

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

IN RE FITBIT, INC. STOCKHOLDER  
DERIVATIVE LITIGATION

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

**STIPULATION AND AGREEMENT OF  
COMPROMISE, SETTLEMENT, AND RELEASE**

This Stipulation and Agreement of Compromise, Settlement, and Release (the “Stipulation”) is entered into as of July 1, 2020, between and among the following parties, by and through their respective counsel, in the above-captioned Action<sup>1</sup>: (i) plaintiffs Anne Bernstein, Michael Hackett, and Bright Agyapong (“Plaintiffs”), derivatively on behalf of Fitbit, Inc. (“Fitbit”); (ii) defendants James Park, William Zerella, Eric N. Friedman, Jonathan D. Callaghan, Steven Murray, and Christopher Paisley (“Defendants”); and (iii) Fitbit, as nominal defendant (together with Plaintiffs and Defendants, the “Parties”). This Stipulation sets forth the terms and conditions of the Settlement of the Action, and is intended by the Parties to fully, finally, and forever resolve, discharge, and settle all Released Claims as against the Released Parties, subject to the approval of the Court.

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<sup>1</sup> All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed to them in paragraph 1 of this Stipulation.

## **RECITALS**

### **Fitbit's PurePulse™ Technology, the IPO, and the SPO**

A. Fitbit develops and sells fitness trackers, among other products. Fitbit was founded by Defendants Park (CEO) and Friedman (CTO) in 2007. Defendant Zerella joined Fitbit as CFO in 2014.

B. On January 6, 2015, Fitbit launched two products: the Surge and the Charge HR. Both products featured Fitbit's PurePulse™ technology, which allowed users to monitor their heart rate.

C. Fitbit conducted its initial public offering (the "IPO") on June 18, 2015 at \$20.00 per share, closing the first day of trading at \$29.68 per share.

D. Defendants Park and Friedman sold portions of their respective stock holdings in the IPO. Defendant Callaghan is a co-founder of True Ventures II, LP, (an early investor in Fitbit that sold stock in the IPO) and a partner of its general partner. Defendant Murray was in 2015 a managing director of SoftBank PrinceVille, an early investor in Fitbit that sold stock in the IPO.

E. In connection with the IPO, Defendants Park, Friedman, and Zerella, certain Fitbit stockholders with which Defendants Callaghan and Murray were affiliated, and other pre-IPO stockholders signed lock-up agreements preventing them from selling stock for six months after the IPO (the "Lock-Up Agreements").

F. In November 2015, Fitbit conducted a secondary public offering (the “SPO”). In connection with the SPO, the Fitbit board of directors (the “Board”) agreed to grant partial waivers of the Lock-Up Agreements. On November 13, 2015, Fitbit sold three million shares at \$29 per share in the SPO. Pre-IPO stockholders, including but not limited to Defendants Park, Friedman, and Zerella, as well as True Ventures II, LP and SoftBank PrinceVille, also sold shares in the SPO.

### **The Class Action Litigation**

G. On January 5, 2016, Business Wire published a press release announcing that a consumer class action lawsuit was filed against Fitbit, captioned *McLellan v. Fitbit, Inc.*, No. 3:16-cv-00036-JD (N.D. Cal. Jan. 5, 2016) (the “Consumer Class Action”). The Consumer Class Action alleged that Fitbit’s PurePulse™ technology did not work as advertised and did not accurately read users’ heart rates. Fitbit denied the allegations in the Consumer Class Action and moved to compel arbitration, which motion was granted as to 12 of 13 named plaintiffs. On July 26, 2019, the parties submitted a stipulation voluntarily dismissing the Consumer Class Action with prejudice.

