



GRANTED

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Transaction ID 65776307
Case No. 2017-0402-JRS



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE FITBIT, INC. STOCKHOLDER
DERIVATIVE LITIGATION

CONSOLIDATED
C.A. No. 2017-0402-JRS

[PROPOSED] AMENDED SCHEDULING ORDER

WHEREAS:

A. The Parties to the above-captioned derivative action (the “Action”) have entered into a Stipulation and Agreement of Compromise, Settlement, and Release, dated July 1, 2020 (the “Stipulation”),¹ which provides for settlement and dismissal of the Action upon the terms and conditions set forth in the Stipulation;

B. Plaintiffs have made an application, pursuant to Court of Chancery Rule 23.1, for entry of a scheduling order in accordance with the Stipulation, approving the form and content of the notice of the Settlement to Fitbit, Inc. (“Fitbit”) Stockholders and scheduling the date and time for the Settlement Hearing;

C. The Court having read and considered the Stipulation and the exhibits attached thereto; the Stipulation being sufficient to warrant notice to Fitbit Stockholders; and all Parties having consented to the entry of this Scheduling Order;

¹ Unless otherwise defined herein, capitalized terms used in this Scheduling Order shall have the meanings assigned to them in the Stipulation.

NOW THEREFORE, IT IS HEREBY ORDERED that:

1. **Settlement Hearing**: The Court will hold a settlement fairness hearing (the “Settlement Hearing”) on October 27, 2020, at 1:30 p.m., in the Court of Chancery, Leonard L. Williams Justice Center, 500 N. King Street, Wilmington, Delaware 19801 (or by telephonic or video means as may be designated by the Court in the interest of public safety) for the following purposes: (a) to determine whether Plaintiffs and Plaintiffs’ Counsel have adequately represented the interests of Fitbit and its stockholders; (b) to determine whether the proposed Settlement on the terms and conditions in the Stipulation is fair, reasonable, and adequate to Plaintiffs, Fitbit and its stockholders, and should be approved by the Court; (c) to determine whether an Order and Final Judgment substantially in the form attached to the Stipulation as Exhibit C should be entered dismissing the Action with prejudice; (d) to determine whether the application by Plaintiffs’ Counsel for an award of attorneys’ fees and reimbursement of litigation expenses (“Fee and Expense Application”), and for a special award to each of the three named Plaintiffs (“Special Award Application”), should be approved; (e) to hear and consider any objections to the Settlement or to the Fee and Expense Application; and (f) to consider any other matters that may properly be brought before the Court in connection with the Settlement.

2. The Court may adjourn the Settlement Hearing without further notice to Fitbit stockholders.

3. The Court reserves the right to approve the proposed Settlement with such modifications as the Parties may agree to without further notice to Fitbit Stockholders.

4. **Manner of Giving Notice**: Notice of the Settlement and the Settlement Hearing shall be given by Fitbit as follows:

(a) No later than sixty (60) calendar days before the Settlement Hearing, Fitbit shall send, or cause to be sent, a copy of the Notice, substantially in the form attached to the Stipulation as Exhibit B, to each Person who was a stockholder of record of Fitbit as of the Record Date (except Defendants). For those stockholders that have consented to receiving information from Fitbit electronically, Fitbit shall send the notice electronically. For all others, Fitbit shall mail the Notice to his, her, or its last known address appearing in the stock transfer records maintained by or on behalf of Fitbit as of the close of business on the date the Stipulation was filed with the Court. All Fitbit Stockholders who are record holders of Fitbit common stock on behalf of beneficial owners shall be requested in the Notice to forward the Notice to such beneficial owners of those shares. Fitbit shall use reasonable efforts to give notice to such beneficial owners by causing additional copies of the Notice (i) to be made available to any record holder who, before the Settlement Hearing, requests the same for distribution to

beneficial owners, or (ii) to be mailed to beneficial owners whose names and addresses Fitbit receives from record owners.

(b) No later than fourteen days before the Settlement Hearing, Fitbit shall serve on Plaintiffs' Counsel and file with the Court proof, by affidavit or declaration, of compliance with the notice provisions listed above.

5. **Approval of Form and Content of Notice:** The Court (a) approves as to form and content the Notice, attached to the Stipulation as Exhibit B, and (b) finds that the mailing of the Notice in the manner and form set forth in paragraph 4 above: (i) constitutes notice that is reasonably calculated, under the circumstances, to apprise Fitbit Stockholders of the pendency of the Action, of the effect of the proposed Settlement (including the releases to be provided thereunder), of the Fee and Expense Application, of the Special Award Application, of their right to object to the Settlement, Fee and Expense Application, or the Special Award Application, and of their right to appear at the Settlement Hearing; (ii) constitutes due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (iii) satisfies the requirements of Court of Chancery Rule 23.1, the United States Constitution (including the Due Process Clause), and all other applicable laws and rules. The date and time of the Settlement Hearing shall be included in the Notice before it is mailed.

