

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

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

**STIPULATION AND AGREEMENT
OF SETTLEMENT**

Hon. Susan Illston

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1 This Stipulation and Agreement of Settlement dated January 18, 2018 (“Stipulation”) is
2 submitted pursuant to Fed. R. Civ. P. 23 and Fed. R. Evid. 408. Subject to the Court’s approval, this
3 Stipulation is entered into between and among Lead Plaintiff Fitbit Investor Group (consisting of
4 Plaintiffs Timothy Flynn, Jesse M. Koth and Kelley Koth, Viet Tran, and Mark Cunningham) (the
5 “Plaintiffs”), individually and on behalf of each member of the proposed Settlement Class (defined
6 below), Ana da Luz and Raul Rivera (the “State Court Plaintiffs”), and Defendants Fitbit, Inc. (“Fitbit”
7 or the “Company”); James Park, William R. Zerella, and Eric N. Friedman (together with Fitbit, the
8 “Exchange Act Defendants”); Defendants Jonathan D. Callaghan, Steven Murray, and Christopher
9 Paisley (together with the Exchange Act Defendants, the “Fitbit Defendants”); and Defendants Morgan
10 Stanley & Co. LLC (“Morgan Stanley”), Deutsche Bank Securities Inc. (“Deutsche Bank”), and
11 Merrill Lynch, Pierce, Fenner & Smith Inc. (“Merrill Lynch”) (collectively, the “Underwriter
12 Defendants”) (together, the Fitbit Defendants and Underwriter Defendants are the “Defendants”), by
13 and through their respective counsel, and sets forth a settlement (the “Settlement”) of the above-
14 captioned action (the “Action”).¹ The Settlement is intended to fully, finally, and forever resolve,
15 discharge, and settle the Action and the Settled Claims (including Unknown Claims) upon and subject
16 to the terms and conditions set forth herein.

17 **I. THE LITIGATION**

18 *This Action*

19 The initial complaint in this action was filed on January 11, 2016. On March 11, 2016, multiple
20 movants filed motions and supporting papers seeking appointment by the Court to serve as lead
21 plaintiffs under the Private Securities Litigation Reform Act, 15 U.S.C. § 78u-4. On May 10, 2016, the
22 Court entered an Order appointing the Fitbit Investor Group, composed of individuals Timothy Flynn,
23 Jesse M. Koth and Kelley Koth, Viet Tran, and Mark Cunningham to serve as Lead Plaintiff and
24 appointing its choice of counsel, Glancy Prongay & Murray LLP and Pomerantz LLP, to serve as Lead
25 Counsel.

27 ¹ All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed to
28 them in ¶ 1 below.

1 The operative Amended Complaint was filed on July 1, 2016. Defendants moved to dismiss,
2 arguing that, among other things, the challenged statements were neither false nor actionable, the
3 Amended Complaint failed to plead scienter, and the alleged corrective disclosures did not reveal the
4 falsity of the challenged statements. The Court denied the motions to dismiss in October 2016. The
5 Fitbit Defendants subsequently filed a motion for reconsideration on the issue of scienter, which the
6 Court denied on January 19, 2017.

7 On March 3, 2017, Plaintiffs filed their motion for class certification, which Defendants did not
8 oppose. On June 21, 2017, the Court certified the Exchange Act Class and Securities Act Class (as
9 defined below), appointed Lead Plaintiff the Fitbit Investor Group (composed of Timothy Flynn, Jesse
10 M. Koth and Kelley Koth, Viet Tran, and Mark Cunningham) as Class Representative, and appointed
11 Lead Counsel Glancy Prongay & Murray LLP and Pomerantz LLP as Class Counsel.

12 On April 26, 2017, the Fitbit Defendants moved for summary judgment on the issue of loss
13 causation. Plaintiffs moved to stay that motion pending further discovery. Before the Court could rule
14 on either of these motions, the parties agreed to pursue mediation, and the Court agreed to defer
15 consideration of the motions until after mediation.

16 ***The State Court Action***

17 In December 2016, two putative class actions alleging violations of the Securities Act were
18 consolidated in front of Judge Karnow in San Francisco Superior Court under the caption, *In re Fitbit,*
19 *Inc. Shareholder Litigation*, Lead Case No. CGC-16-552062 (the “State Court Action”). On
20 February 7, 2017, plaintiffs in the State Court Action filed an amended complaint naming as
21 defendants the Fitbit Defendants, the underwriters for Fitbit’s initial public offering on or about
22 June 18, 2015 (the “IPO”) and for Fitbit’s follow-on public offering on or about November 13, 2015
23 (the “SPO”), and certain venture capital firms that invested in Fitbit. The amended complaint
24 challenged a subset of the statements in Fitbit’s offering documents at issue in the Action. On April 7,
25 2017, the Court entered an order sustaining defendants’ demurrer as to the claims arising out of the
26 secondary offering and dismissing defendants Citigroup Global Markets Inc. and RBC Capital
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1 Markets, LLC from the State Court Action with prejudice, and staying the State Court Action pending
2 resolution of the Action.

3 ***The Mediation***

4 Counsel for Plaintiffs and Defendants have engaged in extensive settlement negotiations, while
5 Plaintiffs pursued discovery in the Action. Settlement negotiations included two mediation sessions on
6 August 9, 2017 and September 14, 2017 before Hon. Daniel Weinstein and Jed Melnick, Esq. of
7 JAMS. Counsel for plaintiffs in the State Court Action attended the September 14, 2017 session, at
8 which an understanding in principle was reached to settle the Action and to fully resolve all pending
9 claims of Plaintiffs, State Court Plaintiffs, and the proposed Settlement Class in exchange for creation
10 of a thirty-three million dollar (\$33,000,000) Settlement Fund (defined below) and the giving of
11 mutual releases as described herein. Thereafter, Lead Counsel and counsel for Defendants negotiated a
12 Memorandum of Understanding, executed on September 26, 2017.

13 **II. PLAINTIFFS' CLAIMS AND BENEFITS OF SETTLEMENT**

14 Lead Counsel have conducted a thorough investigation relating to the claims and the
15 underlying events and transactions alleged in the Action. Specifically, the investigation included,
16 among other things: (i) interviews with former Fitbit employees and/or consultants; (ii) extensive
17 consultation with, and analysis by, damages experts; (iii) detailed reviews of Fitbit's public filings,
18 annual reports, press releases, and other publicly available information; (iv) review of analysts' reports
19 and articles relating to Fitbit; (v) research of the applicable law with respect to the claims asserted in
20 the complaints filed in the litigation and the potential defenses thereto; and (vi) the review of thousands
21 of pages of documents produced by Defendants and third parties.

22 Plaintiffs and Lead Counsel believe that the claims asserted in the Action have merit. However,
23 Plaintiffs and Lead Counsel recognize and acknowledge the expense and length of continued
24 proceedings necessary to prosecute this Action against Defendants, such as motions for summary
25 judgment, trial, and appeals. Plaintiffs are entering into this Settlement in view of, among other things,
26 the significant funds the Settlement will provide to Settlement Class Members and the avoidance of the
27 uncertainties, burden, risk, and expense of further litigation against the Defendants. Plaintiffs and Lead
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1 Counsel are mindful of the inherent problems of proof of, and possible defenses to, the federal
2 securities law violations asserted in the Action. Based on the foregoing, and in acknowledgement of
3 this Court's rulings to this point, Plaintiffs and Lead Counsel have concluded that the terms and
4 conditions of this Stipulation confer substantial benefits upon the Settlement Class; are fair,
5 reasonable, and adequate to the Settlement Class; and that it is in the best interests of the Settlement
6 Class to settle the claims asserted in the Amended Complaint against the Defendants.

7 As set forth in ¶¶ 62–63 below, and pursuant to the Federal Rules of Evidence, this Stipulation
8 shall in no event be construed as or deemed to be evidence of any admission or concession by the
9 Plaintiffs or any Settlement Class Member or Lead Counsel that any of the claims lack merit, that any
10 of the Defendants' defenses to the claims have merit, or that damages recoverable in the action would
11 not have exceeded the Settlement Fund amount.

12 **III. DEFENDANTS' DENIALS OF LIABILITY**

13 The Defendants have denied and continue to deny each and all of the claims, contentions, and
14 allegations made in the Action. They have expressly denied and continue to deny that they have
15 violated the federal securities laws or any other laws or have otherwise misled investors as alleged in
16 the Action. Each Defendant has denied and continues to deny specifically each and all of the claims
17 alleged in the Action; all charges of wrongdoing or liability against them arising out of any of the
18 conduct, statements, acts, or omissions, alleged in the Action; the allegations that any of the
19 Defendants made any material misstatements or omissions; and that any member of the Settlement
20 Class has suffered damages resulting from the conduct alleged in the Action. In addition, the
21 Defendants maintain that they have meritorious defenses to the claims alleged in the Action.

22 Nonetheless, the Defendants have concluded that further conduct of the Action could be
23 protracted, burdensome, expensive, and distracting. The Defendants also have taken into account the
24 uncertainty, risks, and costs inherent in any litigation, especially in complex cases such as this Action.
25 The Defendants have, therefore, determined that it is desirable and beneficial to them that the Action
26 be fully, finally, and forever resolved, discharged, and settled in the manner and upon the terms and
27 conditions set forth in this Stipulation.

1 As set forth in ¶¶ 62–63 below, and pursuant to the Federal Rules of Evidence, this Stipulation
2 shall in no event be construed as or deemed to be evidence of any admission or concession by the
3 Defendants with respect to any claim of any fault or liability or wrongdoing or damage whatsoever.

4 **IV. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT**

5 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Plaintiffs
6 (for themselves and all Settlement Class Members), on the one hand, and the Defendants, on the other
7 hand, by and through their respective counsel or attorneys of record, that, subject to the approval of the
8 Court, in consideration of the benefits flowing to them from the Settlement set forth herein, the Action
9 and the Settled Claims shall be finally and fully compromised, settled, and released, and the Action
10 shall be dismissed with prejudice, as to the Defendants, upon and subject to these terms and conditions
11 set forth herein:

12 **DEFINITIONS**

13 1. In addition to the other defined terms herein, the following definitions shall apply in this
14 Stipulation:

15 (a) “Action” means *Robb v. Fitbit, Inc.*, No. 3:16-cv-00151 (N.D. Cal.).

16 (b) “Amended Complaint” means the Amended Complaint for Violations of the
17 Federal Securities Laws (Dkt. No. 89) filed in the Action on July 1, 2016.

18 (c) “Authorized Claimant” means a Settlement Class Member who submits a timely
19 and valid Proof of Claim to the Settlement Administrator, in accordance with the requirements
20 established by the Court, which is approved for payment from the Settlement Fund.

21 (d) “Claimant” means a Settlement Class Member who submits a Proof of Claim to
22 the Settlement Administrator seeking to be eligible to share in the proceeds of the Settlement Fund.

23 (e) “Defendant Claims” means any and all claims, rights, causes of action, and
24 liabilities of every nature and description, whether known or Unknown Claims, that arise out of or
25 relate in any way to the institution, prosecution, or settlement of the claims asserted in the Action or
26 State Court Action against the Defendants, which any of the Defendants could pursue against the
27 Plaintiffs, Lead Counsel, or any Settlement Class Member or their attorneys, agents, experts, or
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1 investigators. Defendant Claims do not include any claims relating to the enforcement of the
2 Settlement or any claims against any Person who submits a request for exclusion from the Settlement
3 Class that is accepted by the Court.

4 (f) “Defendants” means Defendants Fitbit, Inc. (“Fitbit” or the “Company”); James
5 Park, William R. Zerella, and Eric N. Friedman (together with Fitbit, the “Exchange Act Defendants”);
6 Defendants Jonathan D. Callaghan, Steven Murray, and Christopher Paisley (together with the
7 Exchange Act Defendants, the “Fitbit Defendants”); and Defendants Morgan Stanley & Co. LLC
8 (“Morgan Stanley”), Deutsche Bank Securities Inc. (“Deutsche Bank”), and Merrill Lynch, Pierce,
9 Fenner & Smith Inc. (“Merrill Lynch”) (collectively, the “Underwriter Defendants”).

10 (g) “Derivative Actions” means: *In re Fitbit, Inc. Shareholder Derivative Litigation*,
11 No. 16-cv-6558 (N.D. Cal. November 11, 2016); *Correia v. Park*, No. 1:17-cv-00108 (D. Del. Feb. 2,
12 2017); *In re Fitbit, Inc. Stockholder Derivative Litigation*, C.A. No. 2017-0402-JRS (Del. Chan. May
13 26, 2017); and any other related derivative action filed on behalf of Fitbit prior to the date of this
14 Stipulation.

15 (h) “Effective Date” means the first date by which all of the events and conditions
16 specified in ¶ 55 below have been met and have occurred, at which time the Settlement contemplated
17 by this Stipulation shall become effective.

18 (i) “Escrow Account” means the escrow account or accounts to be established by
19 Lead Counsel at Huntington National Bank, into which the Settlement Consideration shall be wired,
20 transferred, or otherwise paid pursuant to ¶ 11 below.

21 (j) “Escrow Agent” means Huntington National Bank.

22 (k) “Final” means, with respect to any order of court, including, without limitation,
23 the Judgment, that such order represents a final and binding determination of all issues within its scope
24 and is not subject to further review on appeal or otherwise. Without limitation, an order becomes
25 “Final” when: (i) no appeal has been filed and the prescribed time for commencing any appeal has
26 expired; or (ii) an appeal has been filed and either (a) the appeal has been dismissed and the prescribed
27 time, if any, for commencing any further appeal has expired, or (b) the order has been affirmed in all
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1 material respects and the prescribed time, if any for commencing any further appeal has expired. For
2 purposes of this definition of “Final,” an “appeal” includes any motion to alter or amend under Rule
3 52(b) or Rule 59(e) of the Federal Rules of Civil Procedure, any appeal as of right, discretionary
4 appeal, interlocutory appeal, petition for writ of *certiorari*, or other proceeding involving writs of
5 *certiorari* or mandamus, and any other proceedings of like kind. Any appeal or other proceeding
6 pertaining solely to an order or the part of an order adopting or approving a Plan of Allocation or
7 solely to any order or the part of an order issued solely with respect to an application for attorneys’
8 fees and expenses pursuant to ¶¶ 46-51 herein shall not in any way delay or preclude the Judgment
9 from becoming Final.

10 (l) “Individual Defendants” means James Park, William R. Zerella, Eric N.
11 Friedman, Jonathan D. Callaghan, Steven Murray, and Christopher Paisley.

12 (m) “Judgment” means the Judgment and Order of Final Approval to be entered by
13 the Court following the settlement fairness hearing (“Settlement Hearing”) approving the Settlement,
14 substantially in the form attached hereto as Exhibit E.

15 (n) “MOU” means the Memorandum of Understanding executed by the parties on
16 September 26, 2017.

17 (o) “Net Settlement Fund” means the Settlement Fund, less (i) any taxes; (ii) any
18 Notice and Administration Costs; and (iii) any attorneys’ fees, litigation expenses, and awards of
19 reasonable costs and expenses to Plaintiffs awarded by the Court.

20 (p) “Notice” means the Notice of Pendency and Proposed Settlement of Class
21 Action, Motion for Attorneys’ Fees and Expenses, and Settlement Fairness Hearing, in all material
22 respects in the form attached hereto as Exhibit B.

23 (q) “Notice and Administration Costs” means the costs, fees, and expenses that are
24 incurred by the Settlement Administrator and/or the Escrow Agent in connection with administering
25 the Settlement, including but not limited to: (i) providing notices to the Settlement Class;
26 (ii) administering the claims process, (iii) engaging in Settlement-related communications with
27 Settlement Class Members, and (iv) overseeing the administration of the Escrow Account.

1 (r) "Person" means an individual, corporation, limited liability company,
2 professional corporation, partnership, domestic partnership, limited partnership, limited liability
3 partnership, marital community, association, joint stock company, joint venture, joint venturer, estate,
4 legal representative, trust or trustee, unincorporated association, government or any political
5 subdivision or agency thereof, or any other business or legal entity.

6 (s) "Plan of Allocation" means the plan for allocating the Net Settlement Fund as
7 set forth in Exhibit B, or such other plan of allocation as the Court may approve.

8 (t) "Preliminary Approval Order" means the order, substantially in the form
9 attached hereto as Exhibit A, to be entered by the Court preliminarily approving the Settlement and
10 directing that notice be provided to the Settlement Class.

11 (u) "Previously Certified Class" means the following classes certified by the Court
12 in its June 21, 2017 order (Dkt. No. 184):

13 (i) The Exchange Act Class: all persons who purchased or otherwise
14 acquired Fitbit securities on the open market between June 18, 2015, and May 19, 2016, both dates
15 inclusive (the "Exchange Act Class Period"). Excluded from the Exchange Act Class are
16 (i) Defendants and the Individual Defendants' family members; (ii) directors and officers of Fitbit and
17 their families; (iii) any entity in which the Fitbit Defendants have or had a controlling interest; and
18 (iv) any entity in which the Underwriter Defendants have or had a majority interest.

19 (ii) The Securities Act Class: all persons who purchased or otherwise
20 acquired Fitbit Class A common stock pursuant and/or traceable to the Company's initial public
21 offering on or about June 18, 2015 (the "IPO"). Excluded from the Securities Act Class are
22 (i) Defendants and the Individual Defendants' family members; (ii) directors and officers of Fitbit and
23 their families; (iii) any entity in which the Fitbit Defendants have or had a controlling interest; and
24 (iv) any entity in which the Underwriter Defendants have or had a majority interest.

25 (v) "Proof of Claim" means the Proof of Claim and Release Form, substantially in
26 the form attached hereto as Exhibit D, which a putative Settlement Class Member must complete and
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1 timely submit to the Settlement Administrator if that Settlement Class Member seeks to be eligible to
2 share in a distribution of the Net Settlement Fund.

3 (w) “Publication Notice” means the Summary Notice of Pendency and Proposed
4 Settlement of Action and Settlement Hearing, substantially in the form attached as Exhibit C, which is
5 to be published in a national business publication or via a national business newswire, as in the normal
6 course of class action settlement notices, and be posted also on the Settlement Administrator’s website.

7 (x) “Recognized Claim” means the amount of an Authorized Claimant’s loss that is
8 determined by the Settlement Administrator to be compensable under the Plan of Allocation.

9 (y) “Released Persons” means, collectively, each and all of (i) the Defendants, the
10 members of each Individual Defendant’s immediate family, any entity in which any Defendant or
11 member of any Individual Defendant’s immediate family has, or had during the Exchange Act Class
12 Period, a controlling interest (directly or indirectly), any estate or trust of which any Individual
13 Defendant is a settlor or which is for the benefit of any Individual Defendant and/or members of his
14 family, the underwriters of the IPO or SPO; and (ii) for each and every Person listed in part (i), their
15 respective past, present, and future heirs, executors, administrators, predecessors, successors, assigns,
16 employees, agents, affiliates, analysts, assignees, attorneys, auditors, co-insurers, commercial bank
17 lenders, consultants, controlling shareholders, directors, divisions, domestic partners, financial
18 advisors, general or limited partners, general or limited partnerships, insurers, investment advisors,
19 investment bankers, investment banks, joint ventures and joint venturers, managers, managing
20 directors, marital communities, members, officers, parents, personal or legal representatives,
21 principals, reinsurers, selling shareholders, shareholders, spouses, subsidiaries (foreign or domestic),
22 trustees, underwriters, and other retained professionals, in their respective capacities as such.

23 (z) “Settlement” means this Stipulation and Agreement of Settlement and the
24 settlement contained herein.

25 (aa) “Settlement Administrator” means the firm of Angeion Group which, subject to
26 Court approval, shall administer the Settlement, including sending a mailed Notice to Settlement Class
27 Members in the form of Exhibit B hereto, arranging for publication of the Notice in the form of
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1 Exhibit C hereto, processing claims, and performing such other administrative functions as are
2 required under this Stipulation.

3 (bb) “Settlement Administration Account” means an interest-bearing account to be
4 maintained by Lead Counsel with the Escrow Agent for payment of the expenses incurred by the
5 Settlement Administrator in administering the Settlement.

6 (cc) “Settlement Amount” means thirty-three million dollars (\$33,000,000.00).

7 (dd) “Settlement Class” means the proposed settlement classes defined as follows:

8 (i) The Exchange Act Settlement Class: all persons who purchased or
9 otherwise acquired Fitbit securities on the open market between June 18, 2015, and May 19, 2016,
10 both dates inclusive (the “Exchange Act Class Period”). Excluded from the Exchange Act Settlement
11 Class are (i) Defendants and the Individual Defendants’ family members; (ii) directors and officers of
12 Fitbit and their families; (iii) any entity in which the Fitbit Defendants have or had a controlling
13 interest; (iv) any entity in which the Underwriter Defendants have or had a majority interest; and
14 (v) any Person who submits a request for exclusion from the Settlement Class that is accepted by the
15 Court; and

16 (ii) The Securities Act Settlement Class: all persons who purchased or
17 otherwise acquired Fitbit Class A common stock pursuant and/or traceable to the IPO or SPO.
18 Excluded from the Securities Act Settlement Class are (i) Defendants and the Individual Defendants’
19 family members; (ii) directors and officers of Fitbit and their families; (iii) any entity in which the
20 Fitbit Defendants have or had a controlling interest; (iv) any entity in which the Underwriter
21 Defendants have or had a majority interest; and (v) any Person who submits a request for exclusion
22 from the Settlement Class that is accepted by the Court.

23 (ee) “Settled Claims” means the Settlement Class Claims and the Defendant Claims.

24 (ff) “Settlement Class Claims” means all claims, rights, liabilities, and causes of
25 action of every nature and description, including Unknown Claims, whether contingent or absolute,
26 mature or unmature, discoverable or undiscoverable, liquidated or unliquidated, accrued or unaccrued,
27 including those that are concealed or hidden, regardless of legal or equitable theory, that Plaintiffs or
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1 any other member(s) of the Settlement Class asserted or could have asserted in any forum (i) that arise
2 out of, are based upon, or are related in any way directly or indirectly, in whole or in part to, the
3 allegations, transactions, facts, matters, occurrences, representations, or omissions referred to in the
4 operative complaint and that relate to the purchase, sale, acquisition, or retention of Fitbit securities
5 during the Exchange Act Class Period; or (ii) that are related the administration of the Settlement.
6 Notwithstanding the foregoing, “Settlement Class Claims” does not include any claims asserted on
7 behalf of the Company in the Derivative Actions.