H. On January 11, 2016, Fitbit stockholders began filing securities class action complaints against Fitbit and some of its senior management and directors (among others). The securities class actions filed in federal court ultimately were consolidated into a single action, captioned *Robb v. Fitbit, Inc., et al.*, 3:16-cv-

00151-SI (N.D. Cal. Jan. 11, 2016) (the “Federal Securities Action”). The Federal Securities Actions alleged securities fraud claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5, and violations of Sections 11 and 15 of the Securities Act of 1933, for issuing materially false or misleading statements before the IPO. The alleged misstatements and omissions pertained to matters regarding the efficacy of the PurePulse™ technology

I. On February 22, 2016, Indianapolis television channel WTHR broadcast a story questioning the accuracy of a number of fitness devices, including Fitbit’s Charge HR.

J. Thereafter, several securities class actions against Fitbit and Defendants (among others) were filed in California state courts; they made allegations similar to those in the Federal Securities Action. These state-court actions were consolidated in the Superior Court of California, County of San Francisco, captioned as *In re Fitbit, Inc. Shareholder Litigation*, Lead Case No. CGC-16-552062 (the “State Securities Action”).

K. Fitbit and the other defendants denied the allegations in the Federal Securities Action and the State Securities Action, but after motion practice, discovery, and mediations ultimately agreed to settle both the Federal Securities Action and the State Securities Action in exchange for the creation of a \$33 million

common fund paid for by Fitbit's insurers. The settlements received final approval in May 2018.

### **The Related Derivative Actions**

L. On November 11, 2016, a Fitbit stockholder filed a derivative action on behalf of Fitbit against Defendants in the United States District Court for the Northern District of California, captioned *Blackburn v. Park, et al.*, No. 16-cv-6558 (N.D. Cal.) (the "Blackburn Derivative Action"). On January 5, 2017, the court entered a stipulated order staying the Blackburn Derivative Action, pending the resolution of the Federal Securities Action.

M. On February 2, 2017, a Fitbit stockholder filed a derivative action on behalf of Fitbit against Defendants in the United States District Court for the District of Delaware, captioned *Correia v. Park, et al.*, C.A. No. 17-00108-RGA (D. Del.) (the "Delaware Federal Derivative Action"). On May 16, 2019, the Delaware Federal Derivative Action was stayed pending the resolution of this Action.

N. On June 27, 2017, another Fitbit stockholder commenced a derivative action on behalf of Fitbit against Defendants in the United States District Court for the Northern District of California, captioned *Wong v. Park, et al.*, No. 17-cv-3677 (N.D. Cal.) (the "Wong Derivative Action").

O. On October 31, 2017, another Fitbit stockholder commenced a derivative action on behalf of Fitbit against Defendants, captioned *Dua v. Park, et*

*al.*, Case No. CGC-17-562217 (San Francisco Super. Ct.) (the “Dua Derivative Action”). The Dua Derivative Action was removed to the United States District Court for the Northern District of California on November 21, 2018, and re-captioned *Dua v. Park, et al.*, Case No. 3:18-cv-07103-SI (N.D. Cal.). The Blackburn Derivative Action, the Wong Derivative Action, and the Dua Derivative Action (collectively, the “California Derivative Actions”) were subsequently related, consolidated, stayed, and administratively closed pending the resolution of this Action.

P. The California Derivative Actions and the Delaware Federal Derivative Action are collectively referred to as the “Related Derivative Actions.”

### **This Action**

Q. Between November 2016 and February 2017, Plaintiffs individually served three separate requests on Fitbit to inspect books and records pursuant to Delaware General Corporation Law Section 220 (collectively, “Plaintiffs’ Books and Records Demands”).

R. On January 13, 2017, Plaintiff Agyapong filed a Verified Complaint Pursuant to 8 *Del. C.* § 220 to Compel Inspection of Books and Records against Fitbit.

S. In response to Plaintiffs’ Books and Records Demands, Fitbit produced approximately 1,500 pages of internal company documents (the “220 Production”).