6. **Appearance and Objections at the Settlement Hearing:** Any Fitbit Stockholder who was a stockholder of Fitbit as of the Record Date and continues to own shares of Fitbit common stock, and who objects to the Settlement, the Fee and Expense Application, or the Special Award Application, or who otherwise wishes to be heard, may appear in person or through his, her, or its attorney at the Settlement Hearing and present any evidence or argument that may be proper and relevant; provided, however, that no such Person shall be heard, and no papers, briefs, pleadings, or other documents submitted by any such Person shall be received and considered by the Court unless, no later than 21 calendar days before the Settlement Hearing, such Person files with the Register in Chancery, Court of Chancery, Leonard L. Williams Justice Center, 500 N. King Street, Wilmington, Delaware 19801, and serves upon the attorneys listed below: (a) a written and signed notice of intention to appear, which states the name, address, telephone number, and email address (if available) of the objector and, if represented, of his, her, or its counsel; (b) proof that the objector owned shares of Fitbit stock as of the Record Date and continues to hold such shares; and (c) a written, detailed statement of the Person's objections to any matter before the Court, and the specific grounds therefor or the reasons why such Person desires to appear and to be heard, as well as all documents and writings which such Person desires the Court to consider, including any legal and evidentiary support. These writings must also be served by File & Serve*Xpress*,

by email, by hand, by first-class mail, or by express service upon the following attorneys such that they are received no later than 21 calendar days before the Settlement Hearing:

To Plaintiffs:	Peter B. Andrews Craig J. Springer David M. Sborz Jessica Zeldin ANDREWS & SPRINGER LLC 3801 Kennett Pike, Building C, Suite 1305 Wilmington, DE 19807 <i>Co-Lead Counsel for Plaintiffs</i>
To Defendants Callaghan, Murray, and Paisley:	David Teklits Kevin Coen Alexandra Cumings MORRIS, NICHOLS, ARSHT & TUNNELL LLP 1201 North Market Street P.O. Box 1347 Wilmington, DE 19899-1347 <i>Counsel for Defendants Callaghan, Murray, and Paisley</i>

<p>To Defendants Friedman, Park, and Zerella:</p>	<p>Jody C. Barillare MORGAN, LEWIS & BOCKIUS LLP 1007 North Orange Street, Suite 501 Wilmington, DE 19801</p> <p><i>Counsel for Defendants Friedman, Park, and Zerella</i></p>
<p>To Fitbit:</p>	<p>Elena C. Norman Nicholas J. Rohrer Lakshmi A Muthu Peter J. Artese YOUNG CONAWAY STARGATT & TAYLOR, LLC 1000 North King Street Wilmington, DE 19801</p> <p><i>Counsel for Nominal Defendant Fitbit, Inc.</i></p>

7. Unless the Court orders otherwise, any Person or entity who or which does not make his, her, or its objection in the manner provided herein shall be deemed to have waived his, her, or its right to object to any aspect of the proposed Settlement, the Fee and Expense Application, or the Special Award Application and shall be forever barred and foreclosed from objecting to the fairness, reasonableness, or adequacy of the Settlement or the requested attorneys' fees and litigation expenses and special awards, or from otherwise being heard concerning the Settlement, the Fee and Expense Application or the Special Award Application in this or any other proceeding.

8. **Stay and Temporary Injunction**: Until otherwise ordered by the Court, the Court stays all proceedings in the Action other than proceedings necessary to carry out or enforce the terms and conditions of the Stipulation. Pending final determination of whether the Settlement should be approved, the Court bars and enjoins Plaintiffs and all other Fitbit Stockholders from commencing, instituting, or prosecuting any of the Released Claims against any of the Released Defendants.

9. **Notice Costs**: Fitbit shall pay the costs and expenses related to providing notice of the Settlement to Fitbit Stockholders, as well as any costs and expenses related to the administration of the Settlement.

10. **Termination of Settlement**: If the Settlement is terminated pursuant to paragraph 16 of the Stipulation, the Parties shall be restored to their respective positions in the Action as they were on February 7, 2020, and shall promptly agree on a new scheduling order to govern further proceedings in the Action.

11. **No Admission**: As stated in paragraph 26 of the Stipulation, neither the Stipulation nor any act or omission in connection therewith is intended or shall be deemed to be a presumption, concession or admission by:

(a) Any Defendant or any of the Released Defendant Parties as to the validity of any Claim that was or might have been raised in the Action or in any other litigation, or to be evidence of or constitute an admission of

wrongdoing or liability by any of them, and each of them expressly denies any such wrongdoing or liability.

(b) Any Plaintiff or any of the Released Plaintiff Parties as to the infirmity of any Claim asserted in the Action or the Complaint or the validity of any defense to the Action or the Complaint, or to the amount of any damages.

(c) The existence of the Stipulation, its contents or of any negotiations, statements or proceedings in connection therewith, shall not be offered or admitted in evidence or referred to, interpreted, construed, invoked or otherwise used by any Person for any purpose in the Action or otherwise, except as may be needed to consummate the Settlement. This provision shall remain in full force and effect if the Settlement is terminated for any reason.

(d) Notwithstanding the foregoing, any of the Released Parties may file the Stipulation or any judgment or order of the Court related hereto in any other action that may be brought against them, in order to support any and all defenses or counterclaims based on *res judicata*, collateral estoppel, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

12. **Supporting Papers:** Plaintiffs' Counsel shall file and serve the opening papers in support of the proposed Settlement, plus the Fee and Expense Application

and Special Award Application, and any supporting papers, no later than 35 calendar days before the Settlement Hearing. Opposition papers, if any, shall be filed and served no later than 21 calendar days before the Settlement Hearing. Reply papers, if any, shall be filed and served no later than seven calendar days before the Settlement Hearing.

Vice Chancellor Joseph R. Slights III

Dated: _____, 2020

This document constitutes a ruling of the court and should be treated as such.

Court: DE Court of Chancery Civil Action

Judge: Joseph Slights

File & Serve

Transaction ID: 65775273

Current Date: Jul 17, 2020

Case Number: 2017-0402-JRS

Case Name: STAYED CONF ORDER - CONS w/CA#: 2017-0444-JRS & CA#: 2017-0562-JRS - IN
RE FITBIT, INC. STOCKHOLDER DERIVATIVE LITIGATION

Court Authorizer: Joseph Slights

/s/ Judge Joseph Slights