8 (gg) “Settlement Class Member” means a Person who is a member of the Settlement
9 Class that does not exclude himself, herself, or itself by filing a request for exclusion in accordance
10 with the requirements set forth in the Notice.

11 (hh) “Settlement Consideration” means the Settlement Amount that the Fitbit
12 Defendants shall pay or cause to be paid into the Escrow Account within 15 business days of the later
13 of (i) the Court granting preliminary approval of the settlement; or (ii) the receipt by Fitbit’s counsel of
14 complete payment instructions, including a W-9 form and wire transfer instructions required by certain
15 of the Fitbit Defendants’ insurance carriers.

16 (ii) “Settlement Fund” means the Settlement Consideration plus any and all interest
17 accrued thereon in the Escrow Account.

18 (jj) “Settlement Fund Distribution Order” means an order entered by the Court
19 authorizing and directing distribution, in whole or in part, of the Net Settlement Fund to the Authorized
20 Claimants.

21 (kk) “Settling Parties” means Plaintiffs, on behalf of themselves and the Settlement
22 Class Members, and the Defendants.

23 (ll) “Taxes” means: (i) all federal, state, and/or local taxes of any kind on any
24 income earned by the Settlement Fund; (ii) any taxes or tax detriments that may be imposed upon the
25 Defendants or their counsel with respect to any income earned by the Settlement Fund for any period
26 during which the Settlement Fund does not qualify as a “qualified settlement fund” for federal or state
27 income tax purposes, provided that any such taxes or tax detriments are reported to Lead Counsel and
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1 the Escrow Agent at least fourteen (14) days before distribution of the Net Settlement Fund to the
2 Settlement Class Members; and (iii) the reasonable and necessary costs and expenses incurred in
3 connection with determining the amount of, and paying, any taxes owed by the Net Settlement Fund
4 (including, without limitation, the reasonable and necessary costs and expenses of tax attorneys and
5 accountants).

6 (mm) “Unknown Claims” means collectively, any and all Settlement Class Claims that
7 any Plaintiff or any other Settlement Class Member does not know or suspect to exist in his, her, or its
8 favor, and any Defendant Claims that any Defendant does not know or suspect to exist in his, her, or its
9 favor, which, if known by him, her, or it, might have affected his, her, or its decision to enter into this
10 Settlement, execute this Stipulation, and agree to all the various releases set forth herein, or might have
11 affected his, her, or its decision not to object to this Settlement or not exclude himself, herself, or itself
12 from the Settlement Class. Unknown Claims include, without limitation, those claims in which some
13 or all of the facts composing the claim may be unsuspected or undisclosed, concealed, or hidden. The
14 parties stipulate and agree that this provision is to be interpreted to the broadest extent permitted by
15 any applicable law, regulation, or rule.

16 **CAFA NOTICE**

17 2. Pursuant to the Class Action Fairness Act (“CAFA”), no later than ten (10) calendar
18 days after this Stipulation is filed with the Court, the Fitbit Defendants shall complete service on the
19 appropriate federal and state government officials of all notices required under the Class Action
20 Fairness Act, 28 U.S.C. § 1715, and shall thereafter notify Lead Counsel as to completion of such
21 service.

22 **DUE DILIGENCE**

23 3. The parties have conferred in good faith and, with the assistance of mediator Jed
24 Melnick, agreed on an appropriate set of documents to be produced to Lead Plaintiffs, as reasonably
25 necessary for Lead Plaintiffs to confirm and determine in good faith that the Settlement is fair,
26 reasonable, and adequate to the Settlement Classes. The Fitbit Defendants have produced the mutually-
27 agreed set of documents to Lead Plaintiffs. All documents provided to Lead Plaintiffs as part of such
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1 confirmatory discovery are being produced for settlement purposes only, are to be deemed confidential
2 pursuant to the terms of the Stipulated Protective Order entered in the Action on May 1, 2017, and
3 Lead Plaintiffs may only reference their review thereof as part of their assessment of the fairness and
4 reasonableness of the Settlement and the potential risk of proceeding with the Action rather than
5 settling now.

6 **CLASS CERTIFICATION**

7 4. On June 21, 2017, the Court so-ordered the parties' stipulation certifying the Exchange
8 Act Class and Securities Act Class (Dkt. No. 184). For the purposes of the Settlement and for no other
9 purpose, the Settling Parties stipulate, agree, and consent to the modification from the definitions of the
10 Exchange Act Class and of the Securities Act Class, and to the definitions of the Exchange Act
11 Settlement Class and the Securities Act Settlement Class as set forth above in ¶ 1(dd). Following the
12 execution of this Stipulation, Plaintiffs, with the consent of Defendants, shall apply to the Court for
13 entry of the Preliminary Approval Order in the form attached as Exhibit A hereto, which will certify
14 the aforementioned Settlement Class, approving the modifications to the definition of the Previously
15 Certified Class as contemplated herein.

16 **RELEASES AND BAR ORDER**

17 5. The obligations incurred pursuant to this Stipulation shall be in full and final disposition
18 of the Action as to the Defendants, and shall fully and finally release any and all Settled Claims
19 (including Unknown Claims) against the Defendants and all Released Persons.

20 6. Upon the Effective Date, Plaintiffs and each of the other Settlement Class Members, on
21 behalf of themselves and their respective spouses, heirs, executors, beneficiaries, administrators,
22 successors, assigns, and any Person(s) (claiming now or in the future) through or on behalf of any of
23 them directly or indirectly, regardless of whether such Plaintiff or Settlement Class Member ever seeks
24 or obtains by any means (including, without limitation, by submitting a Claim to the Settlement
25 Administrator) any distribution from the Net Settlement Fund: (a) shall be deemed by this Settlement
26 to have, and by operation of law and of the Judgment shall have, fully, finally, and forever released,
27 relinquished, waived, dismissed, and discharged each and all of the Settlement Class Claims (including
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1 Unknown Claims), against each and all of the Released Persons, and shall have covenanted not to sue
2 any Released Person with respect to any Settlement Class Claims (including any Unknown Claims)
3 except to enforce the releases and other terms and conditions contained in this Stipulation or the
4 Judgment entered pursuant hereto and (b) shall be forever permanently barred, enjoined and restrained
5 from commencing, instituting, asserting, maintaining, enforcing, prosecuting, or otherwise pursuing,
6 either directly or in any other capacity, any of the Settlement Class Claims (including any Unknown
7 Claims) against any Released Person in the Action or in any other action or any proceeding, in any
8 state, federal, or foreign court of law or equity, arbitration tribunal, administrative forum, or other
9 forum of any kind. The foregoing provisions shall not apply to any Person who would be a member of
10 the Settlement Class and timely excludes himself, herself, or itself.

11 7. By entering into this Stipulation, Plaintiffs represent and warrant that they have not
12 assigned, hypothecated, conveyed, transferred, or otherwise granted or given any interest in the
13 Settlement Class Claims to any other Person, and the Defendants represent and warrant that they have
14 not assigned, hypothecated, conveyed, transferred, or otherwise granted or given any interest in the
15 Defendant Claims to any other Person.

16 8. The Proof of Claim form to be executed by Claimants shall release all Settlement Class
17 Claims (including Unknown Claims) against all Released Persons and shall be substantially in the form
18 attached hereto as Exhibit D.

19 9. Upon the Effective Date, Defendants, for themselves and on behalf of each of their
20 respective spouses, heirs, executors, beneficiaries, administrators, successors, assigns, and any
21 Person(s) (claiming now or in the future) through or on behalf of any of them directly or indirectly:
22 (a) shall be deemed to have, and by operation of law and of the Judgment shall have, fully, finally and
23 forever released, relinquished, waived, discharged, and dismissed each and all of the Defendant Claims
24 (including Unknown Claims) against Plaintiffs in the Action, Lead Counsel and their attorneys, the
25 State Court Plaintiffs and their attorneys, and all other Settlement Class Members, the members of
26 each Settlement Class Member’s immediate family, any entity in which any member of any Settlement
27 Class Member’s immediate family has or had a controlling interest (directly or indirectly), any estate
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1 or trust of which any Settlement Class Member is the settlor or which is for the benefit of any
2 Settlement Class Member and/or members of his or her family and (b) shall be forever permanently
3 barred, enjoined, and restrained from commencing, instituting, asserting, maintaining, enforcing,
4 prosecuting, or otherwise pursuing, either directly or in any other capacity, any of the Defendant
5 Claims (including any Unknown Claims) against the Plaintiffs, Lead Counsel and their attorneys, and
6 all other Settlement Class Members in the Action or in any other action or any proceeding, in any state,
7 federal, or foreign court of law or equity, arbitration tribunal, administrative forum, or other forum of
8 any kind.

9 10. It is understood that Plaintiffs and the other Settlement Class Members or Defendants,
10 or any of them, may hereafter discover additional or different facts from those that he, she, or it now
11 knows or believes to be true with respect to the subject matter of the Settlement Class Claims or
12 Defendant Claims (including Unknown Claims), but each of the Plaintiffs and the Defendants shall,
13 upon the Effective Date, expressly fully, finally, and forever discharge, settle, and release, and each
14 Settlement Class Member, upon the Effective Date, shall be deemed to have, and by operation of law
15 and of the Judgment shall have, expressly fully, finally, and forever discharged, settled, and released
16 any and all Settled Claims. Plaintiffs and Defendants acknowledge, and the Settlement Class Members
17 by operation of law and of the Judgment shall be deemed to have acknowledged, that the foregoing
18 waiver of Settled Claims that are Unknown Claims (and the inclusion of “Unknown Claims” in the
19 definition of Settlement Class Claims and Defendant Claims) was separately bargained for and is a
20 material element of the Settlement.

21 **SETTLEMENT CONSIDERATION**

22 11. As full and complete consideration for the Settlement, the Fitbit Defendants shall pay or
23 cause to be paid the Settlement Amount into the Escrow Account within fifteen (15) business days of
24 the later of (i) the Court granting preliminary approval of the settlement; or (ii) receipt by Fitbit’s
25 counsel from Lead Counsel of complete and accurate wiring instructions, payment address, and a
26 complete and accurate W-9 form.

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1 12. Other than the obligation of the Fitbit Defendants to pay or cause to be paid the
2 Settlement Amount into the Escrow Account, and the payment set forth in ¶ 51, under no
3 circumstances will any Released Person have any obligation to make any payment pursuant to this
4 Settlement set forth herein, and no responsibility for, or liability or obligation whatsoever, to anyone,
5 with respect to the Settlement Fund, the Net Settlement Fund, the Escrow Account, the Settlement
6 Administrator, the Settlement Administrator’s actions, any transaction executed or approved by the
7 Escrow Agent, the maintenance, administration, investment, or distribution of the Settlement Fund or
8 the Net Settlement Fund, the establishment or administration of the Plan of Allocation, the
9 determination, administration, or calculation of claims, the payment or withholding of Taxes, the
10 administration of the Settlement, or any losses incurred in connection with such matters. The Released
11 Persons shall have no further or other liability or obligations to Plaintiffs, Lead Counsel, the State
12 Court Plaintiffs, or any Settlement Class Member with respect to the Settlement Class Claims, except
13 as expressly stated herein. Notwithstanding anything herein to the contrary, the Escrow Agent shall be
14 obligated to withhold from distribution to Authorized Claimants all funds necessary to pay all Notice
15 and Administration Costs and all other fees, costs, and expenses associated with administration of the
16 Settlement and the Settlement Fund; neither the Defendants nor their counsel nor any other Released
17 Person is responsible therefor, nor shall they have any liability whatsoever with respect thereto, above
18 and beyond the Defendants’ obligation to pay the Settlement Amount into the Escrow Account as set
19 forth above. The Settlement Fund shall indemnify and hold harmless all Released Persons for any costs
20 of administration of the Settlement and the Settlement Fund of any kind whatsoever (including,
21 without limitation, costs associated with any such indemnification). The Underwriter Defendants shall
22 not be required to make, and shall have no responsibility for, any payments under this Settlement.

24 13. The interest earned on the Settlement Fund pursuant to ¶ 16 below shall be for the
25 benefit of the Settlement Class if the Settlement and Judgment become Final. If the Judgment does not
26 become Final or the Settlement is terminated, the interest earned on the Settlement Fund shall be
27 returned to the Defendants.

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DISMISSAL OF STATE COURT PROCEEDINGS

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2 14. Within fourteen (14) days of the entry of the Judgment, the State Court Plaintiffs, with
3 the consent of all Parties to the State Court Action, shall file a motion for dismissal with prejudice of
4 the State Court Action as to all defendants in the State Court Action.

5 **USE OF SETTLEMENT FUND AND ADMINISTRATION OF ESCROW ACCOUNT**

6 15. Prior to any distribution of the Net Settlement Fund, the Settlement Fund shall be used
7 to pay: (i) any Taxes; (ii) any Notice and Administration Costs; and (iii) any attorneys’ fees, litigation
8 expenses, and Plaintiff awards of reasonable costs and expenses awarded by the Court. Under no
9 circumstances shall Plaintiffs or any Settlement Class Member or Lead Counsel have any
10 responsibility for payment of such costs.

11 16. Except as provided herein or pursuant to orders of the Court, the Net Settlement Fund
12 shall remain in the Escrow Account prior to the Effective Date. All funds held by the Escrow Agent
13 shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the
14 Court until such time as the funds shall be distributed or returned pursuant to the terms of this
15 Stipulation and/or further order of the Court. The Escrow Agent shall invest any funds in the Escrow
16 Account exclusively in United States Treasury Bills (or a mutual fund invested solely in such
17 instruments) and shall collect and reinvest all interest accrued thereon, except that any residual cash
18 balances up to the amount that is insured by the FDIC may be deposited in any account that is fully
19 insured by the FDIC. In the event that the yield on United States Treasury Bills is negative, in lieu of
20 purchasing such Treasury Bills, all or any portion of the funds held by the Escrow Agent may be
21 deposited in any account that is fully insured by the FDIC or backed by the full faith and credit of the
22 United States. Additionally, if short-term placement of the funds is necessary, all or any portion of the
23 funds held by the Escrow Agent may be deposited in any account that is fully insured by the FDIC or
24 backed by the full faith and credit of the United States.

25 17. The Escrow Agent will bear all responsibility and liability for managing the Settlement
26 Fund for the benefit of the Settlement Class, and cannot assign or delegate its responsibilities without
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1 approval of Lead Counsel. Statements of account will be provided to Lead Counsel on a monthly basis
2 until the Judgment becomes Final.

3 18. The Escrow Account will, to the extent possible, be a “Qualified Settlement Fund”
4 within the meaning of Treasury Regulation § 1.468B-1. The Settlement Administrator, as administrator
5 of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely
6 responsible for ensuring that the Escrow Account complies with the requirements and regulations
7 governing Qualified Settlement Funds, for filing all informational and other tax returns (including,
8 without limitation, the returns described in Treasury Regulation § 1.468B-2(k)) for the Settlement
9 Fund, and for paying all Taxes owed with respect to the Settlement Fund. The Released Persons shall
10 not have any liability or responsibility for any such Taxes. Upon written request, the Defendants will
11 provide to the Escrow Agent the statement described in Treasury Regulation § 1.468B-1(j). The
12 Escrow Agent shall timely make such elections as may be advisable to carry out this paragraph,
13 including making a “relation back election” as described in Treasury Regulation § 1.468B-2(k)(3), to
14 cause the Qualified Settlement Fund to come into existence at the earliest allowable date, and shall
15 take or cause to be taken all such actions as may be necessary or appropriate in connection therewith.

16 19. In the event the Judgment does not become Final or the Settlement is terminated as
17 provided herein, within ten (10) business days of entry of the order rendering the Settlement and
18 Judgment non-Final or notice of the Settlement being terminated, all monies then held in the Escrow
19 Account, including interest earned but less any costs or expenses properly incurred as set forth herein,
20 shall be returned to Fitbit. Plaintiffs and the Settlement Class Members shall have no responsibility for
21 the return of such consideration. Once the Settlement and Judgment become Final, no monies shall
22 revert to the Defendants.

23 **USE AND ADMINISTRATION OF SETTLEMENT ADMINISTRATION ACCOUNT**

24 20. Before the Effective Date and without further order of the Court, up to two hundred
25 fifty thousand (\$250,000 USD) of the Settlement Amount may be transferred from the Escrow
26 Account to the Settlement Administration Account in order to pay reasonable, necessary, and actually
27 incurred Notice and Administration Costs. No other disbursements from the Escrow Account related to
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1 the Settlement will occur until the Judgment becomes Final, absent agreement of the Settling Parties
2 and approval from the Court.

3 21. After the Judgment becomes Final, any remaining monies in the Settlement
4 Administration Account shall be transferred back to the Escrow Account. In the event the Judgment
5 does not become Final or the Settlement is terminated as provided herein, within ten (10) business days
6 of entry of the order rendering the Settlement and Judgment non-Final or notice of the Settlement
7 being terminated, all monies then held in the Settlement Administration Account, including interest
8 earned, shall be returned to Fitbit except for any monies already paid, or then due to be paid for work
9 already performed, for administration costs, including notice costs and Taxes. Plaintiffs and the
10 Settlement Class shall have no responsibility for the return of such consideration. Once the Settlement
11 and Judgment become Final, no monies shall revert to the Defendants.

12 22. Without prior approval from the Court, Lead Counsel may pay the Settlement
13 Administrator from the Settlement Administration Account for the reasonable and necessary costs and
14 expenses associated with administering the Settlement, including without limitation identifying and
15 notifying members of the Settlement Class.

16 **PLAN OF ALLOCATION**

17 23. The Settlement Administrator shall administer the Settlement subject to the jurisdiction
18 of the Court and pursuant to this Stipulation and the Plan of Allocation. The Plaintiffs and Lead
19 Counsel are solely responsible for formulation of the Plan of Allocation, and have designed it so as to
20 base Recognized Claims on only purchases of Fitbit securities that occurred during the Exchange Act
21 Class Period.

22 24. The Plan of Allocation proposed in the Notice, as set forth in Exhibit B hereto, is not a
23 necessary term of this Stipulation or the Settlement, and any change, modification, or alteration to the
24 Plan of Allocation by the Court shall not be grounds for termination of the Settlement. The Plan of
25 Allocation is to be considered by the Court separately from its determination of the fairness,
26 reasonableness, and adequacy of the Settlement as set forth in this Stipulation.

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ADMINISTRATION OF THE SETTLEMENT

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2 25. As part of the Preliminary Approval Order, Plaintiffs shall seek appointment of the
3 Settlement Administrator. The Settlement Administrator shall administer the Settlement, including but
4 not limited to the process of receiving, reviewing, and approving or denying Proofs of Claim, subject
5 to the jurisdiction of the Court. Other than the Fitbit Defendants’ obligation to cooperate in the
6 production of information with respect to the identification of Settlement Class Members as provided
7 in ¶ 26 below, no Released Person shall have any involvement in, responsibility for, or liability or
8 obligation whatsoever with respect to the selection of the Settlement Administrator, the Plan of
9 Allocation, the administration of the Settlement, the management, disposition, investment, distribution,
10 allocation, or disbursement of the Settlement Fund or the Net Settlement Fund, the determination,
11 administration, calculation or payment of claims, the payment or withholding of Taxes, any
12 nonperformance of the Settlement Administrator or any losses incurred in connection with any such
13 matters. No Person shall have any claim against the Released Persons or the Defendants’ counsel
14 arising from or relating to any of the foregoing, and Lead Plaintiff, Lead Counsel, and each Settlement
15 Class Member hereby fully, finally, and forever releases, relinquishes, and discharges the Released
16 Persons and Defendants’ counsel from any and all such liability.

17 26. Fitbit shall cooperate in the production of information with respect to the identification
18 of Settlement Class Members from Fitbit’s shareholder transfer records.

19 27. In accordance with the terms of the Preliminary Approval Order to be entered by the
20 Court, Lead Counsel shall cause the Settlement Administrator to mail the Notice, in substantially the
21 form as is appended as Exhibit B, as the Court shall order, and the Proof of Claim form, in
22 substantially the form as is appended as Exhibit D hereto, as the Court shall order, to those members of
23 the Settlement Class as may be identified through reasonable effort. Also in accordance with the terms
24 of the Preliminary Approval Order to be entered by the Court, Lead Counsel shall cause the Settlement
25 Administrator to publish the Publication Notice, in substantially the form appended as Exhibit C
26 hereto, as the Court shall order.

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1 28. The Settlement Administrator shall, among other duties and obligations, receive Proofs
2 of Claim and determine whether they present valid claims in whole or part, work with Settlement Class
3 Members as needed to help them supplement or clarify their Proofs of Claim, and determine each
4 Authorized Claimant’s *pro rata* share of the Net Settlement Fund based upon each Authorized
5 Claimant’s Recognized Claim compared to the total Recognized Claims of all Authorized Claimants
6 (as set forth in the Plan of Allocation, or in such other plan of allocation as the Court approves).

7 29. Any Settlement Class Member who does not submit a timely and valid Proof of Claim
8 will not be entitled to receive any of the proceeds from the Net Settlement Fund, but will otherwise be
9 bound by all of the terms in this Stipulation and the Settlement, including the terms of the Judgment to
10 be entered in the Action and the releases provided for herein, and will be barred from bringing any
11 action against the Released Persons concerning the Settlement Class Claims.

12 30. For purposes of determining the extent, if any, to which a Settlement Class Member
13 shall be entitled to be treated as an Authorized Claimant, the following conditions (subject to Court
14 order) shall apply.

15 31. Each Settlement Class Member shall be required to submit a valid Proof of Claim,
16 supported by such documents as are designated therein, including proof of the transactions claimed and
17 the losses incurred thereon, or such other documents or proof as the Settlement Administrator, in its
18 discretion, may deem acceptable.