The 220 Production included, among other things: (1) independence questionnaires for Fitbit's Board members; (2) insider trading policies and procedures; (3) Board and committee policies and charters; (4) formal board minutes and materials concerning PurePulse™, Fitbit's securities, compliance practices, the IPO, the SPO, and sales by Defendants; and (5) studies and reports regarding the accuracy of PurePulse™ that were part of materials sent to some of the Defendants.

T. On May 26, 2017, Plaintiff Bernstein filed a derivative action on behalf of Fitbit against Defendants in this Court, C.A. No. 2017-0402-JRS.

U. On June 9, 2017, Plaintiff Hackett filed a derivative action on behalf of Fitbit against Defendants in this Court, C.A. No. 2017-0444-JRS.

V. On June 21, 2017, the Court consolidated the two actions as C.A. No. 2017-0402-JRS (the "Action") and appointed co-lead counsel.

W. On June 30, 2017, Plaintiffs Bernstein and Hackett filed a Verified Amended Consolidated Stockholder Derivative Complaint.

X. On August 3, 2017, Plaintiff Agyapong filed a derivative action on behalf of Fitbit against Defendants in this Court, C.A. No. 2017-0562. On September 8, 2017, the Court consolidated that case into the Action.

Y. On March 20, 2018, Plaintiffs filed a Verified Second Amended Consolidated Stockholder Derivative Complaint (the "Complaint") on behalf of Fitbit against Defendants.

Z. The Complaint asserted two causes of action. Count I asserted a derivative claim for breach of fiduciary duty against all Defendants for allegedly improperly waiving the Lock-Up Agreements so as to allow Defendants Park, Friedman, Zerella, Callaghan, and Murray, and their affiliates to sell stock in the IPO and the SPO based on insider information. Count II asserted a derivative claim for breach of fiduciary duty against Defendants Park, Friedman, Zerella, Callaghan, and Murray under *Brophy v. Cities Service Co.*, 70 A.2d 5 (Del. Ch. 1949) for allegedly selling stock in the IPO and SPO based on allegedly material adverse non-public information regarding the efficacy of the PurePulse™ technology.

AA. On April 4, 2018, Defendants and Fitbit moved to dismiss the Complaint in its entirety for failure to plead demand futility and for failure to state a claim. On June 7, 2018, Plaintiffs filed a motion to strike certain documents filed by Defendants and Fitbit in support of their motion to dismiss. The Parties fully briefed both of these motions. On September 6, 2018, the Court heard oral argument on the motion to dismiss and the motion to strike.

BB. On December 14, 2018, the Court issued a Memorandum Opinion denying the motion to dismiss and denying as moot the motion to strike. *In re Fitbit, Inc. S'holder Derivative Litig.*, 2018 WL 6587159 (Del. Ch. Dec. 14, 2018). The Court concluded that Plaintiffs had pled particularized facts that raise a reasonable doubt that a majority of the Board could impartially consider a demand regarding

Plaintiffs' insider trading and breach of fiduciary duty claims and that Plaintiffs have stated viable claims. The Court, however, noted that "[w]hether they can prove these facts very much remains to be seen." *Id.* at n.2. The Court also noted but declined to decide Defendants' challenge to Plaintiffs' standing, stating: "[B]efore the parties commence merits discovery, they shall first engage in limited 'standing discovery' to address the discrepancies in Plaintiffs' stock ownership. Upon completion of that discovery, the Court will revisit the standing issue and adjudicate it as 'a question of law.'" *Id.* at n.4.

CC. On December 24, 2018, Fitbit applied for a certification of interlocutory appeal, which Plaintiffs opposed and the Parties fully briefed. On January 14, 2019, the Court issued an order refusing certification of interlocutory appeal. On January 30, 2019, the Supreme Court of Delaware refused the interlocutory appeal.

