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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]~~ **ORDER AND FINAL
JUDGMENT**

Hon. Susan Illston

On the 20th day of April, 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. 207) (“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. Pursuant to Fed. R. Civ. P. 23(a) and (b)(3) and for the purposes of the Settlement only,
11 the Court hereby certifies the Settlement Class, and appoints Lead Plaintiff the Fitbit Investor Group
12 (comprised of Timothy Flynn, Jesse M. Koth and Kelley Koth, Viet Tran, and Mark Cunningham) as
13 Class Representative for the Settlement Class, and Lead Counsel Glancy Prongay & Murray LLP and
14 Pomerantz LLP as Class Counsel for the Settlement Class.

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

28 5. The Settlement is approved as fair, reasonable, adequate, and in the best interests of the
Settlement Class. The Court further finds that there was no collusion, that the Settlement set forth in the

1 Stipulation is the result of arm's-length negotiations between experienced, competent counsel
2 representing the interests of the Settlement Class Members and the Defendants, and that the record is
3 sufficiently developed and complete to have enabled the Plaintiffs and the Defendants to have
4 adequately evaluated and considered their positions. Plaintiffs and Defendants are directed to
5 consummate the Settlement in accordance with the terms and provisions of the Stipulation.

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

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

25 8. Defendants, for themselves and on behalf of each of their respective spouses, heirs,
26 executors, beneficiaries, administrators, successors, assigns and any Person(s) (claiming now or in the
27 future) through or on behalf of any of them directly or indirectly: (a) shall be deemed to have, and by
28 operation of law and of the Judgment shall have, fully, finally and forever released, relinquished,
waived, discharged, and dismissed each and all of the Defendant Claims (including Unknown Claims)

1 against Plaintiffs in the Action, Lead Counsel and their attorneys, and all other Settlement Class
2 Members, the members of each Settlement Class Member's immediate family, any entity in which any
3 member of any Settlement Class Member's immediate family has or had a controlling interest (directly
4 or indirectly), any estate or trust of which any Settlement Class Member is the settlor or which is for the
5 benefit of any Settlement Class Member and/or members of his or her family and (b) shall be forever
6 permanently barred, enjoined and restrained from commencing, instituting, asserting, maintaining,
7 enforcing, prosecuting or otherwise pursuing, either directly or in any other capacity, any of the
8 Defendant Claims (including any Unknown Claims) against the Plaintiffs, Lead Counsel and their
9 attorneys, and all other Settlement Class Members in the Action or in any other action or any
10 proceeding, in any state, federal or foreign court of law or equity, arbitration tribunal, administrative
11 forum or other forum of any kind.

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

14 10. Neither this Order and Final Judgment, the Preliminary Approval Order, the Stipulation
15 (including the exhibits thereto), the Memorandum Of Understanding ("MOU"), nor any of the
16 negotiations, documents or proceedings connected with them shall be argued to be or offered or
17 received:

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

1 Amended Complaint or the Action or of any bad faith, dilatory motive, or inadequate
2 prosecution of the claims or the Amended Complaint or the Action;

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

15 d. against any of the Defendants as evidence of, or construed as evidence of, any
16 presumption, concession, or admission by any of them that the Settlement
17 Consideration represents the amount which could or would have been received after
18 trial of the Action against them;

19 e. against the Plaintiffs or any Settlement Class Member as evidence of, or construed as
20 evidence of, any presumption, concession, or admission by any of the Plaintiffs or
21 any Settlement Class Member that any of their claims are without merit, or that any
22 defenses asserted by the Defendants have any merit, or that damages recoverable in
23 the Action would not have exceeded the Settlement Fund; or

24 f. as evidence of, or construed as evidence of, any presumption, concession, or
25 admission that the modifications to the class definitions as ordered in the Preliminary
26 Approval Order are appropriate in this Action, except for purposes of this
27 Settlement.

28 11. Notwithstanding the foregoing Paragraph 10, the Settling Parties and other Released
Persons may file or refer to this Order and Final Judgment, the Stipulation, Preliminary Approval

1 Order, and/or any Claim Form: (a) to effectuate the liability protections granted hereunder or
2 thereunder, including without limitation, to support a defense or counterclaim based on principles of *res*
3 *judicata*, collateral estoppel, release, good-faith settlement, judgment bar or reduction, or any theory of
4 claim preclusion or issue preclusion or similar defense or counterclaim; (b) to obtain a judgment
5 reduction under applicable law; (c) to enforce any applicable insurance policies and any agreements
6 relating thereto; or (d) to enforce the terms of the Stipulation and/or this Order and Final Judgment.

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

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

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

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

21 16. In the event that the Settlement does not become Final and effective in accordance with
22 the terms and conditions set forth in the Stipulation, then this Judgment shall be vacated, rendered null
23 and void and be of no further force and effect, except as otherwise provided by the Stipulation, and this
24 Judgment shall be without prejudice to the rights of the Settling Parties, and the Settling Parties shall be
25 deemed to have reverted *nunc pro tunc* to their respective status prior to the execution of the MOU, and
26 the Settling Parties shall proceed in all respects as if the MOU and the Stipulation had not been
27 executed and the related orders had not been entered, without prejudice in any way from the
28 negotiation, fact, or terms of the Settlement, and preserving all of their respective claims and defenses
in the Action, and shall revert to their respective positions in the Action. In such circumstances, the

1 parties shall thereafter work together to arrive at a mutually agreeable schedule for resuming litigation of
2 the Action. For the avoidance of doubt, in the event of such an occurrence the Fitbit Defendants'
3 previously filed motion for summary judgment shall remain withdrawn and inoperative until and unless
4 re-noticed, at which time a new briefing schedule shall be set for that motion if not already agreed.

5 17. In the event the Judgment does not become Final or the Settlement is terminated in
6 accordance with the terms and conditions set forth in the Stipulation, within ten (10) business days of
7 entry of the order rendering the Settlement and Judgment non-Final or notice of the Settlement being
8 terminated, all monies then held in the Escrow Account, including interest earned but less any costs or
9 expenses properly incurred as set forth herein, shall be returned to the Defendants. Plaintiffs and the
10 Settlement Class Members shall have no responsibility for the return of such consideration.

11 18. The Court's orders entered during this Action relating to the confidentiality of
12 information shall survive this Settlement.

13 **SO ORDERED** in the Northern District of California on 4/20/18, 2018.

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THE HON. SUSAN ILLSTON

16 UNITED STATES DISTRICT JUDGE
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