19 32. All Proofs of Claim must be submitted by the date specified in the Notice. Any
20 Settlement Class Member who fails to submit a Proof of Claim by such date shall be forever barred
21 from receiving any payment pursuant to the Settlement and this Stipulation, but shall in all other
22 respects be bound by all of the terms of this Stipulation and the Settlement, including the terms of the
23 Judgment to be entered in the Action and the releases provided for herein, and will be barred from
24 bringing any action against the Released Persons with respect to any of the Settlement Class Claims.
25 Provided that it is received before the motion for the Settlement Fund Distribution Order is filed, a
26 Proof of Claim shall be deemed to have been submitted when posted, if received with a postmark
27 indicated on the envelope and if mailed by First-Class mail and addressed in accordance with the
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1 instructions provided in the Notice. In all other cases, the Proof of Claim shall be deemed to have been
2 submitted when actually received by the Settlement Administrator.

3 33. Each Proof of Claim shall be submitted to and reviewed by the Settlement
4 Administrator, who shall determine in accordance with this Stipulation and the Plan of Allocation the
5 extent, if any, to which each Claimant is an Authorized Claimant.

6 34. The administrative determinations of the Settlement Administrator accepting or
7 rejecting claims shall be presented to the Court on notice to the Settling Parties, for approval by the
8 Court in the Settlement Fund Distribution Order.

9 35. The Settling Parties submit to the jurisdiction of the Court for purposes of implementing
10 and enforcing the Settlement embodied in this Stipulation.

11 36. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with
12 respect to the Claimant’s claim, and the claim will be subject to investigation and discovery under the
13 Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to
14 that Claimant’s status as a Settlement Class Member and the validity of the amount of the Claimant’s
15 claim. No discovery shall be allowed on the merits of the Action or Settlement in conjunction with the
16 processing of the Proofs of Claim.

17 37. Payment pursuant to this Stipulation shall be deemed final and conclusive against all
18 Settlement Class Members. All Settlement Class Members whose claims are not approved by the Court
19 shall be barred from participating in the distribution from the Settlement Fund, but otherwise shall be
20 bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment to
21 be entered in this Action and the releases provided for herein, and will be barred from bringing any
22 action against the Released Persons concerning the Settlement Class Claims.

23 38. All proceedings with respect to the administration, processing, and determination of
24 claims and all controversies relating thereto, including disputed questions of law and fact with respect
25 to the validity of claims, shall be subject to the jurisdiction of this Court.

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DISTRIBUTION OF THE SETTLEMENT

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39. The Settlement Administrator shall determine and allocate to each Authorized Claimant that Authorized Claimant’s proportionate share of the Settlement Fund based on each Authorized Claimant’s Recognized Claim compared to the total Recognized Claims of all Authorized Claimants. The Defendants and the Released Persons shall have no involvement in reviewing, challenging, or approving the Proofs of Claim or in distributing the Net Settlement Fund.

40. After the Effective Date, Lead Counsel shall apply to the Court for the Settlement Fund Distribution Order.

41. The Settlement Fund shall be distributed to the Authorized Claimants, pursuant to the Settlement Fund Distribution Order, only after the Effective Date and after:

- (a) All claims have been processed;
- (b) All matters with respect to attorneys’ fees, costs, and disbursements have been resolved by the Court, and such resolution by the Court is Final; and
- (c) All costs of administration of the Settlement have been paid.

42. After the initial distribution of the Net Settlement Fund, the Settlement Administrator shall make reasonable and diligent efforts to have Authorized Claimants cash their distribution checks. To the extent any monies remain in the fund nine (9) months after the initial distribution, if Lead Counsel, in consultation with the Settlement Administrator, determines that it is cost-effective to do so, the Settlement Administrator shall conduct a re-distribution of the funds remaining after payment of any unpaid fees and expenses incurred in administering the Settlement, including for such re-distribution, to Authorized Claimants who have cashed their initial distributions and who would receive at least \$10.00 from such re-distribution. Additional re-distributions to Authorized Claimants who have cashed their prior checks and who would receive at least \$10.00 on such additional re-distributions may occur thereafter if Lead Counsel, in consultation with the Settlement Administrator, determines that additional re-distributions, after the deduction of any additional fees and expenses incurred in administering the Settlement, including for such re-distributions, would be cost-effective. At such time as it is determined that the re-distribution of funds remaining in the Net Settlement Fund

1 is not cost-effective, the remaining balance shall be contributed to non-sectarian, not-for-profit
2 organization(s), to be recommended by Lead Counsel and approved by the Court.

3 **TAXES**

4 43. After the Judgment becomes Final, all costs and Taxes shall be paid out of the Escrow
5 Account, and neither the Defendants nor any of the Released Persons, nor their counsel, shall have any
6 supervisory authority or responsibility with respect to such payments. Any remaining reasonable and
7 necessary costs of administration, costs of notice to the Settlement Class, and Taxes shall be paid out
8 of the Settlement Administration and Escrow Accounts without further order of the Court. Under no
9 circumstances shall Plaintiffs or any Settlement Class Member or Lead Counsel have any
10 responsibility for such costs or Taxes.

11 44. All Taxes shall be paid out of the Settlement Fund, and shall be timely paid by the
12 Escrow Agent pursuant to the terms herein, and without prior Order of the Court. Any tax returns
13 prepared for the Settlement Fund (as well as the election set forth therein) shall be consistent with the
14 previous paragraph and in all events shall reflect that all Taxes (including any interest or penalties) on
15 the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein.
16 Further, Taxes and all related expenses shall be treated as, and considered to be, a cost of
17 administration of the Settlement Fund, and the Escrow Agent shall be obligated (notwithstanding
18 anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds
19 necessary to pay such amounts, including the establishment of adequate reserves for any Taxes (as well
20 as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)); neither the
21 Defendants nor their counsel nor any other Released Person is responsible therefor, nor shall they have
22 any liability whatsoever with respect thereto, nor shall they be liable for any reporting requirements
23 that may relate thereto.

24 45. In all events, neither the Defendants nor their counsel, nor any other Released Person,
25 shall have any responsibility for or liability whatsoever with respect to the Taxes or the filing of any
26 tax returns or other documents with the Internal Revenue Service or any state or local taxing authority
27 in connection with the Settlement Fund. The Settlement Fund shall indemnify and hold all Released
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1 Persons harmless for any Taxes and related expenses on the Settlement Fund after deposit into the
2 Settlement Fund Account of any kind whatsoever (including, without limitation, taxes payable by
3 reason of any such indemnification). Defendants shall notify the Escrow Agent promptly if Defendants
4 receive any notice of any claim for Taxes relating to the Settlement Fund.

5 **ATTORNEYS’ FEES AND EXPENSES**

6 46. Lead Counsel may submit an application (the “Fee and Expense Application”) for
7 distributions from the Settlement Fund for (i) an award of attorneys’ fees from the Settlement Fund;
8 (ii) the reimbursement of actual costs and expenses, including the fees and expenses of any experts or
9 consultants, reasonably and actually incurred in connection with prosecuting the Action; and (iii) an
10 award to Plaintiffs for their reasonable costs and expenses.

11 47. Lead Counsel’s attorneys’ fees and expenses, as awarded by the Court, shall be paid
12 within ten (10) days of the award by the Court (“Fee and Expense Award”), notwithstanding any
13 appeals that may be taken, subject to the obligation of all counsel who receive any award of attorneys’
14 fees and costs to make full refunds or repayments to the Escrow Account plus interest earned thereon if
15 the award is lowered or the Settlement is disapproved by a final order not subject to further review.
16 The Settlement is not conditioned upon any award of attorneys’ fees and costs, and any objection to or
17 appeal from such an award shall not affect the finality of the Settlement or the judgment of dismissal.
18 Defendants and their insurance carriers shall have no responsibility for, and no liability with respect to,
19 the allocation of any attorneys’ fees or costs among any counsel or to any other person or any
20 obligation of Lead Counsel to make appropriate refunds or repayments to the Settlement Fund or
21 interest earned thereon.

22 48. If the Effective Date does not occur or if this Stipulation is terminated, then any Fee and
23 Expense Award is no longer payable. In the event that any portion of the Fee and Expense Award has
24 already been paid from the Settlement Fund, Lead Counsel shall within ten (10) business days from the
25 event which precludes the Effective Date from occurring or the termination of this Stipulation, refund
26 to the Settlement Fund the Fee and Expense Award paid to Lead Counsel.

1 49. If the Fee and Expense Award is reduced or reversed on appeal, Lead Counsel shall
2 within ten (10) business days from the date of a Final order by the Court of Appeals or the Supreme
3 Court directing such reduction or reversal, make such refunds as are required by such Final order, and
4 such funds shall be distributed by the Escrow Agent to the Settlement Class in the manner directed in
5 the Final order.

6 50. The procedure for and the allowance or disallowance by the Court of any application by
7 Lead Counsel for attorneys’ fees and expenses to be paid out of the Settlement Consideration is not a
8 necessary term of the Settlement or this Stipulation, and it is not a condition of this Stipulation that any
9 particular application for attorneys’ fees or expenses be approved.

10 51. The attorneys representing the plaintiffs in the State Court Action, in recognition of
11 their work on behalf of the Settlement Class, will receive fees in the amount of \$450,000. Within
12 twenty (20) days of the later of the (i) Fee and Expense Award; (ii) entry of an order dismissing the
13 State Court Action with prejudice; or (iii) the receipt by Fitbit’s counsel of complete payment
14 instructions, including a W-9 form and wire transfer instructions required by certain of the Fitbit
15 Defendants’ insurance carriers:

16 (a) Co-Lead Counsel will pay \$150,000 of the Fee and Expense Award to the
17 attorneys representing the plaintiffs in the State Court Action; and

18 (b) The Fitbit Defendants will pay or cause to be paid \$300,000 to the attorneys
19 representing the plaintiffs in the State Court Action, which amount will be separate from and in
20 addition to the Settlement Consideration.

21 **TERMS OF ORDER FOR NOTICE AND HEARING**

22 52. After this Stipulation has been fully executed, on the schedule previously set by the
23 Court, Lead Counsel shall apply to the Court for entry of the Preliminary Approval Order by
24 submitting the fully executed Stipulation together with its Exhibits to the Court and shall request that
25 the Court enter the Preliminary Approval Order, and approve the mailing and publication of the Notice
26 and Publication Notice, substantially in the form of Exhibits A, B, and C annexed hereto.

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1 53. Any Settlement Class Member who fails to comply with any of the provisions of ¶¶ 29-
2 33 of this Stipulation shall waive and forfeit any and all rights he, she, or it may otherwise have to
3 appear separately at the Settlement Hearing and/or to object to the Settlement or to this Stipulation, and
4 shall be bound by all the terms of the Settlement and this Stipulation, and by all proceedings, orders,
5 and judgments in the Action.

6 **TERMS OF ORDER AND JUDGMENT**

7 54. If the Settlement contemplated by this Stipulation is approved by the Court, counsel for
8 the Settling Parties shall request that the Court enter the Judgment.

9 **EFFECTIVE DATE OF SETTLEMENT, WAIVER, OR TERMINATION**

10 55. The Effective Date of Settlement shall be the date when all of the following shall have
11 occurred:

12 (a) This Stipulation, and such other documents as may be required to obtain final
13 Court approval of this Stipulation in a form satisfactory to the Settling Parties, have been duly
14 executed;

15 (b) The Court has entered the Preliminary Approval Order, substantially in the form
16 attached hereto as Exhibit A;

17 (c) The Court has approved the Settlement substantially as described herein,
18 following the period set forth for notice under CAFA, and following notice to the Settlement Class and
19 the Settlement Hearing, as prescribed by Fed. R. Civ. P. 23;

20 (d) The Court has entered the Judgment, substantially in the form attached hereto as
21 Exhibit E, which has become Final, or in the event that the Court enters an order of judgment not in all
22 material respects in the form of the Judgment and none of the Settling Parties elects to terminate the
23 Settlement, the date that such alternative judgment becomes Final;

24 (e) The Defendants have not exercised their option to terminate the Settlement
25 pursuant to the provisions of this Stipulation (including pursuant to the side agreement described in
26 ¶ 59 below);

27 (f) The dismissal with prejudice of the State Court Action; and
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1 (g) Plaintiffs have not exercised their option to terminate the Settlement pursuant to
2 the provisions of this Stipulation.

3 56. Upon the occurrence of all of the events referenced in ¶ 55 herein, any and all
4 remaining interest or right of the Defendants in or to the Settlement Fund shall be absolutely and
5 forever extinguished. Without limiting the foregoing, each Defendant shall have, in his or its sole and
6 absolute discretion, the option to terminate the Settlement in its entirety in the event that the Judgment,
7 upon becoming Final, does not provide for the dismissal with prejudice of the Action against him or it.

8 57. Plaintiffs, provided they unanimously agree, and Fitbit shall each have the right to
9 terminate his, her, or its participation in the Settlement by providing written notice of his, her, or its
10 election to do so (“Termination Notice”) to counsel for the other Settling Parties hereto within thirty
11 (30) days of any of the following:

12 (a) The Court enters an order expressly declining to enter the Preliminary Approval
13 Order in any material respect without reasonable leave to amend;

14 (b) The Court refuses to approve this Stipulation in any material respect without
15 reasonable leave to amend;

16 (c) The Court declines to enter the Judgment in any material respect; provided,
17 however, that this Settlement is expressly not conditioned on the Court’s approval of the proposed Plan
18 of Allocation, nor on the Court’s approval of Lead Counsel’s application for attorneys’ fees or
19 expenses, nor on the Court’s approval of any award to Plaintiffs for their reasonable costs and
20 expenses, and any change in the Judgment relating to these items shall not be considered a material
21 change; or

22 (d) The Judgment does not become Final.

23 58. In the event of a termination (whether under ¶ 56 or ¶ 57), this Stipulation and releases
24 provided for therein shall become null and void and of no further force and effect (except for ¶¶ 3, 12,
25 19, 21, 48, 56, 57, 58, 59, 60, 62, 63, 74, 77, 82, 84, 85, 86, and 87, which shall survive the
26 termination), and the Settling Parties shall be deemed to have reverted to their respective positions as
27 they existed prior to the execution of the MOU, the execution of this Stipulation, and the entry of any
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1 orders pursuant to this Stipulation. The Settling Parties shall thereafter proceed in all respects as if this
2 Stipulation and any related orders had not been entered and shall work together to arrive at a mutually
3 agreeable schedule for resuming litigation of the Action in light of such developments. For the
4 avoidance of doubt, in the event of a termination the Fitbit Defendants’ previously filed motion for
5 summary judgment shall remain withdrawn and inoperative until and unless re-noticed, at which time a
6 new briefing schedule shall be set for that motion if not already agreed.

7 **OPT-OUT TERMINATION RIGHT, CONFIDENTIALITY**

8 59. Plaintiffs and Fitbit, by and through their respective counsel, are simultaneously
9 executing a side agreement, which sets forth certain conditions under which this Stipulation may be
10 withdrawn or terminated at the sole discretion of Fitbit and which shall not be filed with the Court,
11 except that it may be brought to the attention of the Court, *in camera*, in the event of a dispute between
12 Plaintiffs and Fitbit or if so requested or as otherwise ordered by the Court. If the Court requires that
13 the side agreement be filed, the Settling Parties shall jointly petition the Court to file it under seal
14 and/or to redact the threshold set forth in its “blow provision” for the termination contemplated by this
15 paragraph, with such protections deemed to be important by the Settling Parties, among other reasons,
16 so as to not encourage or induce actions in opposition to the Settlement by serial objectors or their
17 counsel.

18 60. The Settling Parties will otherwise keep confidential the terms of the side agreement.

19 **NOT A CLAIMS-MADE SETTLEMENT**

20 61. This is not a claims-made settlement; there will be no reversion.

21 **LIMITATIONS ON USE OF THIS STIPULATION**

22 62. This Settlement compromises claims that are contested and, as such, shall not be
23 deemed an admission by any Settling Party as to the merits of any claim or defense. Plaintiffs
24 acknowledge that the Defendants have denied and continue to deny each and all claims of alleged
25 wrongdoing, while the Defendants acknowledge that Plaintiffs continue to maintain the validity of
26 their lawsuit and the merits of their claims. The Parties acknowledge that Defendants make no
27 admission of liability or wrongdoing.

1 63. This Stipulation, whether or not consummated and whether or not the Settlement is
2 approved by the Court, and all negotiations, discussions, drafts, and proceedings made or taken
3 pursuant to or in connection with the Settlement are not, shall not be deemed to be, and may not be
4 argued to be or offered or received:

5 (a) Against any of the Released Persons as evidence of, or construed as evidence of,
6 any presumption, concession, or admission by any of the Released Persons with respect to the truth of
7 any fact alleged by the Plaintiffs in the Amended Complaint or the Action, or the validity of any claim
8 that has been or could have been asserted against any of the Defendants in the Amended Complaint or
9 the Action, or the deficiency of any defense that has been or could have been asserted in the Action, or
10 of any wrongdoing or liability by any of the Defendants, or any liability, fault, misrepresentation, or
11 omission with respect to any statement or written document approved or made by any of the
12 Defendants;

13 (b) Against the Plaintiffs or any Settlement Class Member or Lead Counsel as
14 evidence of, or construed as evidence of, any infirmity of the claims alleged by the Plaintiffs in the
15 Amended Complaint or the Action or of any lack of merit to the claims or the Action or of any bad
16 faith, dilatory motive, or inadequate prosecution of the claims or the Action;

17 (c) Against any of the Defendants, the Plaintiffs, or any Settlement Class Member,
18 or their respective legal counsel, as evidence of, or construed as evidence of, any presumption,
19 concession, or admission by any of the Defendants, the Plaintiffs, or any Settlement Class Member, or
20 their respective legal counsel, with respect to any liability, negligence, fault, or wrongdoing as against
21 any of the Defendants, the Plaintiffs, or any Settlement Class Member, or their respective legal
22 counsel, in any other civil, criminal, or administrative action or proceeding, other than such actions or
23 proceedings as may be necessary to effectuate the provisions of this Stipulation, provided, however,
24 that if this Stipulation is approved by the Court, the Defendants, the Plaintiffs, and any Settlement
25 Class Member, or their respective legal counsel, may refer to it to effectuate the liability protection and
26 releases granted them hereunder;

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1 (d) Against any of the Defendants as evidence of, or construed as evidence of, any
2 presumption, concession, or admission by any of them that the Settlement Consideration represents the
3 amount which could or would have been received after trial of the Action against them;

4 (e) Against the Plaintiffs or any Settlement Class Member as evidence of, or
5 construed as evidence of, any presumption, concession, or admission by any of the Plaintiffs or any
6 Settlement Class Member that any of their claims are without merit, or that any defenses asserted by
7 the Defendants have any merit, or that damages recoverable in the Action would not have exceeded the
8 Settlement Fund; and

9 (f) As evidence of, or construed as evidence of, any presumption, concession, or
10 admission that the modifications to the class definitions as contemplated herein are appropriate in this
11 Action, except for purposes of this Settlement.

12 **MISCELLANEOUS PROVISIONS**

13 64. All of the Exhibits attached hereto are hereby incorporated by reference as though fully
14 set forth herein. Notwithstanding the foregoing, in the event of a conflict or inconsistency between the
15 terms of this Stipulation and the terms of any Exhibit attached hereto, the terms of this Stipulation shall
16 prevail.

17 65. The Settling Parties intend the Settlement to be a final and complete resolution of all
18 disputes which have been asserted, could have been asserted, or could be asserted by Plaintiffs or the
19 Settlement Class Members against the Defendants and all Released Persons concerning the Settlement
20 Class Claims and against the Plaintiffs and Settlement Class Members by the Defendants concerning
21 the Defendant Claims. Accordingly, the Settling Parties agree not to assert in any forum that the
22 litigation was brought by Plaintiffs or defended by the Defendants in bad faith or without a reasonable
23 basis. The Settling Parties shall assert no claims of any violation of Fed. R. Civ. P. 11 relating to the
24 prosecution, defense, or settlement of this Action. Moreover, none of the Settling Parties shall seek any
25 cost-shifting claims against the others. The Settling Parties agree that the Settlement Consideration and
26 the other terms of the Settlement were negotiated at arm’s length in good faith by the Settling Parties,
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1 including during two mediation sessions, as described herein above, and reflect a settlement that was
2 reached voluntarily after consultation with experienced legal counsel.

3 66. This Stipulation may not be modified or amended except by a writing signed by all
4 signatories hereto or their successors-in-interest, nor may a Settling Party be deemed to have waived
5 any provision (including this provision) except by a writing signed by that Settling Party or its
6 successor-in-interest.

7 67. Neither the Settlement Class Members nor the Defendants shall be bound by this
8 Stipulation if the Court modifies material terms hereof, provided, however, that it shall not be a basis
9 to terminate the Settlement if the Court modifies any proposed Plan of Allocation or criteria for
10 allocation of the Net Settlement Fund amongst Settlement Class Members, or the Plan of Allocation is
11 modified on appeal. Nor shall it be a basis to terminate this Stipulation if the Court disapproves of or
12 modifies the terms of this Stipulation with respect to the distribution of the Net Settlement Fund. Nor
13 shall it be a basis to terminate this Stipulation if the Court denies, in whole or in part, Lead Counsel’s
14 application for attorneys’ fees and expenses or Plaintiffs’ application for an award of reasonable costs
15 and expenses.

16 68. Lead Counsel, on behalf of the Settlement Class, is expressly authorized by Plaintiffs to
17 take all appropriate action required or permitted to be taken by the Settlement Class pursuant to this
18 Stipulation to effectuate its terms and also is expressly authorized to enter into any modifications or
19 amendments to this Stipulation on behalf of the Settlement Class which Lead Counsel deems
20 appropriate.

21 69. Plaintiffs and Lead Counsel represent and warrant that none of Plaintiffs’ claims or
22 causes of action referred to in this Action or this Stipulation has been assigned, encumbered, or in any
23 manner transferred in whole or in part.

24 70. Each counsel or other Person executing this Stipulation or any of its Exhibits on behalf
25 of any party hereby warrants and represents that such Person has the full authority to do so and that he,
26 she, or it has the authority to take appropriate action required or permitted to be taken pursuant to this
27 Stipulation to effectuate its terms.

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1 71. The headings herein are used for the purpose of convenience only and are not meant to
2 have legal effect.

3 72. The administration and consummation of the Settlement as embodied in this Stipulation
4 shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of,
5 among other things, entering orders providing for the implementation and enforcement of the terms of
6 this Stipulation, including, without limitation, the releases provided for herein, and any awards of
7 attorneys’ fees and expenses to Lead Counsel, and enforcing the terms of this Stipulation.