DD. Each side promulgated and responded to discovery related to standing, including requests for production and interrogatories. Plaintiffs and Defendants also produced documents. On October 4, 2019, the Court entered a stipulated order dismissing without prejudice Plaintiffs' claims arising out of the IPO. In that order, Defendants also agreed not to challenge the Plaintiffs' contemporaneous and continuous ownership of Fitbit stock with respect to the alleged breach of fiduciary duty claims in connection with the SPO, and Plaintiffs and Defendants agreed to mediate the remaining breach of fiduciary duty claims in connection with the SPO.

EE. On November 1, 2019, Fitbit announced that it had agreed to be acquired by Google, LLC (“Google”). Upon close, Google will own 100% of Fitbit. That acquisition has not yet closed.

### **Mediation and Settlement**

FF. Before Defendants filed their motions to dismiss, the Parties participated in a full-day mediation session in New York City on September 14, 2017. The parties to the Federal Securities Action and State Securities Action also participated. The Parties engaged in detailed negotiations but were unable to reach an agreement to settle the Action.

GG. Following the September 14, 2017 mediation, the Parties’ mediation efforts continued telephonically, with the assistance of the mediator, for many weeks.

HH. On January 25, 2018, the Parties participated in a follow-up mediation session in New York City. That full-day mediation also did not result in an agreement to settle the Action.

II. On April 26, 2019, following the Court’s Memorandum Opinion denying Defendants’ motions to dismiss and ordering discovery related to standing, the Parties participated in another mediation session in New York City. The Parties again were unable to resolve the Action.

JJ. On December 5, 2019, after Plaintiffs dismissed their claims arising out of the IPO and Fitbit announced its agreement to be acquired by Google, the Parties participated in a mediation in New York City. As in previous mediations, in advance of the mediation, the parties submitted detailed mediation statements. Also, as in the other mediations, representatives from certain of Defendants' directors and officers liability insurance carriers participated in the mediation sessions. The carriers continued to raise potential defenses to coverage of the claims at issue in the Action under the relevant insurance policies. After a full-day session, the Parties made progress but did not reach a settlement.

KK. After the mediation, the Parties continued to negotiate telephonically through the mediator and made additional progress. These arm's length negotiations ultimately resulted in a mediator's proposal that the Parties accepted.

LL. On February 10, 2020, the Parties agreed in principle to settle the Action for a \$5 million cash payment to Fitbit on behalf of Defendants, subject to the approval of Fitbit's Board of Directors.

MM. On February 13, 2020, Fitbit's Board approved the proposed settlement, finding it to be fair to and in the best interests of Fitbit and its stockholders.

NN. In connection with the proposed settlement, Fitbit and Defendants have entered into a related funding agreement (the "Insurer Agreement") with two of

Defendants' insurers, Starr Indemnity & Liability Company ("Starr") and Old Republic Insurance Company ("Old Republic" and together with Starr, the "Insurers").

OO. As part of the Insurer Agreement, the Insurers have agreed to pay Fitbit \$5 million in cash on behalf of Defendants. The Insurers' payments are to be made within ten business days after entry of the Final Judgment. The payments to be made under the Insurer Agreement are contingent upon the Court of Chancery approving the Settlement and the Final Judgment. Nothing in this Stipulation obligates Defendants, or any of them, to pay the Settlement Amount or any portion of it not funded by the Insurers.

PP. Defendants and Fitbit represent that: the Insurers have raised certain coverage defenses under their insurance policies; in compromise of the coverage dispute, Fitbit has agreed to pay reasonably-incurred outstanding but unpaid defense costs, as well as future defense costs reasonably-incurred in connection with the Action; and such contribution, together with the settlement payment made by Starr in this Action shall, by agreement of Defendants, Fitbit, and the Insurers, be deemed to exhaust the remaining limits of liability in the Starr Policy. Plaintiffs take no position on the matters asserted in this Recital PP.

QQ. On February 19, 2020, Plaintiffs and Defendants submitted a letter to the Court, advising the Court that they had reached an agreement in principle for a

settlement of all claims in the Action, and requesting that the Court stay all proceedings in the Action to permit the Parties to undertake certain actions contemplated by the agreement, including preparing and submitting to the Court a stipulation of settlement and accompanying ancillary documents. The Court granted the requested stay that same day.