8 73. The waiver by one Settling Party of any breach of this Stipulation by any other Settling
9 Party shall not be deemed a waiver by the waiving Settling Party of any other prior or subsequent
10 breach of this Stipulation or a waiver by any other Settling Party of any breach of this Stipulation.
11 Without further order of the Court, the Settling Parties may agree to reasonable extensions of time to
12 carry out any of the provisions of this Stipulation, unless such extensions conflict with an Order of the
13 Court, in which case the Settling Parties shall move the Court to amend any such Order.

14 74. Other than the side agreement discussed in ¶ 59, this Stipulation and its Exhibits
15 constitute the entire agreement among the Settling Parties concerning this Settlement, and no
16 representations, warranties, or inducements have been made by any Settling Party concerning this
17 Stipulation and its Exhibits other than those contained and memorialized in such documents.

18 75. This Stipulation may be executed in one or more counterparts, and the counterparts
19 when executed may be made into a composite which shall constitute one integrated original agreement.

20 76. This Stipulation shall be binding upon, and inure to the benefit of, the Settling Parties
21 hereto and their successors, heirs, and assigns, including any corporation or other entity into or with
22 which any Settling Party or Released Person merges, consolidates, or reorganizes.

23 77. This Stipulation shall not be construed more strictly against one Settling Party than
24 another merely by virtue of the fact that this Stipulation, or any part of it, may have been prepared by
25 counsel for one of the Settling Parties, it being recognized that it is the result of arm’s-length
26 negotiations between the Settling Parties, and all Settling Parties have contributed substantially and
27 materially to the preparation of this Stipulation.

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1 78. The Settling Parties warrant that, in entering into this Settlement, they have relied solely
2 upon their own knowledge and investigation, and not upon any promise, representation, warranty, or
3 other statement by any other Settling Party, not expressly contained in this Stipulation or any of the
4 incorporated Settlement documents. It is understood by the Settling Parties that, except for the matters
5 expressly represented herein, the facts or law with respect to which this Stipulation is entered into may
6 turn out to be other than or different from the facts and law now known to each Settling Party or
7 believed by such party to be true; each Settling Party therefore expressly assumes the risk of the facts
8 or law turning out to be so different, and agrees that this Stipulation shall be in all respects effective
9 and not subject to termination by reason of any such different facts or law.

10 79. Lead Counsel and the Defendants’ counsel agree to cooperate fully with one another in
11 seeking Court approval of the Preliminary Approval Order, this Stipulation and the Settlement, and to
12 use best efforts to promptly agree upon and execute all such other documentation as may be reasonably
13 required to obtain final approval by the Court of the Settlement.

14 80. Pending preliminary and final approval of the Court of the Settlement, as set forth in
15 this Stipulation and its attached Exhibits, all proceedings in the Action and the State Court Action shall
16 be stayed.

17 81. No part of the Settlement Consideration shall be used to pay the settlement of any other
18 action arising from the facts and circumstances at issue in the Action. For the avoidance of doubt, this
19 provision shall not prohibit the allocation of \$150,000 of any fee awarded to Co-Lead Counsel to the
20 attorneys representing the plaintiffs in the State Court Action, in recognition of their work on behalf of
21 the Settlement Class, as is contemplated by this Settlement.

22 82. No Person shall have any claim against Plaintiffs, Lead Counsel, the Settlement
23 Administrator, the Escrow Agent, or any other agent designated by Lead Counsel based on distribution
24 determinations or claim rejections made substantially in accordance with this Stipulation and the
25 Settlement, the Plan of Allocation, or further orders of the Court, except in the case of fraud or willful
26 misconduct. No person shall have any claim under any circumstances against the Defendants or the
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1 Released Persons, based on any distributions, determinations, claim rejections, or the design, terms, or
2 implementation of the Plan of Allocation.

3 83. All dollar amounts in this Stipulation are in U.S. dollars.

4 84. The construction, interpretation, operation, effect, and validity of this Stipulation and
5 any ancillary documents necessary to effectuate it shall be governed by, construed, and enforced in
6 accordance with the internal, substantive laws of the State of California without giving effect to that
7 State’s choice-of-law or conflicts-of-laws principles, except to the extent that federal law requires that
8 federal law governs. Any dispute relating to this Stipulation shall be brought exclusively in the United
9 States District Court for the Northern District of California, and each of the Settling Parties agrees not
10 to contest subject matter jurisdiction or personal jurisdiction, or assert that such forum is inconvenient
11 for any such dispute brought in this Court.

12 85. Whether or not this Stipulation is approved by the Court and whether or not this
13 Stipulation is consummated, or the Effective Date occurs, the Settling Parties and their counsel shall
14 use their best efforts to keep all negotiations, discussions, acts performed, agreements, drafts,
15 documents signed, and proceedings in connection with this Stipulation confidential.

16 86. All agreements made and Court Orders entered during the course of this Action relating
17 to the confidentiality of information shall survive this Settlement, including but not limited to the
18 obligations set forth in Section 13 of the Stipulated Protective order entered in this Action (Dkt. No.
19 169).

20 87. No opinion or advice concerning the tax consequences of the Settlement to individual
21 Settlement Class Members is being given or will be given by the Settling Parties or their counsel; nor
22 is any representation or warranty in this regard made by virtue of this Stipulation. Each Settlement
23 Class Member’s tax obligations, and the determination thereof, are the sole responsibility of the
24 Settlement Class Member, and it is understood that the tax consequences may vary depending on the
25 particular circumstances of each individual Settlement Class Member.

26 88. If any Settling Party is required to give notice to any other Settling Party under this
27 Stipulation, such notice shall be in writing and shall be deemed to have been duly given upon receipt
28

1 of hand-delivery, overnight courier, email, or facsimile transmission with confirmation of receipt.

2 Notice shall be provided as follows:

<p>3 If to Class Counsel:</p>	<p>POMERANTZ LLP Jeremy A. Lieberman, Esq. Murielle Steven Walsh, Esq. Aatif Iqbal, Esq. 600 Third Avenue, 20th Floor New York, NY 10016 Telephone: (212)-661-1100 Facsimile: (917)-463-1044 jalieberman@pomlaw.com</p> <p>GLANCY PRONGAY & MURRAY LLP Brian P. Murray Garth A. Spencer 230 Park Avenue, Suite 530 New York, New York 10169 Telephone: (212) 682-5340 Facsimile: (212) 884-0988 Email: bmurray@glancylaw.com</p>
<p>15 If to Counsel for the Fitbit 16 Defendants:</p>	<p>MORRISON & FOERSTER LLP Jordan Eth Anna Erickson White 425 Market Street San Francisco, California 94105-2482 Telephone: (415) 268-7000 Facsimile: (415) 268-7522 jeth@mofo.com</p>

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<p>If to Counsel for the Underwriter Defendants</p>	<p>O'MELVENY & MYERS LLP Jonathan Rosenberg William J. Sushon Seven Times Square New York, NY 10036 Telephone: (212) 326-2000 Facsimile: (212) 326-2061 jrosenberg@omm.com</p>
<p>If to Counsel for the State Court Plaintiffs</p>	<p>ROBBINS ARROYO LLP Brian J. Robbins George C. Aguilar 600 B Street, Suite 1900 San Diego, CA 92101 Telephone: (619) 525-3990 Facsimile: (619) 525-3991 gaguilar@robbinsarroyo.com</p> <p>LIFSHITZ & MILLER Joshua M. Lifshitz Edward W. Miller 821 Franklin Ave, Suite 209 Garden City, NY 11530 Telephone: (516) 493-9780 Facsimile: (516) 280-7376 jml@jlclasslaw.com</p>

1 Dated: January 18, 2018

POMERANTZ LLP

2 By: _____

3 Jeremy A. Lieberman
4 Murielle Steven Walsh
5 Aatif Iqbal
6 600 Third Avenue, 20th Floor
7 New York, New York 10016
8 Telephone: (212) 661-1100
9 Facsimile: (917) 463-1044
10 Email: jalieberman@pomlaw.com
11 mjsteven@pomlaw.com

GLANCY PRONGAY & MURRAY LLP

12 By: _____

13 Brian P. Murray
14 Garth A. Spencer
15 230 Park Avenue, Suite 530
16 New York, New York 10169
17 Telephone: (212) 682-5340
18 Facsimile: (212) 884-0988
19 Email: bmurray@glancylaw.com

*Counsel for Plaintiffs and Lead Counsel for
the Class*

20 Dated: January __, 2018

MORRISON & FOERSTER LLP

21 By: _____

22 Jordan Eth (SBN 121617)
23 Anna Erickson White (SBN 161385)
24 Ryan M. Keats (SBN 296463)
25 425 Market Street
26 San Francisco, California 94105-2482
27 Telephone: (415) 268-7000
28 Facsimile: (415) 268-7522
Email: jeth@mofocom
awhite@mofocom
rkeats@mofocom

*Attorneys for Defendants Fitbit, Inc., James
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Christopher Paisley*

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11 mjsteven@pomlaw.com

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14 Garth A. Spencer
15 230 Park Avenue, Suite 530
16 New York, New York 10169
17 Telephone: (212) 682-5340
18 Facsimile: (212) 884-0988
19 Email: bmurray@glancylaw.com

*Counsel for Plaintiffs and Lead Counsel for
the Class*

20 Dated: January __, 2018

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24 Ryan M. Keats (SBN 296463)
25 425 Market Street
26 San Francisco, California 94105-2482
27 Telephone: (415) 268-7000
28 Facsimile: (415) 268-7522
Email: jeth@mofo.com
awhite@mofo.com
rkeats@mofo.com

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7 New York, New York 10016
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10 Email: jalieberman@pomlaw.com
11 mjsteven@pomlaw.com

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9 By: _____

10 Brian P. Murray
11 Garth A. Spencer
12 230 Park Avenue, Suite 530
13 New York, New York 10169
14 Telephone: (212) 682-5340
15 Facsimile: (212) 884-0988
16 Email: bmurray@glancylaw.com

Counsel for Plaintiffs and Lead Counsel for the Class

16 Dated: January 18, 2018

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21 425 Market Street
22 San Francisco, California 94105-2482
23 Telephone: (415) 268-7000
24 Facsimile: (415) 268-7522
25 Email: jeth@mofo.com
26 awhite@mofo.com
27 rkeats@mofo.com

Attorneys for Defendants Fitbit, Inc., James Park, William R. Zerella, Eric N. Friedman, Jonathan D. Callaghan, Steven Murray, and Christopher Paisley

1 Dated: January 18, 2018

O'MELVENY & MYERS LLP

2 By: 

3 Matthew D. Powers (S.B. #212682)
4 mpowers@omm.com
5 Two Embarcadero Center
6 San Francisco, CA 94111
7 Telephone: (415) 984-8700
8 Facsimile: (415) 984-8701

9 Jonathan Rosenberg
10 jrosenberg@omm.com
11 William J. Sushon
12 wsushon@omm.com
13 Seven Times Square
14 New York, NY 10036
15 Telephone: (212) 326-2000
16 Facsimile: (212) 326-2061

*Attorneys for Defendants Morgan Stanley &
17 Co. LLC, Deutsche Bank Securities Inc., and
18 Merrill Lynch, Pierce, Fenner & Smith
19 Incorporated*

20 Dated: January __, 2018

ROBBINS ARROYO LLP

21 By: _____

22 Brian J. Robbins
23 George C. Aguilar
24 600 B Street, Suite 1900
25 San Diego, CA 92101
26 Telephone: (619) 525-3990
27 Facsimile: (619) 525-3991
28 gaguilar@robbinsarroyo.com

Dated: January __, 2018

LIFSHITZ & MILLER

By: _____

Joshua M. Lifshitz
Edward W. Miller
821 Franklin Ave, Suite 209
Garden City, NY 11530
Telephone: (516) 493-9780
Facsimile: (516) 280-7376
jml@jlclasslaw.com

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O'MELVENY & MYERS LLP

2 By: _____

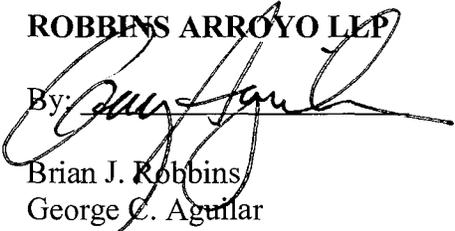
3 Matthew D. Powers (S.B. #212682)
4 mpowers@omm.com
5 Two Embarcadero Center
6 San Francisco, CA 94111
7 Telephone: (415) 984-8700
8 Facsimile: (415) 984-8701

9 Jonathan Rosenberg
10 jrosenberg@omm.com
11 William J. Sushon
12 wsushon@omm.com
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14 New York, NY 10036
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3 Matthew D. Powers (S.B. #212682)
4 mpowers@omm.com
5 Two Embarcadero Center
6 San Francisco, CA 94111
7 Telephone: (415) 984-8700
8 Facsimile: (415) 984-8701

9 Jonathan Rosenberg
10 jrosenberg@omm.com
11 William J. Sushon
12 wsushon@omm.com
13 Seven Times Square
14 New York, NY 10036
15 Telephone: (212) 326-2000
16 Facsimile: (212) 326-2061

17 *Attorneys for Defendants Morgan Stanley &*
18 *Co. LLC, Deutsche Bank Securities Inc., and*
19 *Merrill Lynch, Pierce, Fenner & Smith*
20 *Incorporated*

21 Dated: January __, 2018

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23 Brian J. Robbins
24 George C. Aguilar
25 600 B Street, Suite 1900
26 San Diego, CA 92101
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28 Facsimile: (619) 525-3991
gaguilar@robbinsarroyo.com

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31 Joshua M. Lifshitz
32 Edward W. Miller
33 821 Franklin Ave, Suite 209
34 Garden City, NY 11530
35 Telephone: (516) 493-9780
36 Facsimile: (516) 280-7376
37 jml@jlclasslaw.com

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

Hon. Susan Illston

WHEREAS:

(A) On May 10, 2016, the Court appointed the Fitbit Investor Group (comprised of Timothy Flynn, Jesse M. Koth and Kelley Koth, Viet Tran, and Mark Cunningham) as Lead Plaintiff and its choice of counsel, Glancy Prongay & Murray LLP and Pomerantz LLP, Lead Counsel;

(B) The operative Amended Complaint for Violations of the Federal Securities Laws (Dkt. No. 89) was filed on July 1, 2016, asserting claims against Fitbit Inc. (“Fitbit”); James Park, William R. Zerella, Eric N. Friedman, Jonathan D. Callaghan, Steven Murray, and Christopher Paisley (the “Individual Defendants,” and together with Fitbit, the “Fitbit Defendants”); and Morgan Stanley & Co. LLC, Deutsche Bank Securities Inc., and Merrill Lynch, Pierce, Fenner & Smith Incorporated (the “Underwriter Defendants” and together with the Fitbit Defendants, “Defendants”);

(C) On October 26, 2016, the Court entered the Order Denying Defendants’ Motion to Dismiss (Dkt. No. 122);

(D) On January 19, 2017, the Court entered the Order Denying Motion for Partial Reconsideration (Dkt. No. 147);

1 (E) On June 21, 2017, the Court so-ordered the parties' stipulation (Dkt. No. 184),
2 appointing Lead Plaintiff the Fitbit Investor Group (comprised of Timothy Flynn, Jesse M. Koth and
3 Kelley Koth, Viet Tran, and Mark Cunningham) as Class Representative, appointing Lead Counsel
4 Glancy Prongay & Murray LLP and Pomerantz LLP as Class Counsel, and certifying the following
5 classes:

- 6 a. The Exchange Act Class: all persons who purchased or otherwise acquired Fitbit
7 securities on the open market between June 18, 2015, and May 19, 2016, both dates
8 inclusive (the "Exchange Act Class Period"). Excluded from the Exchange Act Class
9 are (i) Defendants and the Individual Defendants' family members; (ii) directors and
10 officers of Fitbit and their families; (iii) any entity in which the Fitbit Defendants
11 have or had a controlling interest; and (iv) any entity in which the Underwriter
12 Defendants have or had a majority interest.
- 13 b. The Securities Act Class: all persons who purchased or otherwise acquired Fitbit
14 Class A common stock pursuant and/or traceable to the Company's initial public
15 offering on or about June 18, 2015 (the "IPO"). Excluded from the Securities Act
16 Class are (i) Defendants and the Individual Defendants' family members;
17 (ii) directors and officers of Fitbit and their families; (iii) any entity in which the
18 Fitbit Defendants have or had a controlling interest; and (iv) any entity in which the
19 Underwriter Defendants have or had a majority interest.

20 (F) Class Representatives, on behalf of themselves and the Settlement Class, and
21 Defendants (together, the "Parties") have agreed to a settlement of all claims asserted in the Action
22 against all Defendants and have entered into a Stipulation and Agreement of Settlement dated January
23 18, 2018 (the "Stipulation") setting forth the terms and conditions for the proposed Settlement;

24 (G) Plaintiffs have applied to the Court under Fed. R. Civ. P. 23(e) for an order approving
25 the Settlement in accordance with the terms of the Stipulation and for complete dismissal of this
26 Action as to the Defendants;

27 (H) The Court having reviewed and considered Plaintiffs' Motion for Preliminary Approval
28 of Settlement and all papers submitted in support thereof, the Stipulation and the attached exhibits, and
finding that substantial and sufficient grounds exist for entering this Preliminary Approval Order:

1 **NOW, THEREFORE, IT IS HEREBY ORDERED:**

2 1. All capitalized terms used herein shall have the same meaning as in the Stipulation.

3 2. This Court has jurisdiction over the subject matter of this Action and over all parties to
4 this Action, including Settlement Class Members.

5 3. The Court preliminarily approves the Settlement and the proposed Plan of Allocation
6 described in the Notice as fair, reasonable and adequate, pending a final settlement and fairness hearing
7 (the “Settlement Hearing”) as described below. The Court preliminarily finds that the proposed
8 Settlement should be approved as: (i) the result of serious, extensive arm’s-length and non-collusive
9 negotiations; (ii) falling within a range of reasonableness warranting final approval; (iii) having no
10 obvious deficiencies; (iv) not improperly granting preferential treatment to the Plaintiffs or segments of
11 the Settlement Class; and (v) warranting notice of the proposed Settlement at the Settlement Hearing
12 described below.

13 **Class Certification**

14 4. Pursuant to Fed. R. Civ. P. 23(a) and (b)(3) and for the purposes of the Settlement only,
15 the Court hereby preliminarily certifies the following two classes (together the “Settlement Class”),
16 which shall take the place of the Exchange Act Class and the Securities Act Class previously certified
17 by the Court on June 21, 2017 (*see* Dkt. No. 184):

18 a. The Exchange Act Settlement Class: all persons who purchased or otherwise
19 acquired Fitbit securities on the open market between June 18, 2015, and May 19,
20 2016, both dates inclusive (the “Exchange Act Class Period”). Excluded from the
21 Exchange Act Settlement Class are (i) Defendants and the Individual Defendants’
22 family members; (ii) directors and officers of Fitbit and their families; (iii) any entity
23 in which the Fitbit Defendants have or had a controlling interest; (iv) any entity in
24 which the Underwriter Defendants have or had a majority interest; and (v) any
25 Person who submits a request for exclusion from the Settlement Class that is
26 accepted by the Court; and

27 b. The Securities Act Settlement Class: all persons who purchased or otherwise
28 acquired Fitbit Class A common stock pursuant and/or traceable to the Company’s
initial public offering on or about June 18, 2015 (the “IPO”) or the Company’s

1 follow-on public offering on or about November 13, 2015 (the “SPO”). Excluded
2 from the Securities Act Settlement Class are (i) Defendants and the Individual
3 Defendants’ family members; (ii) directors and officers of Fitbit and their families;
4 (iii) any entity in which the Fitbit Defendants have or had a controlling interest;
5 (iv) any entity in which the Underwriter Defendants have or had a majority interest;
6 and (v) any Person who submits a request for exclusion from the Settlement Class
7 that is accepted by the Court.

8 5. Pursuant to Fed. R. Civ. P. 23(a) and (b)(3) and for the purposes of the Settlement only,
9 the Court appoints Lead Plaintiff the Fitbit Investor Group (comprised of Timothy Flynn, Jesse M.
10 Koth and Kelley Koth, Viet Tran, and Mark Cunningham) as Class Representative for the Settlement
11 Class, and Lead Counsel Glancy Prongay & Murray LLP and Pomerantz LLP as Class Counsel for the
12 Settlement Class.

13 6. Pursuant to Fed. R. Civ. P. 23(a) and (b)(3), consistent with the Court’s June 21, 2017
14 Stipulation and Order Granting Lead Plaintiff’s Motion for Class Certification (ECF No. 184), and for
15 the purposes of the Settlement only, the Court finds that the prerequisites for a class action under Fed.
16 R. Civ. P. 23(a) and (b)(3) have been satisfied in that: (a) the number of Settlement Class Members is
17 so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact
18 common to the Settlement Class; (c) the claims of the Plaintiffs are typical of the claims of the
19 Settlement Class they seek to represent; (d) Plaintiffs fairly and adequately represent the interests of the
20 Settlement Class; (e) questions of law and fact common to the members of the Settlement Class
21 predominate over any questions affecting only individual members of the Settlement Class; and (f) a
22 class action is superior to other available methods for the fair and efficient adjudication of this action.

23 7. If the Stipulation is terminated or is not consummated for any reason, the foregoing
24 certification of the Settlement Class shall be void and of no further effect, and the parties to the
25 Stipulation shall be returned to the status each occupied before entry of this Order and before execution
26 of the MOU and the Stipulation without prejudice to any legal argument that any of the parties to the
27 Stipulation might have asserted in the Action.

28 8. The Court approves the appointment of Huntington National Bank as the Escrow Agent
to manage the Settlement Fund for the benefit of the Settlement Class.

1 forward to their beneficial owners, and within ten (10) days of receipt of those copies of the Notice and
2 Proof of Claim, forward them to such beneficial owners; or (ii) provide the Settlement Administrator
3 with lists of the names and addresses of the beneficial owners. Promptly upon receipt of any such
4 information from nominee purchasers, the Settlement Administrator shall cause the Notice and Proof of
5 Claim to be mailed to such beneficial owners. Additional copies of the Notice and Proof of Claim shall
6 be made available to any record holder requesting same for the purpose of distribution to beneficial
7 owners.

8 15. Before the Settlement Hearing, Class Counsel shall file with this Court proof of
9 publication of the Publication Notice as well as a declaration describing the Settlement Administrator's
10 efforts to provide notice to Settlement Class Members in compliance with the specific requirements set
11 forth above.

12 16. This Court preliminarily finds that the form and method set forth herein of notifying the
13 Settlement Class of the Settlement and its terms and conditions:

- 14 a. Constitute the best practicable notice to Settlement Class Members under the
15 circumstances of this Action;
- 16 b. Are reasonably calculated, under the circumstances, to apprise Settlement Class
17 Members of: (i) the proposed Settlement of this Action; (ii) their right to exclude
18 themselves from the Settlement Class; (iii) their right to object to any aspect of the
19 proposed Settlement; (iv) their right to appear at the Settlement Hearing, either on
20 their own or through counsel hired at their own expense, if they did not exclude
21 themselves from the Settlement Class; (v) their right to submit a claim as part of the
22 Settlement; and (vi) the binding effect of the proceedings, rulings, orders, and
23 judgments in this Action, whether favorable or unfavorable, on all persons not
24 excluded from the Settlement Class;
- 25 c. Is reasonable and constitutes due, adequate, and sufficient notice to all persons
26 entitled to be provided with notice; and
- 27 d. Fully satisfies all applicable requirements of the Federal Rules of Civil Procedure
28 (including Fed. R. Civ. P. 23(c) and (d)), the United States Constitution (including
the Due Process Clause), the Securities Exchange Act of 1934, 15 U.S.C. § 78u-

1 4(a)(7), the Securities Act of 1933, 15 U.S.C. § 77z-1(a)(7), the Private Securities
2 Litigation Reform Act of 1995, the Rules of Court, and any other applicable law.

3 **Participation and Opt Out**

4 17. Settlement Class Members who wish to participate in the Settlement shall complete and
5 submit the Proof of Claim and Release form in accordance with the instructions contained in the
6 Notice. Unless the Court orders otherwise, all Proofs of Claim and Release must be submitted no later
7 than _____, 2018. Any Settlement Class Member who does not submit a Proof of Claim and
8 Release within the time provided shall be barred from sharing in the distribution of the proceeds of the
9 Net Settlement Fund, unless otherwise ordered by the Court, but shall nevertheless be bound by the
10 Settlement and all determinations and judgments in the Action concerning the Settlement, whether
11 favorable or unfavorable to the Settlement Class. Notwithstanding the foregoing, Class Counsel shall
12 have the discretion to accept late-submitted claims for processing by the Settlement Administrator so
13 long as distribution of the Net Settlement Fund is not materially delayed thereby.

14 18. Any person falling within the definition of the Settlement Class may seek to be excluded
15 from the Settlement Class by submitting to the Settlement Administrator a request for exclusion
16 (“Request for Exclusion”), which complies with the requirements set forth in the Notice and is
17 postmarked no later than _____, 2018. All persons who submit valid and timely Requests for
18 Exclusion shall have no rights under the Stipulation, shall not share in the distribution of the Net
19 Settlement Fund, and shall not be bound by the Settlement Stipulation or the Judgment. However, a
20 Settlement Class Member may submit a written revocation of a Request for Exclusion up until five (5)
21 days prior to the date of the Settlement Hearing and still be eligible to receive payments pursuant to the
22 Stipulation provided the Settlement Class Member also submits a valid Proof of Claim prior to the
23 Settlement Hearing.

24 19. Upon receiving any Request for Exclusion, Class Counsel or the Settlement
25 Administrator shall promptly provide copies of such request(s) to Defendants’ counsel within five (5)
26 business days, and in any event not less than fourteen (14) days prior to the Settlement Hearing.

27 **Settlement Hearing; Right to Appear and Object**

28 20. The Settlement Hearing shall take place before the undersigned, United States District
Judge Susan Illston, in Courtroom 1, 17th Floor, San Francisco Courthouse, 450 Golden Gate Avenue,

1 San Francisco, CA 94102, on _____, 2018, at ____: __.m., to determine:

- 2 a. Whether the Settlement, on the terms and conditions provided for in the Stipulation,
- 3 should be finally approved by the Court as fair, reasonable, and adequate;
- 4 b. Whether a Judgment as provided in the Stipulation should be entered herein;
- 5 c. Whether the application for attorneys' fees and expenses to be submitted by Class
- 6 Counsel should be approved;
- 7 d. Whether the Plan of Allocation is fair and reasonable to the Settlement Class;
- 8 e. Whether the application for an award of reasonable costs and expenses to be
- 9 submitted by Plaintiffs should be approved; and
- 10 f. Such other matters as the Court may deem necessary or appropriate.

11 21. The Plan of Allocation, Class Counsel's application for an award of attorneys' fees, and
12 Plaintiffs' award of reasonable costs and expenses will be considered separately from the fairness,
13 reasonableness, and adequacy of the Settlement. Any appeal relating solely to the Plan of Allocation,
14 solely to Class Counsel's application for an award of attorneys' fees and expenses, or solely to
15 Plaintiffs' application for an award of reasonable costs and expenses shall not operate to terminate or
16 cancel the Settlement, or affect or delay the finality of the Judgment approving the Stipulation and the
17 Settlement of the Action.

18 22. The Court may finally approve the Stipulation at or after the Settlement Hearing with
19 any modifications agreed to by the parties and without further notice to the Settlement Class Members.

20 23. Any Settlement Class Member and any other interested person may appear at the
21 Settlement Hearing in person or by counsel and be heard, to the extent allowed by the Court, either in
22 support of or in opposition to the matters to be considered at the hearing, provided, however, that no
23 person shall be heard, and no papers, briefs, or other submissions shall be considered by the Court in
24 connection to such matters, unless no later than _____, 2018, such person files with the Court a
25 statement of objection signed by the objector, even if represented by counsel, setting forth: (i) whether
26 the person is a Settlement Class Member; (ii) to which part of the Stipulation the Settlement Class
27 Member objects; (iii) the specific reason(s), if any, for such objection including any legal support the
28 Settlement Class Member wishes to bring to the Court's attention and any evidence the Settlement
Class Member wishes to introduce in support of such objection. Such Settlement Class Member shall

1 also provide documentation sufficient to establish the amount of publicly traded Fitbit securities
 2 purchased and sold during the Exchange Act Class Period and the prices and dates of such transactions.
 3 Settlement Class Members wishing to appear in person at the Settlement Hearing must submit a Notice
 4 of Intention to Appear with the objection. If the objector intends to appear at the Settlement Hearing
 5 through counsel, the objection must also state the identity of all attorneys who will appear at the Final
 6 Approval Hearing and such counsel must submit a Notice of Intention to Appear with the objection.
 7 Objection materials must be sent to the following:

<p>Clerk of the Court United States District Court Northern District of California 450 Golden Gate Avenue San Francisco, CA 94102-3489</p>	<p>Class Counsel Brian P. Murray Garth A. Spencer GLANCY PRONGAY & MURRAY LLP 230 Park Avenue, Suite 530 New York, NY 10169 Jeremy A. Lieberman Murielle Steven Walsh POMERANTZ LLP 600 Third Avenue, Floor 20 New York, NY 10016</p>
<p>Attorneys for Underwriter Defendants Jonathan Rosenberg William J. Sushon O’MELVENY & MYERS LLP Seven Times Square New York, NY 10036</p>	<p>Attorneys for Fitbit Defendants Jordan Eth Anna Erickson White Ryan M. Keats MORRISON & FOERSTER LLP 425 Market Street San Francisco, CA 94105</p>

20 24. Class Counsel shall file all papers, including memoranda or briefs in support of the
 21 Settlement, the Plan of Allocation, an award of attorneys’ fees and reimbursement of expenses, and
 22 Plaintiffs’ award of reasonable costs and expenses no later than _____, 2018. Reply papers, if
 23 any, shall be filed no later than _____, 2018.

24 25. The Court reserves the right to adjourn or continue the Settlement Hearing, including the
 25 consideration of the motion for attorneys’ fees and expenses, without further notice of any kind. The
 26 Court may approve the Settlement with modifications as may be agreed to by the Settling Parties,
 27 without further notice to the Settlement Class.

28 26. If the Settlement is approved, all Settlement Class Members will be bound by the terms
 of the Settlement as set forth in the Stipulation, and by any judgment or determination of the Court

1 affecting the Settlement Class, regardless of whether or not a Settlement Class Member submits a Proof
2 of Claim. Any member of the Settlement Class who fails to opt out of the Settlement Class or who fails
3 to object in the manner prescribed therein shall be deemed to have waived, and shall be foreclosed
4 forever from raising objections or asserting any claims arising out of, related to, or based in whole or in
5 part on any of the facts or matters alleged in the Amended Complaint, or which could have been
6 alleged, or which otherwise were at issue in the Action.

7 **Other Provisions**

8 27. Upon payment of the Settlement Consideration to the Escrow Account by or on behalf
9 of the Fitbit Defendants, the Settlement Fund shall be deemed to be in the custody of the Court and
10 shall remain subject to the jurisdiction of the Court until such time as the Settlement Fund is distributed
11 pursuant to the Stipulation and/or further order of this Court. There shall be no distribution of any part
12 of the Net Settlement Fund to the Settlement Class until the Plan of Allocation is finally approved and
13 the Court issues the Settlement Fund Distribution Order and until the Order and Final Judgment
14 becomes Final.

15 28. Except for the obligations to cooperate in the production of reasonably available
16 information with respect to the identification of Settlement Class Members from Fitbit's shareholder
17 transfer records, in no event shall the Defendants or any of the Released Persons have any
18 responsibility for the administration of the Settlement, and neither the Defendants nor any of the
19 Released Persons shall have any obligation or liability to the Plaintiffs, Lead Counsel, or the Settlement
20 Class in connection with such administration.

21 29. No Person shall have any claim against Plaintiffs, Lead Counsel, the Settlement Class
22 Members, the Settlement Administrator, the Escrow Agent or any other agent designated by Lead
23 Counsel based on distribution determinations or claim rejections made substantially in accordance with
24 this Stipulation and the Settlement, the Plan of Allocation, or further orders of the Court, except in the
25 case of fraud or willful misconduct. No person shall have any claim under any circumstances against
26 the Released Persons, based on any distributions, determinations, claim rejections or the design, terms,
27 or implementation of the Plan of Allocation.

28 30. The Defendants have denied, and continue to deny, any and all allegations and claims
asserted in the Amended Complaint and the Action and have represented that they entered into the

1 Settlement solely in order to eliminate the burden, expense, and uncertainties of further litigation. This
2 Order and the Stipulation, whether the Settlement contemplated by the Stipulation is consummated or
3 not, and any statements made or proceedings taken pursuant to them are not, shall not be deemed to be,
4 and may not be argued to be or offered or received:

- 5 a. Against any of the Released Persons as evidence of, or construed as evidence of, any
6 presumption, concession, or admission by any of the Released Persons with respect
7 to the truth of any fact alleged by the Plaintiffs in the Amended Complaint or the
8 Action, or the validity of any claim that has been or could have been asserted against
9 any of the Defendants in the Amended Complaint or the Action, or the deficiency of
10 any defense that has been or could have been asserted in the Action, or of any
11 wrongdoing or liability by any of the Defendants, or any liability, fault,
12 misrepresentation, or omission with respect to any statement or written document
13 approved or made by any of the Defendants;
- 14 b. Against the Plaintiffs or any Settlement Class Member or Lead Counsel as evidence
15 of, or construed as evidence of, any infirmity of the claims alleged by the Plaintiffs
16 in the Amended Complaint or the Action or of any lack of merit to the claims or the
17 Amended Complaint or the Action or of any bad faith, dilatory motive, or inadequate
18 prosecution of the claims or the Amended Complaint or the Action;
- 19 c. Against any of the Defendants, the Plaintiffs, or any Settlement Class Member, or
20 their respective legal counsel, as evidence of, or construed as evidence of, any
21 presumption, concession, or admission by any of the Defendants, the Plaintiffs, or
22 any Settlement Class Member, or their respective legal counsel, with respect to any
23 liability, negligence, fault, or wrongdoing as against any of the Defendants, the
24 Plaintiffs, or any Settlement Class Member, or their respective legal counsel, in any
25 other civil, criminal, or administrative action or proceeding, other than such actions
26 or proceedings as may be necessary to effectuate the provisions of this Stipulation,
27 provided, however, that if this Stipulation is approved by the Court, the Defendants,
28 the Plaintiffs, and any Settlement Class Member, or their respective legal counsel,
may refer to it to effectuate the liability protection and releases granted them

1 hereunder;

- 2 d. Against any of the Defendants as evidence of, or construed as evidence of, any
3 presumption, concession, or admission by any of them that the Settlement
4 Consideration represents the amount which could or would have been received after
5 trial of the Action against them;
- 6 e. Against the Plaintiffs or any Settlement Class Member, or Lead Counsel as evidence
7 of, or construed as evidence of, any presumption, concession, or admission by any of
8 the Plaintiffs or any Settlement Class Member that any of their claims are without
9 merit, or that any defenses asserted by the Defendants have any merit, or that
10 damages recoverable in the Action would not have exceeded the Settlement Fund; or
- 11 f. As evidence of, or construed as evidence of, any presumption, concession, or
12 admission that the modification to the class definitions as ordered herein are
13 appropriate in this Action, except for purposes of this Settlement.

14 31. In the event that the Settlement does not become effective in accordance with the terms
15 of the Stipulation, this Order shall be rendered null and void to the extent provided by and in
16 accordance with the Stipulation and shall be vacated, and in such event, all orders entered and releases
17 delivered in connection therewith shall be null and void to the extent provided by and in accordance
18 with the Settlement, and without prejudice to the rights of the parties to the Stipulation before it was
19 executed.

20 32. The Court retains jurisdiction over the Action to consider matters arising out of, or
21 connected with, the Settlement.

22 **SO ORDERED** in the Northern District of California on _____, 2018.

23 _____
24 THE HON. SUSAN ILLSTON
25 UNITED STATES DISTRICT JUDGE
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

BRIAN H. ROBB, Individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

FITBIT INC., *et al.*,

Defendants.

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

Hon. Susan Illston

NOTICE OF PROPOSED CLASS-ACTION SETTLEMENT

**If you purchased Fitbit, Inc. securities between June 18, 2015
and May 19, 2016, you could get a payment from a class action settlement.**

*A federal court authorized this notice. This is not a solicitation from a lawyer.
This is not a notice that you have been sued.*

- The proposed Settlement, if approved by the Court, will provide \$33 million (approximately \$0.24 per share) to pay claims from investors who bought Fitbit, Inc. securities between June 18, 2015 and May 19, 2016, both dates inclusive.
- The Settlement resolves a lawsuit concerning whether Fitbit, Inc. (“Fitbit”), certain of its officers and directors, and certain investment banks that served as underwriters in Fitbit’s initial public offering made false and misleading statements concerning the accuracy of Fitbit’s heart-rate tracking technology. Defendants Fitbit; James Park, William R. Zerella, Eric N. Friedman, Jonathan D. Callaghan, Steven Murray, and Christopher Paisley (the “Individual Defendants,” and together with Fitbit, the “Fitbit Defendants”); and Morgan Stanley & Co. LLC, Deutsche Bank Securities Inc., and Merrill Lynch, Pierce, Fenner & Smith Incorporated (the “Underwriter Defendants” and together with the Fitbit Defendants, “Defendants”) deny all allegations of misconduct. The two sides disagree on whether the investors could have won at trial, and if so, how much money they could have won.
- Court-appointed lawyers for investors will ask the Court for up to \$9.24 million in attorneys’ fees (28% of the Settlement) and up to \$250,000 in reimbursement for expenses for their work litigating the case and negotiating the Settlement. They will also ask for an award to the five Class Representatives, not to exceed \$5,000 each, for their reasonable costs and expenses. If approved by the Court, these amounts (totaling approximately \$0.07 per share) will be paid from the Settlement Fund.
- The estimated average recovery, after deducting attorneys’ fees and expenses, administrative costs, and Class Representative awards of reasonable costs and expenses (if approved by the Court), is \$0.17 per share.
- The Court has not yet approved the Settlement. Payments will be made only if the Court approves the Settlement and after any appeals are resolved. Please be patient.

- **Your legal rights will be affected whether you act or don't act.** If you do not act, you may permanently forfeit your right to recover on this claim. **Read this Notice carefully.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
SUBMIT A CLAIM FORM	Fill out the attached Proof of Claim and Release form and submit it no later than _____, 2018. This is the only way to get a payment.
EXCLUDE YOURSELF FROM THE CLASS	Submit a request for exclusion no later than _____, 2018. This is the only way you can ever be part of any other lawsuit against Defendants about the legal claims in this case. If you exclude yourself, you will receive no payment and cannot object or speak at the hearing.
OBJECT	Write to the Court no later than _____, 2018 about why you do not like the Settlement. You can still submit a claim form. If the Court approves the Settlement, you will be bound by it.
GO TO THE HEARING	Ask to speak in Court about the fairness of the Settlement at the hearing on _____, 2018. You can still submit a claim form. If the Court approves the Settlement, you will be bound by it.
DO NOTHING	Get no payment AND give up your rights to bring your own individual action.

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION

1. Why did I receive this notice package?
2. What is this lawsuit about?
3. Why is this a class action?
4. Why is there a settlement?

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5. How do I know if I am part of the settlement?
6. Are there exceptions to being included?
7. I am still not sure if I am included.

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8. What does the settlement provide?
9. How much will my payment be?

HOW YOU GET A PAYMENT – SUBMITTING A CLAIM FORM

10. How can I obtain a payment?
11. When will I receive my payment?
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IF YOU DO NOTHING

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GETTING MORE INFORMATION

23. Are there more details about the Settlement?

THE PLAN OF ALLOCATION

BASIC INFORMATION

1. Why Did I Receive This Notice Package?

You or someone in your family may have purchased or otherwise acquired (i) Fitbit Class A common stock pursuant and/or traceable to the Company's initial public offering on or about June 18, 2015 (the "IPO") or the Company's follow-on public offering on or about November 13, 2015 (the "SPO"); or (ii) Fitbit securities on the open market between June 18, 2015, and May 19, 2016, both dates inclusive.

This Notice was sent because you have a right to know about a proposed settlement of a class action lawsuit, and about all of your options before the Court decides whether to approve the Settlement. If the Court approves the Settlement, after any objections or appeals are resolved, the Settlement Administrator appointed by the Court will make the payments to those persons who timely submit claims in the manner described below.

This package explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the case is the United States District Court for the Northern District of California, U.S. District Judge Susan Illston presiding, and the case is known as *Robb v. Fitbit, Inc.*, Case No. 3:16-cv-00151 (N.D. Cal.). The Fitbit Investor Group (consisting of Plaintiffs Timothy Flynn, Jesse M. Koth and Kelley Koth, Viet Tran, and Mark Cunningham) is called the Lead Plaintiff or the Class Representative, and the Defendants are Fitbit, Inc. ("Fitbit" or the "Company"); James Park, William R. Zerella, and Eric N. Friedman (together with Fitbit, the "Exchange Act Defendants"); Defendants Jonathan D. Callaghan, Steven Murray, and Christopher Paisley (together with the Exchange Act Defendants, the "Fitbit Defendants"); and Morgan Stanley & Co. LLC ("Morgan Stanley"), Deutsche Bank Securities Inc. ("Deutsche Bank"), and Merrill Lynch, Pierce, Fenner & Smith Inc. ("Merrill Lynch") (collectively, the "Underwriter Defendants") (together, the Fitbit Defendants and Underwriter Defendants are the "Defendants"). The Class Representative and the Defendants are referred to together as the "Settling Parties."

2. What Is This Lawsuit About?

This Action alleges violations of the federal securities laws against Defendants. Specifically, Plaintiffs assert claims under sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") and sections 11 and 15 of the Securities Act of 1933 (the "Securities Act"), 15 U.S.C. § 77k, 77o.

As alleged in the Amended Complaint, Fitbit develops, manufactures, and sells wearable fitness-tracking devices. Fitbit's devices track daily activity statistics, including steps taken, distance traveled, calories burned, and stairs climbed. In October 2014, Fitbit announced two new products featuring its new "proprietary PurePulse™ optical heart rate technology." Fitbit subsequently held its initial public offering on or about June 18, 2015 and a secondary public offering on or about November 13, 2015.

Lead Plaintiff alleges that Defendants unlawfully inflated Fitbit's stock price by making materially false or misleading statements and/or failing to disclose material facts concerning the accuracy of Fitbit's heart-rate tracking devices. Lead Plaintiff further contends that the price of

Fitbit securities was artificially inflated as a result of Defendants' actions and that investors suffered injury as a result of the alleged inflation.

Defendants deny all of these allegations, deny that they made any false or misleading statements, and deny that they engaged in any wrongdoing.

3. Why Is This A Class Action?

Classes are generally used in lawsuits that affect a large number of individuals. The class action consolidates into a single action all of the claims of individuals allegedly harmed by the same conduct or course of conduct in the same period of time, thus removing the need for members of the class to file their own individual lawsuits for the harm alleged. Once the class is certified, one court is empowered to resolve all of the issues for all class members, except for those class members who exclude themselves from the class.

4. Why Is There a Settlement?

The Court did not decide in favor of the Lead Plaintiff or Defendants. Instead, both sides agreed to a Settlement under the terms set forth in the Stipulation and Agreement of Settlement (the "Stipulation"). This permits the parties to avoid the cost, delay, and uncertainty of a trial, and permits eligible Settlement Class Members who submit valid claims to receive some compensation sooner, rather than engaging in years of further litigation—including motions for summary judgment, trial, and appeals—with the possibility of no recovery at all.

Both the Lead Plaintiff and the Defendants have taken into account the uncertainty and risks inherent in any litigation, especially in complex cases such as the Action. The Settling Parties disagree on both liability and damages, and do not agree on the average amount of damages per share, if any, that would be recoverable if Class Representatives were to prevail at trial on each claim. Among their many other disagreements are: (1) whether Defendants violated the securities laws or otherwise engaged in wrongdoing; (2) whether the misrepresentations and omissions alleged by the Plaintiffs were material, false, misleading, or otherwise actionable; (3) whether and to what extent the alleged misrepresentations and omissions influenced Fitbit's stock price and/or caused Settlement Class Members' alleged damages; and (4) the method for determining the amount of damages, if any, suffered by the Settlement Class Members.