RR. Plaintiffs, having considered the facts and law underlying the Action, including the documents produced in response to Plaintiffs' Books and Records Demands, and based upon the investigation and prosecution of the Action (including the consultation with experts) and the mediations that led to the Settlement, and after weighing the risks of continued litigation, have determined that it is in the best interests of Fitbit and its stockholders that the Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation. Although Plaintiffs believe that the Action is meritorious and asserts valid claims, they are agreeing to settle the Action in order to eliminate the uncertainties inherent in the future litigation and in recognition of the immediate benefits that their Settlement will afford Fitbit. Plaintiffs and their counsel have determined that the Settlement's terms and conditions are fair, reasonable, and adequate to Fitbit and its stockholders.

SS. Defendants have denied and continue to deny all material allegations made by Plaintiffs in the Action, including any and all allegations of wrongdoing, liability, and damages. Without limiting the generality of the foregoing, Defendants

have denied and continue to deny that they acted improperly in connection with the matters alleged in the Action, that they sold or caused to be sold Fitbit stock using material non-public information, that they breached their fiduciary duties, or that they made any misstatements or materially misleading omissions.

TT. Defendants believe that they have substantial defenses to the claims alleged against them in the Action. Defendants believe that, at all relevant times, they acted in good faith, and in a manner they reasonably believed to be in the best interests of Fitbit and its stockholders.

UU. Nevertheless, Defendants have concluded that further litigation in connection with the Action would be time-consuming and expensive. After weighing the costs, disruption, and distraction of continued litigation, Defendants have determined, solely to eliminate the risk, burden, and expense of further litigation, and without admitting any wrongdoing or liability whatsoever, that the Action should be fully and finally settled in the manner and upon the terms and conditions set forth in the Stipulation.

**NOW THEREFORE, IT IS STIPULATED AND AGREED**, by and among the Parties, by and through their undersigned counsel, and subject to the approval of the Court, that the Action shall be fully and finally compromised and settled, that the Released Claims shall be released as against the Released Parties,

and that the Action and all the Related Derivative Actions shall be dismissed with prejudice, on and subject to the terms and conditions of the Settlement, as follows:

### **DEFINITIONS**

1. The following terms used in this Stipulation have the meanings specified below:

1.1 “Action” means the derivative action captioned *In re Fitbit, Inc. S’holder Derivative Litig.*, C.A. No. 2017-0402-JRS, currently pending before the Court.

1.2 “Claims” means any and all manner of claims, demands, rights, liabilities, losses, obligations, duties, damages, costs, debts, expenses, interest, penalties, sanctions, fees, attorneys’ fees, actions, potential actions, causes of action, suits, judgments, defenses, counterclaims, offsets, decrees, matters, issues and controversies of any kind, nature or description whatsoever, whether known or unknown, disclosed or undisclosed, accrued or unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, suspected or unsuspected, liquidated or not liquidated, fixed or contingent, including Unknown Claims, that were or that could have been asserted in any court, tribunal, forum or proceeding based on any law or rule, including but not limited to federal law, state law, local law, statutes, regulations, ordinances and common law.

1.3 “Complaint” means the Verified Second Amended Consolidated Stockholder Derivative Complaint filed by Plaintiffs on March 20, 2018, which is the operative complaint in the Action.

1.4 “Court” means the Court of Chancery of the State of Delaware.

1.5 “Defendants” means James Park, William Zerella, Eric N. Friedman, Jonathan D. Callaghan, Steven Murray, and Christopher Paisley.

1.6 “Effective Date” means the first date by which all of the conditions set forth in paragraph 15 below have been met and occurred or have been waived in writing by the Parties.

1.7 “Fee and Expense Application” means the application by Plaintiffs’ Counsel to be filed with the Court under paragraphs 18 through 23 below for an award of attorneys’ fees and reimbursement of litigation expenses.