Lead Plaintiff and its attorneys believe the Settlement is best for all Settlement Class Members. However, by settling the Action at this point, Plaintiffs are not admitting that the Amended Complaint or the Action lacked merit or that the Settlement Class's ultimate recovery would not have been greater than the Settlement Consideration. Neither the Stipulation, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by the Plaintiffs or the Settlement Class Members that any of their claims are without merit, or that any defenses asserted by the Defendants have any merit, or that damages recoverable in the Action would not have exceeded the Settlement Fund.

Defendants deny all charges of wrongdoing or liability arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, by Plaintiffs. Nonetheless, Defendants have concluded that further defense of the Action would be protracted and expensive, and that it is desirable that the Action be fully and finally settled upon the terms and conditions set forth in the Stipulation in order to limit further expense and avoid the burden of protracted litigation. Defendants entered into the Stipulation without in any way admitting to or acknowledging any fault, liability, or wrongdoing of any kind. There has been no adverse

determination by any court against Defendants or anyone else on the merits of the claims asserted in the Amended Complaint. Neither the Stipulation, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by Defendants of the merit or truth of any of the allegations or wrongdoing of any kind on their part nor shall they be offered as evidence in the Action or in any pending or future civil, criminal, or administrative action against Defendants, except as expressly set forth in the Stipulation.

WHO IS IN THE SETTLEMENT

To see if you will receive money from this Settlement, you first have to determine if you are a possible Settlement Class Member.

5. How Do I Know if I Am Part of the Settlement?

The potential Settlement Class includes two classes: the Exchange Act Settlement Class and the Securities Act Settlement Class.

To be a member of the Exchange Act Settlement Class, you must have purchased or otherwise acquired Fitbit securities on the open market between June 18, 2015, and May 19, 2016, both dates inclusive.

To be a member of the Securities Act Settlement Class, you must have purchased or otherwise acquired Fitbit Class A common stock pursuant and/or traceable to the Company's initial public offering on or about June 18, 2015 or the Company's follow-on public offering on or about November 13, 2015.

6. Are there exceptions to being included?

Yes. You are not a member of the Settlement Class if you belong to any of the following groups: (i) Defendants and the Individual Defendants' family members; (ii) directors and officers of Fitbit and their families; (iii) any entity in which the Fitbit Defendants have or had a controlling interest; (iv) any entity in which the Underwriter Defendants have or had a majority interest; and (v) any persons or entities who exclude themselves by filing a request for exclusion in accordance with the requirements set forth in this Notice.

7. I am Still Not Sure if I Am Included.

If you are still not sure whether you are included, you can ask for free help. You can contact the Settlement Administrator at Fitbit Securities Litigation, c/o Settlement Administrator, 1801 Market Street, Suite 660, Philadelphia, PA 19103, for more information. Or you can fill out and return the claim form described in question 10, to see if you qualify.

THE SETTLEMENT BENEFITS—WHAT YOU GET

8. What Does the Settlement Provide?

The Settlement, if approved by the Court, will result in a gross fund of \$33 million U.S. dollars. Subject to the Court's approval, a portion of this fund will be used to pay Class Representatives' attorneys' fees and reasonable litigation expenses, the costs of notice and claims administration (including the costs of printing and mailing this Notice), and any award of reasonable costs and expenses granted to the Class Representatives. After these deductions from

the Settlement Fund have been made, the amount remaining (the “Net Settlement Fund”) will be distributed to Settlement Class Members who submit valid claims, in accordance with the Plan of Allocation set forth below.

9. How Much Will My Payment Be?

Your share of the Net Settlement Fund will depend on (i) the number of valid claim forms submitted by Settlement Class Members, (ii) the number of Fitbit securities you purchased and sold between June 18, 2015, and May 19, 2016, and the timing of those purchases and sales; (iii) the amount of administrative costs, including the costs of notice; and (iv) the amount awarded by the Court to Class Representatives for their reasonable costs and expenses, if any, and to Class Counsel for attorneys’ fees, costs, and expenses.

You can calculate your Recognized Claim in accordance with the Plan of Allocation set forth below. After all Settlement Class Members have sent in their Proof of Claim and Release forms, the payment you receive will reflect your Recognized Claim in relation to the sum total of Recognized Claims of all persons submitting valid Proof of Claim forms. Your Recognized Claim is not the amount of the payment that you can expect, but is used to determine how the Net Settlement Fund is to be allocated among all persons submitting claims.

HOW TO GET A PAYMENT—SUBMITTING A CLAIM FORM

10. How Can I Get a Payment?

To qualify for a payment, you must be an eligible Settlement Class Member, send in a valid Proof of Claim and Release form by _____, 2018, and properly document your claim as requested in the form. The Settlement Administrator will process your claim and determine whether you are an Authorized Claimant.

A Proof of Claim and Release form is enclosed with this Notice and may also be downloaded at www.FitBitSecuritiesLitigation.com. Read the instructions carefully, fill out the form, sign it in the location indicated, include all of the documentation requested in the form, and mail or submit it online so that it is postmarked or received no later than _____, 2018. The claim form may be submitted online at www.FitBitSecuritiesLitigation.com or mailed to:

Fitbit Securities Litigation
c/o Settlement Administrator
1801 Market Street, Suite 660
Philadelphia, PA 19103

11. When Will I Receive My Payment?

The Court will hold a hearing on _____, 2018 to decide whether to approve the Settlement. If the Court approves the Settlement, there might be an appeal afterwards. It is always uncertain whether there will be an appeal and when any appeal will be resolved, and resolving an appeal can take time, perhaps more than a year. It also takes at least several months for the Settlement Administrator to process all of the Proof of Claim and Release forms and determine the ultimate distribution amounts. Please be patient.

12. What Am I Giving Up to Receive a Payment or remain a Settlement Class Member?

Unless you validly exclude yourself from the Settlement Class by the _____, 2018 deadline, you are a Settlement Class Member and will be giving up certain rights that you currently have if the Court approves the Settlement. That means that if the Settlement is approved, you and all Settlement Class Members will release (agreeing never to sue or be part of any other proceeding) all claims against each and all of (i) the Defendants, the members of each Individual Defendant's immediate family, any entity in which any Defendant or member of any Individual Defendant's immediate family has, or had during the Exchange Act Class Period, a controlling interest (directly or indirectly), any estate or trust of which any Individual Defendant is a settlor or which is for the benefit of any Individual Defendant and/or members of his family, the underwriters of the IPO or SPO; and (ii) for each and every Person listed in part (i), their respective past, present, and future heirs, executors, administrators, predecessors, successors, assigns, employees, agents, affiliates, analysts, assignees, attorneys, auditors, co-insurers, commercial bank lenders, consultants, controlling shareholders, directors, divisions, domestic partners, financial advisors, general or limited partners, general or limited partnerships, insurers, investment advisors, investment bankers, investment banks, joint ventures and joint venturers, managers, managing directors, marital communities, members, officers, parents, personal or legal representatives, principals, reinsurers, selling shareholders, shareholders, spouses, subsidiaries (foreign or domestic), trustees, underwriters and other retained professionals, in their respective capacities as such (the "Released Persons") in connection with your acquisition of Fitbit securities during the Exchange Act Class Period, except that you do not release the Released Persons from any claim or action to enforce the Settlement. It also means that all of the Court's orders will apply to you and legally bind you. If you sign the claim form, you are agreeing to its "Release of Claims," which will bar you from ever filing a lawsuit against any of the Released Persons to recover losses from the acquisition or sale of Fitbit securities during the Exchange Act Class Period, except to enforce the Settlement. That means you will accept your share in the Net Settlement Fund as sole compensation for any losses you have suffered in the acquisition and sale of Fitbit securities during the Exchange Act Class Period.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want a payment from the Settlement, but you want to keep the right to sue or continue to sue the Defendants on your own for the Settlement Class Claims, then you must take steps to get out of the Settlement Class. This is called excluding yourself or "opting out" of the Settlement Class.

13. How Do I Get Out of the Settlement Class?

To exclude yourself from the Settlement Class, you must send a letter by mail stating that you "request exclusion from the Settlement Class in the *Fitbit Securities Litigation*." To be valid, the letter must state (A) your name, address, telephone number, signature, and e-mail address (if any); (B) the date, number of shares, and dollar amount of all purchases, acquisitions, sales, or dispositions of Fitbit securities between June 18, 2015 and May 19, 2016, both dates inclusive; and (C) the number of shares of Fitbit securities held by you as of May 19, 2016. Any request for exclusion must be signed and submitted by you, as the beneficial owner, under penalty of

perjury. You must submit your exclusion request so that it is **received no later than _____, 2018** at:

Fitbit Securities Litigation
c/o Settlement Administrator
1801 Market Street, Suite 660
Philadelphia, PA 19103

14. If I Do Not Exclude Myself, Can I Sue the Released Persons for the Same Thing Later?

No. Unless you exclude yourself from the Settlement Class, you give up any rights to sue the Defendants and the other Released Persons for the claims being released in this Settlement. If you have a pending lawsuit against the Defendants, speak to your lawyer in that case immediately. Remember, the exclusion deadline is _____, 2018.

15. If I Exclude Myself, Can I Receive Money from the Net Settlement Fund?

No. If you properly exclude yourself, you will not receive a payment from the Net Settlement Fund, you cannot object to the Settlement, and you will not be legally bound by any judgment in this case.

THE LAWYERS REPRESENTING YOU

16. Do I Have a Lawyer in This Case?

The Court has appointed the law firms Pomerantz LLP and Glancy Prongray & Murray LLP to represent you and other Settlement Class Members. These lawyers are called Lead Counsel or Class Counsel. You will not be charged for the services of these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

17. How Will the Lawyers Be Paid?

Class Counsel has not been paid any attorneys' fees to date. Class Counsel has expended considerable time litigating this Action on a contingent-fee basis and has paid for all of the expenses of the litigation themselves. Class Counsel has done so with the expectation that if they are successful in recovering money for the Settlement Class, they will receive attorneys' fees and be reimbursed for their litigation expenses from the Settlement Fund, as is customary in this type of litigation. Class Counsel will not receive attorneys' fees or be reimbursed for their litigation expenses except from the Settlement Fund.

Therefore, Class Counsel will file a motion asking the Court for an award of up to \$9,240,000 in attorneys' fees, up to \$250,000 for reimbursement of reasonable litigation expenses, and may also seek an award of up to \$5,000 for each of the five Class Representatives for their reasonable costs and expenses. That motion will argue that the requested fees and expenses are well within the range awarded to class counsel under similar circumstances in other cases of this type. The Court may award less than these amounts. Any amounts awarded by the Court will come out of the Settlement Fund. Settlement Class Members are not personally liable for any such fees or expenses.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the Settlement or some part of it.

18. How Do I Tell the Court That I Do Not Like the Settlement?

If you are a Settlement Class Member and do not agree with the proposed Settlement, any part of the Settlement, the proposed Plan of Allocation, and/or the request for attorneys' fees and expenses or an award of reasonable costs and expenses for the Class Representatives, you can ask the Court to deny approval by filing an objection. You can't ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payment will be sent out and the lawsuit will continue.

To object, you must send a letter saying you object to the Settlement in the *Fitbit Securities Litigation*, Case No. 16-cv-00151-SI. Be sure to include: (A) your name, address, telephone number, signature, and e-mail address (if any); (B) the date, number of shares, and dollar amount of all purchases, acquisitions, sales, or dispositions of Fitbit securities between June 18, 2015 and May 19, 2016, both dates inclusive; (C) the number of shares of Fitbit securities held by you as of May 19, 2016; and (D) a description of the specific part of the Stipulation or Settlement to which you object and all grounds for your objection, including any evidence you wish to bring to the Court's attention and any legal support known to you or your counsel.

If you object to the Settlement or the requested attorneys' fees or award of reasonable costs and expenses for the Class Representatives, you subject yourself to the jurisdiction of the Court in this matter and Lead Plaintiff may seek to take your deposition before the Settlement Hearing. If the Court allows the deposition and you refuse to have your deposition taken, your objection may be deemed invalid.

The motions in support of the Settlement and the request for attorneys' fees will be filed no later than _____, 2018, and they will be available from Lead Counsel, the Settlement Administrator, or the Court. Any objection must be mailed or delivered such that it is received by *each* of the following no later than _____, 2018:

COURT	LEAD COUNSEL	DEFENDANTS' COUNSEL
United States District Court Northern District of California 450 Golden Gate Avenue San Francisco, CA 94102- 3489	Brian P. Murray Garth A. Spencer GLANCY PRONGAY & MURRAY LLP 230 Park Avenue, Suite 530 New York, NY 10169 Jeremy A. Lieberman Murielle Steven Walsh POMERANTZ LLP 600 Third Avenue, Floor 20 New York, NY 10016	For the Fitbit Defendants: Jordan Eth Anna Erickson White Ryan M. Keats MORRISON & FOERSTER LLP 425 Market Street San Francisco, CA 94105-2482 For the Underwriter Defendants: Jonathan Rosenberg William J. Sushon O'MELVENY & MYERS LLP Seven Times Square New York, NY 10036

THE COURT'S SETTLEMENT HEARING

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you do not have to.

19. When and Where Will the Court Decide Whether to Approve the Settlement?

The Court will hold a Settlement Hearing at ___ .m. on _____, 2018 at the United States District Court for the Northern District of California in Courtroom 1, 17th Floor, San Francisco Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102.

At this hearing, the Court will consider whether the proposed Settlement and Plan of Allocation are fair, reasonable, and adequate and should be approved. If there are objections, the Court will consider them, and the Court will listen to people who have asked to speak at the hearing. The Court may also decide how much should be awarded to Class Counsel for attorneys' fees and expenses and to Class Representatives for their reasonable costs and expenses. The Court may decide these issues at the hearing or take them under consideration for a later decision.

We do not know how long these decisions will take. You should be aware that the Court may change the date and time of the Settlement Hearing without another notice being sent to Settlement Class Members. If you want to attend the hearing, you may wish to visit the Court's website at <http://www.cand.uscourts.gov/si> or check with Class Counsel beforehand to be sure that the date and time has not changed.

20. Do I Have to Come to the Hearing?

No. Lead Counsel will answer questions the Court may have. But you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it, though you are welcome to do so. However if you object and wish to appear at the hearing, you must provide notification that you wish to appear at the hearing in your written objection. You may also pay your own lawyer to attend, but it is not necessary.

21. May I Speak at the Hearing?

You may ask the Court for permission to speak at the Settlement Hearing. To do so, you must send a letter saying you intend to appear at the Settlement Hearing in the *Fitbit Securities Litigation*, Case No. 16-cv-00151-SI. Your letter should comply with all of the requirements set forth in question 18 above for submitting a written objection, and it must be received no later than _____, 2018 by the Clerk of the Court, Lead Counsel and the Defendants' Counsel at the addresses listed in question 18.

If you wish to present evidence at the Settlement Hearing, you must also identify any witnesses you may call to testify and any exhibits you intend to introduce into evidence at the Settlement Hearing. If you intend to have counsel appear on your behalf at the Settlement Hearing, your letter must identify all attorneys who will appear on your behalf, and your attorneys must file a notice of their intent to appear.

You cannot speak at the hearing if you exclude yourself.

IF YOU DO NOTHING

22. What Happens if I Do Nothing at All?

If you do nothing, all of your claims against Defendants and the Released Persons will be released, but you will not receive any money from this Settlement, because it is necessary to submit a Proof of Claim and Release form to share in the Settlement proceeds.

GETTING MORE INFORMATION

23. Are There More Details About the Settlement?

This Notice summarizes the proposed Settlement. More details are in the Stipulation. The Stipulation is the controlling document describing the proposed Settlement and its terms govern anything to the contrary in this Notice. You can get a copy of the Stipulation and obtain answers to common questions regarding the proposed Settlement by visiting www.FitBitSecuritiesLitigation.com or by contacting the Settlement Administrator toll-free at 1-866-846-7286. You can also access the Court docket in this case through the Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>. You can also contact class counsel at:

Brian P. Murray Garth A. Spencer GLANCY PRONGAY & MURRAY LLP 230 Park Avenue, Suite 530 New York, NY 10169 Telephone: (212) 682-5340	Jeremy A. Lieberman Murielle Steven Walsh POMERANTZ LLP 600 Third Avenue, Floor 20 New York, NY 10016 Telephone: (212) 661-1100
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**PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE
REGARDING THIS SETTLEMENT OR THE CLAIM PROCESS.**

THE PLAN OF ALLOCATION

The Plan of Allocation is a matter separate and apart from the proposed Settlement, and any decision by the Court concerning the Plan of Allocation shall not affect the validity or finality of the proposed Settlement. The Court may approve the Plan of Allocation with or without modifications agreed to among the Parties, or may approve another plan of allocation, without further notice to Settlement Class Members. Any orders regarding a modification of the Plan of Allocation will be posted to the Settlement Administrator's website: www.FitBitSecuritiesLitigation.com.

The general objective of the Plan of Allocation is to equitably distribute the Net Settlement Fund among Authorized Claimants based on their respective alleged economic losses as a result of the alleged misconduct, as opposed to losses caused by market- or industry-wide factors, or Company-specific factors unrelated to the alleged misconduct. The Settlement Administrator shall determine each Authorized Claimant's share of the Net Settlement Fund based upon the recognized loss formula (the "Recognized Loss") described below. A Recognized Loss will be calculated for each share of Fitbit Class A common stock ("Fitbit Common Stock") purchased or otherwise acquired during the Exchange Act Class Period (*i.e.*, June 18, 2015

through May 19, 2016, both dates inclusive), including Fitbit Common Stock acquired pursuant and/or traceable to Fitbit's initial public offering on or about June 18, 2015 (the "IPO"), and Fitbit Common Stock acquired pursuant and/or traceable to Fitbit's follow-on public offering on or about November 13, 2015 (the "SPO").

The calculation of Recognized Loss will depend upon several factors, including when shares of Fitbit Common Stock were purchased or otherwise acquired, and for what amounts, and whether those shares were sold, and if sold, when they were sold, and for what amounts. The Recognized Loss is not intended to estimate the amount a Settlement Class Member might have been able to recover after a trial, though Class Counsel's determinations of litigation risk may inform the calculation of Recognized Loss in order to achieve an equitable distribution of the Net Settlement Fund. The Recognized Loss is not intended to estimate the amount that will be paid to Authorized Claimants pursuant to the Settlement. The Recognized Loss is the basis upon which the Net Settlement Fund will be proportionately allocated to the Authorized Claimants. The Settlement Administrator will use its best efforts to administer and distribute the Net Settlement Fund to the extent that it is equitably and economically feasible.

The Plan of Allocation was created with the assistance of a consulting damages expert, and reflects the assumption that the price of Fitbit Common Stock was artificially inflated during part of the Exchange Act Class Period. The computation of the estimated alleged artificial inflation in the price of Fitbit Common Stock during the Exchange Act Class Period is based on certain misrepresentations alleged by Lead Plaintiff and the decline in the price of Fitbit Common Stock, net of market- and industry-wide factors, in reaction to public announcements that allegedly corrected the alleged misrepresentations. Lead Plaintiff and Plaintiffs' Counsel have determined that such price declines occurred on January 5, 2016 and February 23, 2016 (the "Corrective Disclosure Dates").¹

Federal securities laws allow investors to recover for losses caused by disclosures which corrected Defendants' previous misleading statements or omissions. Thus, in order to have been damaged by the alleged violations of the federal securities laws, Fitbit Common Stock purchased or otherwise acquired during the Exchange Act Class Period must have been held until such time when its price declined due to the disclosure of information which corrected an allegedly misleading statement or omission. Accordingly, if Fitbit Common Stock was sold before January 5, 2016 (the earliest Corrective Disclosure Date), the Recognized Loss for such shares is \$0.00, and any loss suffered is not compensable under the federal securities laws. Likewise, if Fitbit Common Stock was both purchased and sold between the two Corrective Disclosures Dates (*i.e.*, January 5, 2016 and February 23, 2016), the Recognized Loss for such shares is \$0.00.

¹ Due to the timing of the corrective disclosures alleged with respect to January 5, 2016, only part of that day's total Company-specific price decline was used to estimate artificial price inflation. Due to the heightened litigation risk associated with demonstrating loss causation with respect to the February 23, 2016 (including the difficulty of disaggregating confounding factors) as determined by Class Counsel, only part of that day's total Company-specific price decline was used to estimate artificial price inflation.

Fitbit Common Stock purchased pursuant and/or traceable to Fitbit's IPO or Fitbit's SPO are the only securities eligible for a claim under §11(e) of the Securities Act of 1933 ("Section 11"). All purchases of Fitbit Common Stock made directly from an underwriter or its agent in the IPO, as well as all purchases of Fitbit Common Stock made in the open market prior to November 13, 2015, shall be considered a purchase pursuant and/or traceable to Fitbit's IPO.² No other purchases of Fitbit Common Stock shall be considered a purchase pursuant or traceable to Fitbit's IPO. All purchases of Fitbit Common Stock made directly from an underwriter or its agent in the SPO shall be considered a purchase pursuant and/or traceable to Fitbit's SPO.³ No other purchases of Fitbit Common Stock shall be considered a purchase pursuant or traceable to Fitbit's SPO.

Fitbit Common Stock purchased directly from an underwriter or its agent in Fitbit's IPO shall be considered a purchase of Fitbit Common Stock at a price of \$20.00 per share (the IPO offering price). Fitbit Common Stock purchased directly from an underwriter or its agent in Fitbit's SPO shall be considered a purchase of Fitbit Common Stock at a price of \$29.00 per share (the SPO offering price).

For shares with a claim under both Section 11 and Section §10(b) of the Securities Exchange Act of 1934 ("Section 10(b)"), the Recognized Loss shall be the sum of: (i) the Recognized Loss amount calculated under Section 10(b) as described below and (ii) the Recognized Loss amount calculated under Section 11 as described below. This approach to calculating Recognized Losses is intended to reflect the determination of Class Counsel that, although the damages alleged to be actionable under Section 10(b) and Section 11 generally relate to similar alleged misconduct and the same stock price declines, the Section 11 claims add value to the overlapping Section 10(b) claims because they would be easier to prove and therefore more likely to prevail if litigated to a conclusion.