1.8 “Fee and Expense Award” means the amount actually awarded by the Court in response to the Fee and Expense Application.

1.9 “Final” with respect to the judgment approving the Settlement or any other court order means: (i) if no appeal from an order or judgment is taken, the date on which the time for taking such an appeal expires; or (ii) if any appeal is taken, the date on which all appeals, including petitions for rehearing or reargument, have been finally disposed of (whether through expiration of time to file, through denial of any request for review, by affirmance on the merits or otherwise). For the

avoidance of doubt, Final as the term is used herein, shall not be dependent on the award of attorneys' fees and the reimbursement of expenses as discussed in paragraphs 18 through 23 below.

1.10 "Final Judgment" means the [Proposed] Order and Final Judgment of the Court, substantially in the form attached hereto as Exhibit C.

1.11 "Fitbit" means Fitbit, Inc.

1.12 "Fitbit Stockholder(s)" means any and all persons and entities who hold of record, or beneficially own, shares of Fitbit stock as of the close of business on the date of this Stipulation.

1.13 "Notice" means the Notice of Pendency of Derivative Action, Proposed Settlement of Derivative Action, Settlement Hearing and Right to Appear, substantially in the form attached hereto as Exhibit B.

1.14 "Parties" means Plaintiffs, Defendants, and nominal defendant, Fitbit.

1.15 "Person" means any individual, corporation, professional corporation, limited liability company, partnership, limited partnership, limited liability partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity, and individuals' spouses, estates, heirs, predecessors, successors, representatives, and assigns.

1.16 “Plaintiffs” means Anne Bernstein, Michael Hackett, and Bright Agyapong.

1.17 “Plaintiffs’ Counsel” means the law firms (i) Andrews & Springer LLC; (ii) Kahn Swick & Foti, LLC; (iii) Schubert Jonckheer & Kolbe LLP; (iv) Shapiro Haber & Urmy LLP; and (v) Rosenthal, Monhait & Goddess, P.A.

1.18 “Record Date” means the date that this Stipulation was submitted to the Court.

1.19 “Related Derivative Actions” means the derivative actions described in Recitals L through P of this Stipulation.

1.20 “Released Claims” means Released Plaintiff Parties’ Claims and Released Defendant Parties’ Claims, but “Released Claims” does not include any Claims to enforce this Stipulation, the Settlement, the Fee and Expense Award, the Final Judgment, or any other document memorializing the Settlement of the Action.

1.21 “Released Defendant Parties” means, whether or not each or all of the following Persons were named, served with process, or appeared in the Action: (i) Defendants; (ii) Defendants’ advisors, agents, assigns, attorneys, estates, heirs, insurers, reinsurers, spouses and other representatives; (iii) True Ventures II, L.P., SoftBank PrinceVille Investments, L.P., and their affiliates; and (iv) Fitbit and its past and present directors and officers, as well as each of their advisors, agents,

assigns, attorneys, estates, heirs, insurers, reinsurers, spouses, and other representatives.

1.22 “Released Defendant Parties’ Claims” means any and all Claims, including Unknown Claims, that Defendants have asserted or could have asserted against Released Plaintiff Parties based upon, arising out of, relating in any way to, or involving, directly or indirectly, the Released Plaintiff Parties’ institution and prosecution of the Action. For the avoidance of doubt:

1.22.1 The Released Defendant Parties’ Claims do not include any Claim to enforce this Stipulation, the Settlement, the Final Judgment, or any other document memorializing the Settlement of the Action.

1.22.2 The Released Defendant Parties’ Claims do not include any Claim by Defendants against Fitbit for indemnification.

1.23 “Released Parties” means the Released Defendant Parties and the Released Plaintiff Parties.

1.24 “Released Plaintiff Parties” means, whether or not each or all of the following Persons were named, served with process, or appeared in the Action, Plaintiffs, Fitbit, Fitbit Stockholder(s) acting or purporting to act on behalf of Fitbit, and their advisors, agents, assigns, attorneys, estates, heirs, insurers, reinsurers, spouses and other representatives.