In the calculations below, all purchase and sale prices shall exclude any fees, taxes, and commissions. If a Recognized Loss amount is calculated to be a negative number, that Recognized Loss shall be set to zero.

Calculation of Recognized Loss per Share of Fitbit Common Stock under Section 10(b)

For each share of Fitbit Common Stock purchased during the Exchange Act Class Period (*i.e.*, June 18, 2015 through May 19, 2016, both dates inclusive), the Recognized Loss per share under Section 10(b) shall be calculated as follows:

- i. For each share of Fitbit Common Stock purchased prior to January 5, 2016:
 - a. For each share of Fitbit Common Stock sold prior to January 5, 2016, the Recognized Loss per share is \$0.00.

² The underwriters of the IPO were: Morgan Stanley; SunTrust Robinson Humphrey; Barclays Capital; Bank of America Merrill Lynch; Deutsche Bank Securities, Inc.; William Blair & Co., LLC; Stifel Nicolaus & Co., Inc.; Raymond James & Associates; and Piper Jaffray & Co.

³ The underwriters of the SPO were: Morgan Stanley; Citigroup Global Markets, Inc.; Barclays Capital; Bank of America Merrill Lynch; Deutsche Bank Securities, Inc.; Stifel Nicolaus & Co., Inc.; RBC Dominion Securities; Piper Jaffray & Co.; and SunTrust Robinson Humphrey.

- b. For each share of Fitbit Common Stock sold during the period January 5, 2016 through February 22, 2016, both dates inclusive, the Recognized Loss per share is \$1.79.
 - c. For each share of Fitbit Common Stock sold or retained on or after February 23, 2016, the Recognized loss per share is \$2.27.
 - ii. For each share of Fitbit Common Stock purchased between January 5, 2016 and February 22, 2016, both dates inclusive:
 - a. For each share of Fitbit Common Stock sold during the period January 5, 2016 through February 22, 2016, both dates inclusive, the Recognized Loss per share is \$0.00.
 - b. For each share of Fitbit Common Stock sold or retained on or after February 23, 2016, the Recognized Loss per share is \$0.48.
 - iii. For each share of Fitbit Common Stock purchased on or after February 23, 2016, the Recognized Loss per share is \$0.00.

Calculation of Recognized Loss per Share of Fitbit Common Stock under Section 11

For each share of Fitbit Common Stock purchased pursuant and/or traceable to the Company's IPO, the Recognized Loss per share under Section 11 shall be calculated as follows:

- i. For each share of Fitbit Common Stock sold prior to January 5, 2016, the Recognized Loss per share is \$0.
- ii. For each share of Fitbit Common Stock sold or retained on or after January 5, 2016, the Recognized Loss per share is \$0.23.

For each share of Fitbit Common Stock purchased pursuant and/or traceable to the Company's SPO, the Recognized Loss per share under Section 11 shall be calculated as follows:

- i. For each share of Fitbit Common Stock sold prior to January 5, 2016, the Recognized Loss per share is \$0.
- ii. For each share of Fitbit Common Stock sold or retained on or after January 5, 2016, the Recognized Loss per share is \$0.23.

INSTRUCTIONS APPLICABLE TO ALL CLAIMANTS

The payment you receive will reflect your proportionate share of the Net Settlement Fund. Such payment will depend on the number of eligible securities that participate in the Settlement, and when those securities were purchased and sold. The number of claimants who send in claims varies widely from case to case.

A purchase or sale of Fitbit common stock shall be deemed to have occurred on the "contract" or "trade" date as opposed to the "settlement" or "payment" date. All purchase and sale prices shall exclude any fees and commissions. Any transactions in Fitbit common stock executed outside of regular trading hours for the U.S. financial markets shall be deemed to have occurred during the next regular trading session.

To the extent a claimant had a trading gain or “broke even” from his, her, or its overall transactions in Fitbit common stock during the Exchange Act Class Period, the value of the Recognized Loss will be zero and the claimant will not be entitled to a share of the Net Settlement Fund. To the extent that a claimant suffered a trading loss on his, her, or its overall transactions in Fitbit common stock during the Exchange Act Class Period, but that trading loss was less than the Recognized Loss calculated above, then the Recognized Loss shall be limited to the amount of the claimant’s actual trading loss.

For purposes of determining whether a claimant had a trading gain from his, her, or its overall transactions in Fitbit common stock during the Exchange Act Class Period or suffered a trading loss, the Settlement Administrator shall determine the difference between (i) the Total Purchase Amount⁴ and (ii) the sum of the Total Sales Proceeds⁵ and Holding Value.⁶ This difference shall be deemed a Claimant’s trading gain or loss with respect to his, her, or its overall transactions in Fitbit common stock during the Exchange Act Class Period.

Acquisition by Gift, Inheritance, or Operation of Law: If a Settlement Class Member acquired Fitbit common stock by way of gift, inheritance, or operation of law, such a claim will be computed by using the date and price of the original purchase and not the date and price of transfer. To the extent that Fitbit common stock was originally purchased prior to commencement of the Exchange Act Class Period, the Recognized Loss for that acquisition shall be deemed to be zero (\$0.00).

Notwithstanding any of the above, receipt of Fitbit common stock in exchange for securities of any other corporation or entity shall not be deemed a purchase or sale of Fitbit common stock.

The first-in-first-out (“FIFO”) basis will be applied to purchases and sales. Sales will be matched in chronological order, by trade date, first against Fitbit common stock held as of the close of trading on June 17, 2015 (the last day before the Exchange Act Class Period begins) and then against the purchases of Fitbit common stock during the Exchange Act Class Period.

The date of covering a “short sale” is deemed to be the date of purchase of shares. The date of a “short sale” is deemed to be the date of sale of shares. In accordance with the Plan of Allocation, however, the Recognized Loss on “short sales” is zero. In the event that a claimant has an opening short position in Fitbit common stock, the earliest Exchange Act Class Period purchases shall be matched against such opening short position and not be entitled to a recovery until that short position is fully covered.

⁴ The “Total Purchase Amount” is the total amount the claimant paid for all Fitbit common stock purchased during the Exchange Act Class Period.

⁵ The Settlement Administrator shall match any sales of Fitbit common stock during the Exchange Act Class Period, first against the Claimant’s opening position in Fitbit common stock (the proceeds of those sales will not be considered for purposes of calculating trading gains or losses). The total amount received for the remaining sales of Fitbit common stock sold during the Exchange Act Class Period shall be the “Total Sales Proceeds.”

⁶ The Settlement Administrator shall ascribe a Holding Value of \$13.99 per share for Fitbit common stock still held as of the close of trading on May 19, 2016.

With respect to Fitbit common stock purchased or sold through the exercise of an option, the purchase/sale date of the stock shall be the exercise date of the option and the purchase/sale price of the stock shall be the closing price of Fitbit common stock on the date of exercise. Any Recognized Loss arising from purchases of Fitbit common stock acquired during the Exchange Act Class Period through the exercise of an option on Fitbit common stock⁷ shall be computed as provided for other purchases of Fitbit common stock in the Plan of Allocation.

Payment according to the Plan of Allocation will be deemed conclusive against all Authorized Claimants. A Recognized Loss will be calculated as defined herein and cannot be less than zero. The Settlement Administrator shall allocate to each Authorized Claimant a *pro rata* share of the Net Settlement Fund based on his, her, or its Recognized Loss as compared to the total Recognized Losses of all Authorized Claimants (see the Plan of Allocation for additional details). No distribution will be made to Authorized Claimants who would otherwise receive a distribution of less than \$10.00.

Settlement Class Members who do not submit acceptable Proofs of Claim will not share in the Settlement proceeds. The Settlement and the Final Judgment and Order of Dismissal with Prejudice dismissing this Action will nevertheless bind Settlement Class Members who do not submit a request for exclusion and/or submit an acceptable Proof of Claim.

Please contact the Settlement Administrator or Lead Counsel if you disagree with any determinations made by the Settlement Administrator regarding your Proof of Claim. If you are unsatisfied with the determinations, you may ask the Court, which retains jurisdiction over all Settlement Class Members and the claims-administration process, to decide the issue by submitting a written request.

Defendants, their respective counsel, and all other Released Persons will have no responsibility or liability whatsoever for the investment of the Settlement Fund, the distribution of the Net Settlement Fund, the Plan of Allocation, or the payment of any claim. Lead Plaintiff and Plaintiffs' Counsel, likewise, will have no liability for their reasonable efforts to execute, administer, and distribute the Settlement.

Distributions will be made to Authorized Claimants after all claims have been processed and after the Court has finally approved the Settlement. After the initial distribution of the Net Settlement Fund, the Settlement Administrator shall make reasonable and diligent efforts to have Authorized Claimants cash their distribution checks. To the extent any monies remain in the fund nine (9) months after the initial distribution, if Lead Counsel, in consultation with the Settlement Administrator, determines that it is cost-effective to do so, the Settlement Administrator shall conduct a re-distribution of the funds remaining after payment of any unpaid fees and expenses incurred in administering the Settlement, including for such re-distribution, to Authorized Claimants who have cashed their initial distributions and who would receive at least \$10.00 from such re-distribution. Additional re-distributions to Authorized Claimants who have cashed their prior checks and who would receive at least \$10.00 on such additional re-distributions may occur thereafter if Lead Counsel, in consultation with the Settlement Administrator, determines that

⁷ Including (1) purchases of Fitbit common stock as the result of the exercise of a call option, and (2) purchases of Fitbit common stock by the seller of a put option as a result of the buyer of such put option exercising that put option.

additional re-distributions, after the deduction of any additional fees and expenses incurred in administering the Settlement, including for such re-distributions, would be cost-effective. At such time as it is determined that the re-distribution of funds remaining in the Net Settlement Fund is not cost-effective, the remaining balance shall be contributed to non-sectarian, not-for-profit organization(s), to be recommended by Lead Counsel and approved by the Court.

SPECIAL NOTICE TO SECURITIES BROKERS AND OTHER NOMINEES

If you purchased Fitbit common stock during the Exchange Act Class Period (CUSIP: 33812L102) for the beneficial interest of an individual or organization other than yourself, the Court has directed that, **within fourteen (14) days after you receive this Notice**, you must either: (1) request from the Settlement Administrator sufficient copies of the Notice and Proof of Claim and Release form to forward to their beneficial owners, and within ten (10) days of receipt of those copies of the Notice and Proof of Claim and Release forms, forward them to such beneficial owners by first class mail, send a statement to the Settlement Administrator confirming that the mailing was made as directed, and retain the names and addresses for any future mailings; or (2) provide a list of the names and addresses of such beneficial owners to the Settlement Administrator at:

Fitbit Securities Litigation
c/o Settlement Administrator
1801 Market Street, Suite 660
Philadelphia, PA 19103
www.FitBitSecuritiesLitigation.com

If you choose to mail the Notice and Proof of Claim and Release form yourself, you may obtain from the Settlement Administrator (without cost to you) as many additional copies of these documents as you will need. You are also entitled to reimbursement from the Settlement Fund of your reasonable expenses actually incurred in connection with the foregoing, including postage and the cost of ascertaining the names and addresses of beneficial owners.

Regardless of whether you choose to complete the mailing yourself or elect to have the mailing performed for you, you may obtain reimbursement for administrative costs actually incurred in connection with forwarding the Notice and which would not have been incurred but for the obligation to forward the Notice, upon submission of appropriate documentation to the Settlement Administrator.

Reasonable expenses will be paid upon request and submission of appropriate supporting documentation. All communications concerning the foregoing should be addressed to the Settlement Administrator at the address above.

DATED: _____, 201_

BY ORDER OF THE COURT
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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

BRIAN H. ROBB, Individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

FITBIT INC., *et al.*,

Defendants.

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

The Hon. Susan Illston

SUMMARY NOTICE OF PROPOSED CLASS-ACTION SETTLEMENT

To: **All Persons Who Purchased Fitbit, Inc. securities between June 18, 2015 and May 19, 2016, inclusive.**

A hearing will be held on _____ at _____.m. before the Honorable Susan Illston at the United States District Court for the Northern District of California, 450 Golden Gate Avenue, Courtroom 1, San Francisco, CA 94102, to determine: (1) whether the proposed Settlement for \$33 million in cash should be approved by the Court as fair, reasonable, and adequate; (2) whether the proposed plan to distribute the settlement proceeds is fair and reasonable; (3) whether the application for an award of attorneys' fees of up to \$9,240,000 and reimbursement of expenses of not more than \$250,000 and an payment of no more than \$5,000 to each of the five Class Representatives for their reasonable costs and expenses should be approved; and (4) whether the Action should be dismissed with prejudice against the Defendants, as set forth in the Stipulation and Agreement of Settlement (the "Stipulation") filed with the Court.

If you have not received the detailed Notice of Proposed Class-Action Settlement (the "Notice") and Proof of Claim and Release Form, you may obtain them free of charge at www.FitBitSecuritiesLitigation.com or by contacting the Settlement Administrator at Fitbit Securities Litigation, c/o Settlement Administrator, 1801 Market Street, Suite 660, Philadelphia,

PA 19103.

If you purchased Fitbit Inc. (“Fitbit”) securities between June 18, 2015 and May 19, 2016, inclusive, **your rights may be affected by this Settlement.** As further described in the Notice, **you will be bound by any Judgment entered in the Action,** whether or not you make a claim, unless you request exclusion from the Settlement Class, in the manner set forth in the Notice, no later than _____, 2018.

If you are a member of the Settlement Class and wish to share in the Settlement proceeds, you must submit a Proof of Claim no later than _____, 2018 establishing that you are entitled to recovery. Any objections to the Settlement, Plan of Allocation, or application for attorneys’ fees and expenses must be made in writing and must be provided to the Court and parties, in the manner set forth in the Notice, no later than _____, 2018.

PLEASE DO NOT CONTACT THE COURT OR THE CLERK’S OFFICE REGARDING THIS NOTICE. Inquiries, other than requests for the Notice, may be made to Class Counsel at the addresses below.

Brian P. Murray Garth A. Spencer GLANCY PRONGAY & MURRAY LLP 230 Park Avenue, Suite 530 New York, NY 10169 Telephone: (212) 682-5340	Jeremy A. Lieberman Murielle Steven Walsh POMERANTZ LLP 600 Third Avenue, Floor 20 New York, NY 10016 Telephone: (212) 661-1100
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Dated: _____, 2018

BY ORDER OF THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN
DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

BRIAN H. ROBB, Individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

FITBIT INC., *et al.*,

Defendants.

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

Hon. Susan Illston

PROOF OF CLAIM AND RELEASE FORM

A. GENERAL INSTRUCTIONS & INFORMATION

1. You are urged to read carefully the accompanying Notice of Proposed Class-Action Settlement (the "Notice") and the Stipulation and Agreement of Settlement ("Stipulation"). Both documents are available at www.FitBitSecuritiesLitigation.com. All capitalized terms used herein shall have the same meaning as defined in the Notice and the Stipulation.

2. To file a claim and recover under the Settlement of this Action, you must have purchased or otherwise acquired Fitbit Inc. Class A common stock between June 18, 2015 and May 19, 2016, both dates inclusive. You must not be a person who is excluded from the Settlement Class, as defined in the Notice. You also must not have requested exclusion from the Settlement Class.

3. If you are a Settlement Class Member and wish to participate in the proposed Settlement, you must complete and sign this Proof of Claim and Release ("Proof of Claim"). The submission of a Proof of Claim does not ensure that your claim will be upheld or that you will share in any recovery. All claims are subject to verification and investigation. If you fail to file a properly addressed and fully completed Proof of Claim, fail to provide required documentation, or are not eligible to recover under the Settlement, your claim may be rejected and you may be precluded from any recovery from the proposed Settlement. You may also be requested to provide further information.

4. You must mail your completed and signed Proof Of Claim, **postmarked on or before _____, 2018**, to the Settlement Administrator at:

Fitbit Securities Litigation
c/o Settlement Administrator
1801 Market Street, Suite 660
Philadelphia, PA 19103

5. If you are a member of the Settlement Class and do not timely request exclusion, **you will be bound** by any judgment entered in the Action **whether or not you submit a proof of claim**.

6. If you are **not** a member of the Settlement Class, **do not** submit a Proof of Claim. For help completing this Proof of Claim, please contact the Settlement Administrator.

B. CLAIMANT IDENTIFICATION INSTRUCTIONS

1. If you purchased Fitbit Inc. Class A common stock and registered the certificate in your name, you are the beneficial owner as well as the owner of record. If, however, you purchased Fitbit Inc. Class A common stock and the certificate was registered in the name of a third party (such as your stock broker), you are the beneficial owner and the third party is the owner of record. Proceeds of this Settlement will be distributed to Settlement Class members who are beneficial owners of Fitbit Inc. Class A common stock.

2. Use Section D of this form, entitled “Claimant Identification Schedule,” to identify yourself and each owner of record, if different from the beneficial owner of Fitbit Inc. Class A common stock that forms the basis of this claim. **This claim must be filed by the actual beneficial owner(s), or the legal representative of such owner(s), of the stock upon which this claim is based.**

3. If shares of Fitbit Inc. Class A common stock were owned jointly, all joint owners must sign the Proof of Claim. Executors, administrators, guardians, conservators, and trustees may complete and sign the Proof of Claim on behalf of persons or entities represented by them, but they must identify such persons or entities and provide proof of their authority (*e.g.*, powers of attorney or currently effective letters testamentary or letters of administration). The Social Security (or taxpayer identification) number and telephone number of the beneficial owner may be used in verifying the Claim. If you fail to provide the foregoing information, your claim may be delayed or rejected.

4. You must file a separate Proof of Claim for each differently named account or ownership, such as an individual account, an IRA account, a joint account, or a custodial account, etc. Joint tenants, co-owners, or custodians UGMA should file a single claim. Claimants who file one or more claims (*e.g.*, one in Claimant’s name and one for an IRA or joint ownership) must identify the other claims filed.

C. INSTRUCTIONS FOR SCHEDULE OF TRANSACTIONS

1. Use Section E of this form, entitled “Schedule of Transactions,” to supply all of the requested information with respect to **all** of your transactions—purchases, other acquisitions, sales, and other dispositions—in Fitbit Inc. Class A common stock that took place at any time between June 18, 2015 through and including May 19, 2016, whether such transactions resulted in a profit or a loss. The failure to report all such transactions or to provide all requested information with respect to each transaction may result in the rejection of your claim.

2. If you need more space, attach separate, numbered sheets giving all of the required information in substantially the same form. Sign each additional sheet and print or type your name at the top.

3. List each transaction separately and in chronological order by trade date, beginning with the earliest. You must accurately provide the month, day, and year of each transaction, as well as the purchase and/or sales price, excluding commissions, taxes, and other fees. The date of a transaction is the “trade” date and not the “settlement” date. The date of covering a “short sale” is deemed to be the date of purchase; and the date of a “share sale” is deemed to be the date of sale. Shares originally sold short will have a Recognized Loss of zero. Fitbit Inc. Class A common stock acquired or disposed of for any consideration other than, or in addition to, cash must be reported as having been acquired or disposed of.

4. You **must** attach to your claim form **copies** of brokerage confirmations, monthly statements, or other documentation of your transactions in Fitbit Inc. Class A common stock in order for your claim to be valid. A complete list of acceptable supporting documentation can be found at www.FitBitSecuritiesLitigation.com. Failure to provide this documentation could delay verification or result in rejection of your Claim. The Settlement Administrator may also request additional information as required to efficiently and reliably calculate your losses.

5. If your trading activity between June 18, 2015 and May 19, 2016 exceeds 50 transactions, you must provide all information required in the Schedule of Transactions in an electronic file. For instructions and parameters concerning such a submission, please visit www.FitBitSecuritiesLitigation.com or call the Settlement Administrator at 1-866-846-7286.

6. If you have questions or need additional Proofs of Claim, contact the Settlement Administrator via the information in the preceding paragraph. You may make photocopies of this form.

7. Please refer to the Plan of Allocation set forth in the accompanying Notice for a detailed explanation of how a Claimant’s Recognized Loss will be calculated.

D. CLAIMANT IDENTIFICATION SCHEDULE

Claims must be received by the Settlement Administrator postmarked no later than _____, **2018**.

Please Type or Print

Beneficial Owner's Name *(as it appears on your brokerage statement)*

Joint Beneficial Owner's Name *(as it appears on your brokerage statement)*

Street Address

Street Address 2

City

State

Zip Code

Foreign Province

Foreign Country

(_____) _____
Telephone Number (Daytime)

(_____) _____
Telephone Number (Evening)

(_____) _____
Fax Number

E-Mail Address

Record Owner's Name and Address *(if different from beneficial owner listed above)*

Specify one of the following.