1.25 “Released Plaintiff Parties’ Claims” means any and all Claims, including Unknown Claims, that:

1.25.1 Plaintiffs asserted in the Action; or

1.25.2 Fitbit could have asserted directly, or Plaintiffs or any other Fitbit Stockholder or any other Person purporting to act on behalf of Fitbit could have asserted derivatively on behalf of Fitbit, based upon, arising out of, relating in any way to, or involving, directly or indirectly: the subject matter of the Action; the facts, events, transactions, acts, occurrences, statements, representations, misrepresentations, or omissions that were or could have been alleged in the Action, including but not limited to any allegations relating to: the IPO; the SPO; the Lock-Up Agreement; PurePulse™ technology; or Fitbit’s expenditure of company funds in response to the Action, the Federal Securities Action, the State Securities Action, and/or the Related Derivative Actions; or

1.25.3 Plaintiffs or any other Fitbit Stockholder could have asserted with respect to the Settlement or the Action if Google’s acquisition of Fitbit closes, including but not limited to Claims of the types discussed in *In re Primedia, Inc. S’holders Litig.*, 67 A.3d 455 (Del. Ch. 2013) and *In re Riverstone Nat’l, Inc. Stockholder Litig.*, 2016 WL 4045411 (Del. Ch. July 28, 2016).

1.25.4 For the avoidance of doubt, Released Plaintiff Parties’ Claims do not include any Claim to enforce this Stipulation, the Settlement,

the Fee and Expense Award, the Final Judgment, the Insurer Agreement, or any other document memorializing the Settlement of the Action, nor any Claim (including one for appraisal pursuant to 8 Del. C. § 262) relating to Google’s acquisition of Fitbit other than as expressly stated in paragraph 1.25.3.

1.26 “Releases” means the releases set forth in paragraphs 6 and 7 below.

1.27 “Scheduling Order” means the scheduling order to be entered under Rule 23.1 of the Rules of the Court of Chancery, substantially in the form attached hereto as Exhibit A.

1.28 “Settlement” means the settlement and resolution of the Action on the terms and conditions contained in this Stipulation.

1.29 “Settlement Hearing” means a hearing required under Rule 23.1 of the Rules of the Court of Chancery, at or after which the Court will review the adequacy, fairness, and reasonableness of the Settlement and determine whether to issue the Final Judgment.

1.30 “Settlement Payment” means the payment specified in paragraph 3 of this Stipulation.

1.31 “Stipulation” means this Stipulation and Agreement of Settlement dated as of July 1, 2020.

1.32 “Unknown Claims” means any Released Claims that a Person granting Releases does not know or suspect to exist in his, her, or its favor at the time of the Releases, including without limitation those that, if known, might have affected the decision to enter into or object to the Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date, Plaintiffs, Defendants, and Fitbit shall have expressly waived, relinquished, and released, and all other Fitbit Stockholders, by operation of law, shall be deemed to have waived, relinquished, and released any and all rights and benefits conferred by California Civil Code Section 1542, or any law or principle of common law of the United States or any state or territory of the United States or other jurisdiction that is similar, equivalent, comparable, or analogous to California Civil Code Section 1542. California Civil Code Section 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Plaintiffs, Defendants, and Fitbit acknowledge, and all other Fitbit Stockholders by operation of law shall be deemed to have acknowledged, that they may discover facts in addition to or different from those now known or believed to be true with respect to the Released Claims, but that it is the intention of Plaintiffs, Defendants, and

Fitbit, and all other Fitbit Stockholders by operation of law, to completely, fully, finally, and forever extinguish any and all Released Claims without regard to the subsequent discovery of additional or different facts. Plaintiffs, Defendants, and Fitbit acknowledge, and all other Fitbit Stockholders by operation of law shall be deemed to have acknowledged, that this waiver and the inclusion of “Unknown Claims” in the definition of “Released Claims” was separately bargained for, was a material element of the Settlement, and was relied upon by each and all of the Parties in agreeing to the Settlement.