Claimant holder of Fitbit Inc. Class A common stock is:

<input type="checkbox"/>	A. Individual Claimant: I am a claimant acting in my own interest and am the sole owner of the shares.
<input type="checkbox"/>	B. Joint Claimants: We are claimants acting jointly.
<input type="checkbox"/>	C. Corporate Claimant: I am the _____ of _____, a corporation whose address is _____. I am authorized to make this claim on behalf of the corporation. The corporation is the owner of the shares.
<input type="checkbox"/>	D. IRA Claimant: I am a claimant acting on behalf of my IRA. The shares are held in my IRA.
<input type="checkbox"/>	E. Partnership Claimant: I am a partner of _____, a partnership whose business address is _____. I am authorized to make this claim on behalf of the partnership. The partnership is the owner of the shares.
<input type="checkbox"/>	F. Decedent's Estate Claimant: I am the executor or the administrator (circle which) of the estate of _____, whose last address was _____. (Valid proof of authority must accompany this claim.)
<input type="checkbox"/>	G. Trust Claimant: I am a trustee of _____, a trust authorized under the laws of _____. I am authorized to make this claim on behalf of the trust. The trust is the owner of the shares.
<input type="checkbox"/>	H. Custodial or Guardian Claimant: I am the custodian or the guardian (circle which) for _____ whose address is _____. (Valid proof of authority must accompany this claim.)
<input type="checkbox"/>	I. Other: (Specify) _____

E. SCHEDULE OF TRANSACTIONS IN FITBIT INC. CLASS A COMMON STOCK

1. State the total number of shares of Fitbit Inc. Class A common stock owned at the close of trading on **June 18, 2015**, long or short (*if none, enter "0"; if other than zero, must be documented*):

2. Separately list each and every **purchase** of Fitbit Inc. Class A common stock between **June 18, 2015** and **May 19, 2016**, and provide the following information (*must be documented*):

Trade Date (list chronologically) Month/Day/Year	Number of Shares Purchased	Price Per Share (excluding commissions, taxes, and other fees)	Total Purchase Price (excluding commissions, taxes, and other fees)
____/____/____		\$	\$
____/____/____		\$	\$
____/____/____		\$	\$

3. Separately list each and every **sale** of Fitbit Inc. Class A common stock between **June 18, 2015** and **May 19, 2016**, and provide the following information (*must be documented*):

Trade Date (list chronologically) Month/Day/Year	Number of Shares Sold	Price Per Share (excluding commissions, taxes, and other fees)	Total Sale Price (excluding commissions, taxes, and other fees)
____/____/____		\$	\$
____/____/____		\$	\$
____/____/____		\$	\$

4. State the total number of shares of Fitbit Inc. Class A common stock owned at the close of trading on **May 19, 2016**, long or short (*if none, enter "0"; if other than zero, must be documented*):

If you need additional space, attach the required information on separate, numbered sheets in the same format as above and print your name and Social Security or Taxpayer Identification number at the top of each additional sheet.

YOU MUST ALSO READ THE RELEASE AND SIGN THE CERTIFICATION OR THE W-8 CERTIFICATION BELOW

F. SUBMISSION TO JURISDICTION OF THE COURT

By submitting this Proof of Claim Form and Release, I/we, and every Settlement Class Member I/we represent, submit to the jurisdiction of the United States District Court for the Northern District of California for purposes of this Action and the Settlement of the Action, as reflected in the Stipulation. I/We

further agree to be bound by the orders of the Court, agree that this Proof of Claim Form, my/our status or the status of the Settlement Class Member I/we represent as a Claimant, and the allowable amount of this claim will be subject to review and further inquiry, and that I/we will furnish such additional documentation with respect to this Proof of Claim as may be required.

G. RELEASE

1. By signing this Proof of Claim Form and Release, I/we hereby acknowledge full and complete satisfaction of, and do hereby fully, finally and forever settle, release and discharge from the Settlement Class Claims each and all of the “Released Persons” defined as, collectively, each and all of (i) the Defendants, the members of each Individual Defendant’s immediate family, any entity in which any Defendant or member of any Individual Defendant’s immediate family has, or had during the Exchange Act Class Period, a controlling interest (directly or indirectly), any estate or trust of which any Individual Defendant is a settlor or which is for the benefit of any Individual Defendant and/or members of his family, the underwriters of the IPO or SPO; and (ii) for each and every Person listed in part (i), their respective past, present, and future heirs, executors, administrators, predecessors, successors, assigns, employees, agents, affiliates, analysts, assignees, attorneys, auditors, co-insurers, commercial bank lenders, consultants, controlling shareholders, directors, divisions, domestic partners, financial advisors, general or limited partners, general or limited partnerships, insurers, investment advisors, investment bankers, investment banks, joint ventures and joint venturers, managers, managing directors, marital communities, members, officers, parents, personal or legal representatives, principals, reinsurers, selling shareholders, shareholders, spouses, subsidiaries (foreign or domestic), trustees, underwriters, and other retained professionals, in their respective capacities as such.

2. “Settlement Class Claims” means all claims, rights, liabilities, and causes of action of every nature and description, including Unknown Claims, whether contingent or absolute, mature or unmature, discoverable or undiscoverable, liquidated or unliquidated, accrued or unaccrued, including those that are concealed or hidden, regardless of legal or equitable theory, that Plaintiffs or any other member(s) of the Settlement Class asserted or could have asserted in any forum (i) that arise out of, are based upon, or are related in any way directly or indirectly, in whole or in part to, the allegations, transactions, facts, matters, occurrences, representations, or omissions referred to in the operative complaint and that relate to the purchase, sale, acquisition, or retention of Fitbit Class A common stock during the Exchange Act Class Period; or (ii) that are related the administration of the Settlement. Notwithstanding the foregoing, “Settlement Class Claims” does not include any claims asserted on behalf of the Company in the Derivative Actions.

3. “Unknown Claims” means collectively, any and all Settlement Class Claims that any Plaintiff or any other Settlement Class Member does not know or suspect to exist in his, her, or its favor, and any Defendant Claims that any Defendant does not know or suspect to exist in his, her, or its favor, which, if known by him, her, or it, might have affected his, her, or its decision to enter into this Settlement, execute this Stipulation, and agree to all the various releases set forth herein, or might have affected his, her, or its decision not to object to this Settlement or not exclude himself, herself, or itself from the Settlement Class. Unknown Claims include, without limitation, those claims in which some or all of the facts composing the claim may be unsuspected or undisclosed, concealed, or hidden. The parties stipulate and agree that this provision is to be interpreted to the broadest extent permitted by any applicable law, regulation, or rule.

4. “Derivative Actions” means: *In re Fitbit, Inc. Shareholder Derivative Litigation*, No. 16-cv-6558 (N.D. Cal. November 11, 2016); *Correia v. Park*, No. 1:17-cv-00108 (D. Del. Feb. 2, 2017); *In re Fitbit, Inc. Stockholder Derivative Litigation*, C.A. No. 2017-0402-JRS (Del. Chan. May 26, 2017); and any other related derivative action filed on behalf of Fitbit prior to the date of the Stipulation.

H. REPRESENTATIONS

I/We acknowledge that I/we have read the Notice of Proposed Class-Action Settlement and that pursuant thereto I/we file this claim to participate in the Settlement.

I/We hereby warrant and represent that neither I/we, nor any person I/We represent, is a Defendant (as defined in the Notice) with respect to any of the claims asserted in the Action, a member of the immediate family of any of the Defendants, or anyone excluded from the Settlement Class as it is defined in the Stipulation, or a person or entity who has requested exclusion from the Settlement Class.

I/We hereby warrant and represent that I/We have not assigned or transferred or purported to assign or transfer, voluntarily or involuntarily, any matter released pursuant to this release or any other part or portion hereof.

I/We hereby warrant and represent that I/We have included information about all of My/Our transactions in Fitbit Inc. Class A common stock between June 18, 2015 and May 19, 2016 as well as the number of shares of Fitbit Inc. Class A common stock held by Me/Us at the close of trading on June 18, 2015 and on May 19, 2016.

I/We hereby warrant and represent that I am/we are authorized to execute and deliver this Proof of Claim Form and Release.

I. CERTIFICATION

I/We certify that I am/we are not subject to backup withholding. **(If you have been notified by the IRS that you are subject to backup withholding, strike out the previous sentence.)**

I/We certify that I/we purchased or otherwise acquired the Fitbit Inc. Class A common stock listed in the above Schedule between June 18, 2015 and May 19, 2016, inclusive.

I/We declare and affirm under penalties of perjury that the foregoing information and the documents attached hereto, including the Social Security or Taxpayer Identification Number shown on this Proof of Claim, are true, correct and complete to the best of my/our knowledge, information, and belief, and that this Proof of Claim was executed this _____ day of _____, 201_ in:

(City) (State/Country)

Signature of Claimant

Signature of Joint Claimant, if any

(Print your name here)

(Print your name here)

Signature of Person signing on behalf of Claimant

(Print your name here)

Capacity of person signing on behalf of Claimant, if other than an individual, (Executor, President, Custodian, etc.)

SUBSTITUTE FORM W-8: IF YOU ARE NOT A RESIDENT OR CITIZEN OF THE UNITED STATES, COMPLETE THE FOLLOWING:

Permanent residence (principal office if a corporation): _____

If your claim is effectively connected with the conduct of a trade or business within the U.S., please provide the following information regarding your U.S. business:

Name of U.S. Business

Address of U.S. Business

Type of Business

Tax Identification Number

W-8 Certification: Under the penalties of perjury, I certify that the information provided above is true, correct and complete.

Signature(s) _____ Date: _____

_____ Date: _____

ACCURATE CLAIMS PROCESSING TAKES A SIGNIFICANT AMOUNT OF TIME. THANK YOU FOR YOUR PATIENCE.

Reminder Checklist:

1. Remember to sign the above Release and Certification (or W-8 Certification).
2. Remember to attach only **copies** of acceptable supporting documentation, a complete list of which can be found on the Settlement Administrator’s website at www.FitBitSecuritiesLitigation.com.
3. Do not send originals of securities certificates.
4. Keep copies of the completed claim form and documentation for your own records.
5. If you desire an acknowledgment of receipt of your claim form, please send it Certified Mail, Return Receipt Requested, or its equivalent. **You will bear all risks of delay or non-delivery of your claim.**
6. If your address changes in the future, or if these documents were sent to an old or incorrect address, please send us **written** notification of your new address.

If you have questions or concerns regarding your claim, please contact the Settlement Administrator at:

Fitbit Securities Litigation
c/o Settlement Administrator
1801 Market Street, Suite 660
Philadelphia, PA 19103

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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

**[PROPOSED] ORDER AND FINAL
JUDGMENT**

Hon. Susan Illston

On the ____ day of _____, 2018, a hearing having been held before this Court to determine whether the terms and conditions of the Stipulation and Agreement of Settlement dated January 18, 2018 (the “Stipulation”) are fair, reasonable, and adequate for the settlement of all claims asserted by the Settlement Class against Fitbit Inc. (“Fitbit”), James Park, William R. Zerella, Eric N. Friedman, Jonathan D. Callaghan, Steven Murray, and Christopher Paisley (the “Individual Defendants,” and together with Fitbit, the “Fitbit Defendants”), Morgan Stanley & Co. LLC, Deutsche Bank Securities Inc., and Merrill Lynch, Pierce, Fenner & Smith Incorporated (the “Underwriter Defendants” and together with the Fitbit Defendants, “Defendants”)¹;

The Court having considered all matters submitted to it at the hearing and otherwise; and

It appearing that the Notice substantially in the form approved by the Court in the Order Preliminarily Approving Settlement (Dkt. No. ____) (“Preliminary Approval Order”) was mailed to all reasonably identifiable Settlement Class Members; and

¹ Plaintiffs, on behalf of themselves and the Settlement Class, and Defendants are collectively referred to as the “Parties”.

1 It appearing that the Publication Notice substantially in the form approved by the Court in the
2 Preliminary Approval Order was published in accordance with the Court’s specifications;

3 **NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

4 1. Unless indicated otherwise, all capitalized terms used herein have the same meanings as
5 set forth and defined in the Stipulation.

6 2. The Court has jurisdiction over the subject matter of this action (the “Action”),
7 Plaintiffs, all Settlement Class Members, and the Defendants, including all Settlement Class Members
8 who did not timely file a request for exclusion from the Settlement Class by the relevant deadline
9 pursuant to the Preliminary Approval Order.

10 3. The Court hereby finds that the forms and methods of notifying the Settlement Class of
11 the Settlement and its terms and conditions: met the requirements of due process, Rule 23 of the Federal
12 Rules of Civil Procedure, and 15 U.S.C. § 78u-4(a)(7) (added to the Exchange Act by the Private
13 Securities Litigation Reform Act of 1995); constituted the best notice practicable under the
14 circumstances; and constituted due and sufficient notice to all persons and entities entitled thereto of
15 these proceedings and the matters set forth herein, including the Settlement and Plan of Allocation. No
16 Settlement Class Member is relieved from the terms of the Settlement, including the releases provided
17 for therein, based upon the contention or proof that such Settlement Class Member failed to receive
18 actual or adequate notice. A full opportunity has been offered to the Settlement Class Members to
19 object to the proposed Settlement and to participate in the hearing thereon. The Court further finds that
20 the notice provisions of the Class Action Fairness Act, 28 U.S.C. § 1715, were fully discharged and that
21 the statutory waiting period has elapsed. Thus, it is hereby determined that all members of the
22 Settlement Class are bound by this Order and Final Judgment except those listed on Exhibit A hereto.

23 4. The Settlement is approved as fair, reasonable, adequate, and in the best interests of the
24 Settlement Class. The Court further finds that there was no collusion, that the Settlement set forth in the
25 Stipulation is the result of arm’s-length negotiations between experienced, competent counsel
26 representing the interests of the Settlement Class Members and the Defendants, and that the record is
27 sufficiently developed and complete to have enabled the Plaintiffs and the Defendants to have
28 adequately evaluated and considered their positions. Plaintiffs and Defendants are directed to
consummate the Settlement in accordance with the terms and provisions of the Stipulation.

1 5. Except with respect to individual claims by persons who have validly and timely
2 requested exclusion from the Settlement Class (listed on Exhibit A), all of the claims asserted in the
3 Amended Complaint or the Action against the Defendants are hereby dismissed with prejudice.

4 6. Plaintiffs and each of the other Settlement Class Members, on behalf of themselves and
5 their respective spouses, heirs, executors, beneficiaries, administrators, successors, assigns, and any
6 Person(s) (claiming now or in the future) through or on behalf of any of them directly or indirectly,
7 regardless of whether such Plaintiff or Settlement Class Member ever seeks or obtains by any means
8 (including, without limitation, by submitting a Claim to the Settlement Administrator) any distribution
9 from the Net Settlement Fund: (a) shall be deemed by this Settlement to have, and by operation of law
10 and of the Judgment shall have, fully, finally, and forever released, relinquished, waived, dismissed,
11 and discharged each and all of the Settlement Class Claims (including Unknown Claims), against each
12 and all of the Released Persons, and shall have covenanted not to sue any Released Person with respect
13 to any Settlement Class Claims (including any Unknown Claims) except to enforce the releases and
14 other terms and conditions contained in this Stipulation or the Judgment entered pursuant hereto and
15 (b) shall be forever permanently barred, enjoined and restrained from commencing, instituting,
16 asserting, maintaining, enforcing, prosecuting or otherwise pursuing, either directly or in any other
17 capacity, any of the Settlement Class Claims (including any Unknown Claims) against any Released
18 Person in the Action or in any other action or any proceeding, in any state, federal or foreign court of
19 law or equity, arbitration tribunal, administrative forum or other forum of any kind.

20 7. Defendants, for themselves and on behalf of each of their respective spouses, heirs,
21 executors, beneficiaries, administrators, successors, assigns and any Person(s) (claiming now or in the
22 future) through or on behalf of any of them directly or indirectly: (a) shall be deemed to have, and by
23 operation of law and of the Judgment shall have, fully, finally and forever released, relinquished,
24 waived, discharged, and dismissed each and all of the Defendant Claims (including Unknown Claims)
25 against Plaintiffs in the Action, Lead Counsel and their attorneys, and all other Settlement Class
26 Members, the members of each Settlement Class Member's immediate family, any entity in which any
27 member of any Settlement Class Member's immediate family has or had a controlling interest (directly
28 or indirectly), any estate or trust of which any Settlement Class Member is the settlor or which is for the
benefit of any Settlement Class Member and/or members of his or her family and (b) shall be forever

1 permanently barred, enjoined and restrained from commencing, instituting, asserting, maintaining,
2 enforcing, prosecuting or otherwise pursuing, either directly or in any other capacity, any of the
3 Defendant Claims (including any Unknown Claims) against the Plaintiffs, Lead Counsel and their
4 attorneys, and all other Settlement Class Members in the Action or in any other action or any
5 proceeding, in any state, federal or foreign court of law or equity, arbitration tribunal, administrative
6 forum or other forum of any kind.

7 8. The Court finds that all parties and their counsel have complied with each requirement
8 of Fed. R. Civ. P. 11 as to all proceedings herein.

9 9. Neither this Order and Final Judgment, the Preliminary Approval Order, the Stipulation
10 (including the exhibits thereto), the Memorandum Of Understanding (“MOU”), nor any of the
11 negotiations, documents or proceedings connected with them shall be argued to be or offered or
12 received:

- 13 a. against any of the Released Persons as evidence of, or construed as evidence of, any
14 presumption, concession, or admission by any of the Released Persons with respect
15 to the truth of any fact alleged by the Plaintiffs in the Amended Complaint or the
16 Action, or the validity of any claim that has been or could have been asserted against
17 any of the Defendants in the Amended Complaint or the Action, or the deficiency of
18 any defense that has been or could have been asserted in the Action, or of any
19 wrongdoing or liability by any of the Defendants, or any liability, fault,
20 misrepresentation, or omission with respect to any statement or written document
21 approved or made by any of the Defendants;
- 22 b. against the Plaintiffs or any Settlement Class Member or Lead Counsel as evidence
23 of, or construed as evidence of, any infirmity of the claims alleged by the Plaintiffs
24 in the Amended Complaint or the Action or of any lack of merit to the claims or the
25 Amended Complaint or the Action or of any bad faith, dilatory motive, or inadequate
26 prosecution of the claims or the Amended Complaint or the Action;
- 27 c. against any of the Defendants, the Plaintiffs, or any Settlement Class Member, or
28 their respective legal counsel, as evidence of, or construed as evidence of, any
presumption, concession, or admission by any of the Defendants, the Plaintiffs, or

1 any Settlement Class Member, or their respective legal counsel, with respect to any
2 liability, negligence, fault, or wrongdoing as against any of the Defendants, the
3 Plaintiffs, or any Settlement Class Member, or their respective legal counsel, in any
4 other civil, criminal, or administrative action or proceeding, other than such actions
5 or proceedings as may be necessary to effectuate the provisions of this Stipulation,
6 provided, however, that if this Stipulation is approved by the Court, the Defendants,
7 the Plaintiffs, and any Settlement Class Member, or their respective legal counsel,
8 may refer to it to effectuate the liability protection and releases granted them
9 hereunder;

- 10 d. against any of the Defendants as evidence of, or construed as evidence of, any
11 presumption, concession, or admission by any of them that the Settlement
12 Consideration represents the amount which could or would have been received after
13 trial of the Action against them;
- 14 e. against the Plaintiffs or any Settlement Class Member as evidence of, or construed as
15 evidence of, any presumption, concession, or admission by any of the Plaintiffs or
16 any Settlement Class Member that any of their claims are without merit, or that any
17 defenses asserted by the Defendants have any merit, or that damages recoverable in
18 the Action would not have exceeded the Settlement Fund; or
- 19 f. as evidence of, or construed as evidence of, any presumption, concession, or
20 admission that the modifications to the class definitions as ordered in the Preliminary
21 Approval Order are appropriate in this Action, except for purposes of this
22 Settlement.

23 10. Notwithstanding the foregoing Paragraph 9, the Settling Parties and other Released
24 Persons may file or refer to this Order and Final Judgment, the Stipulation, Preliminary Approval
25 Order, and/or any Claim Form: (a) to effectuate the liability protections granted hereunder or
26 thereunder, including without limitation, to support a defense or counterclaim based on principles of *res*
27 *judicata*, collateral estoppel, release, good-faith settlement, judgment bar or reduction, or any theory of
28 claim preclusion or issue preclusion or similar defense or counterclaim; (b) to obtain a judgment
reduction under applicable law; (c) to enforce any applicable insurance policies and any agreements

1 relating thereto; or (d) to enforce the terms of the Stipulation and/or this Order and Final Judgment.

2 11. Exclusive jurisdiction is hereby retained over the Settling Parties for all matters relating
3 to the Action, including the administration, interpretation, effectuation or enforcement of the
4 Stipulation, or Settlement and this Order and Final Judgment, and including any application for fees and
5 expenses incurred in connection with administering and distributing the Settlement proceeds to the
6 Settlement Class Members.

7 12. Without further order of the Court, the Settling Parties may agree to reasonable
8 extensions of time to carry out any of the provisions in the Stipulation.

9 13. There is no just reason for delay in the entry of this Order and Final Judgment and
10 immediate entry by the Clerk of the Court is directed pursuant to Fed. R. Civ. P. 54(b).

11 14. Any order approving or modifying the Plan of Allocation, Class Counsel's application or
12 award of attorneys' fees and expenses, or Plaintiffs' application or award for payment of reasonable
13 costs and expenses, shall be separate from, and shall not in any way disturb or affect, the finality of this
14 Judgment, the Stipulation, or the Settlement contained therein, nor any act performed or document
15 executed pursuant to or in furtherance of the Stipulation or the Settlement.

16 15. In the event that the Settlement does not become Final and effective in accordance with
17 the terms and conditions set forth in the Stipulation, then this Judgment shall be vacated, rendered null
18 and void and be of no further force and effect, except as otherwise provided by the Stipulation, and this
19 Judgment shall be without prejudice to the rights of the Settling Parties, and the Settling Parties shall be
20 deemed to have reverted *nunc pro tunc* to their respective status prior to the execution of the MOU, and
21 the Settling Parties shall proceed in all respects as if the MOU and the Stipulation had not been
22 executed and the related orders had not been entered, without prejudice in any way from the
23 negotiation, fact, or terms of the Settlement, and preserving all of their respective claims and defenses
24 in the Action, and shall revert to their respective positions in the Action. In such circumstances, the
25 parties shall thereafter work together to arrive at a mutually agreeable schedule for resuming litigation of
26 the Action. For the avoidance of doubt, in the event of such an occurrence the Fitbit Defendants'
27 previously filed motion for summary judgment shall remain withdrawn and inoperative until and unless
28 re-noticed, at which time a new briefing schedule shall be set for that motion if not already agreed.

16. In the event the Judgment does not become Final or the Settlement is terminated in

1 accordance with the terms and conditions set forth in the Stipulation, within ten (10) business days of
2 entry of the order rendering the Settlement and Judgment non-Final or notice of the Settlement being
3 terminated, all monies then held in the Escrow Account, including interest earned but less any costs or
4 expenses properly incurred as set forth herein, shall be returned to the Defendants. Plaintiffs and the
5 Settlement Class Members shall have no responsibility for the return of such consideration.

6 17. The Court's orders entered during this Action relating to the confidentiality of
7 information shall survive this Settlement.

8 **SO ORDERED** in the Northern District of California on _____, 2018.

9 _____
10 THE HON. SUSAN ILLSTON
11 UNITED STATES DISTRICT JUDGE
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