### **SETTLEMENT CONSIDERATION**

2. In consideration of the full settlement, satisfaction, compromise, and release of the Released Plaintiff Parties’ Claims and the dismissal with prejudice of the Action and all the Related Derivative Actions, the Parties agree as specified below.

3. In consideration of the Settlement, Defendants will cause the Insurers to pay \$5 million to Fitbit (the “Settlement Payment”). Such payment shall be made to Fitbit within ten business days after the entry of the Final Judgment (the “Payment Date”). Within two business days of the Payment Date, Fitbit shall provide written evidence to Plaintiffs’ Counsel demonstrating receipt of the Settlement Payment. For the avoidance of doubt, in no circumstance shall any Defendant be required to pay any portion of the Settlement Payment.

4. The Fee and Expense Award will be paid by Fitbit to Plaintiffs' Counsel out of the Settlement Payment.

5. Defendants and Fitbit agree among themselves that Fitbit will pay any outstanding but unpaid attorneys' fees and expenses, and any future attorneys' fees and expenses, reasonably incurred by Defendants and their counsel in defending the Action and consummating this Settlement. For the avoidance of doubt:

5.1 Nothing in this Stipulation expands, augments, alters, restricts, curtails or limits the indemnification obligations of Fitbit to Defendants; and

5.2 Nothing in this Paragraph 5 imposes any obligations on Plaintiffs or Plaintiffs' Counsel.

#### **RELEASES AND COVENANTS NOT TO SUE**

6. Upon the Effective Date, Plaintiffs and each of the other Released Plaintiff Parties shall be deemed to have, and by operation of law and the Final Judgment shall have:

6.1 fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, discharged, extinguished, and dismissed with prejudice the Released Plaintiff Parties' Claims; and

6.2 covenanted not to sue, maintain or prosecute any of the Released Plaintiff Parties' Claims.

7. Upon the Effective Date, Defendants and each of the other Released Defendant Parties shall be deemed to have, and by operation of law and the Final Judgment shall have:

7.1 fully, finally, and forever released, relinquished, discharged, and extinguished the Released Defendant Parties' Claims; and

7.2 covenanted not to sue, maintain or prosecute any of the Released Defendant Parties' Claims.

**SCHEDULING ORDER; STAY OF PROCEEDINGS**

8. Promptly after all Parties execute this Stipulation, the Parties shall jointly request the Court to enter a Scheduling Order in substantially the form attached hereto as Exhibit A.

9. Pending Final Approval of the Settlement, the Parties agree not to litigate this Action further and not to initiate any other proceedings other than those incident to the Settlement itself; provided, however, that nothing in this Stipulation will prevent the Parties from responding to (or otherwise taking actions that such Parties deem necessary or advisable to respond to) actions taken by plaintiffs in the Related Derivative Actions or any other current Fitbit Stockholder in connection with the Action or the Related Derivative Actions.

**NOTICE**

10. The Scheduling Order will provide that:

10.1 Within twenty business days after the entry of the Scheduling Order, Fitbit shall send, or cause to be sent, the Notice to each Person who was a stockholder of record of Fitbit as of the Record Date (other than 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 Record Date.

10.2 The Notice shall ask each Fitbit Stockholder who is a record holder of Fitbit common stock on behalf of beneficial owners to forward the Notice to the beneficial owners of those shares.

10.3 Fitbit also shall use reasonable efforts to give notice to 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 Notice for distribution to beneficial owners, or (ii) to be mailed to beneficial owners whose names and addresses Fitbit receives from record owners.

11. Fitbit shall be responsible for all costs and expenses of providing notice of the Settlement. In no event shall Plaintiffs or Plaintiffs' Counsel be responsible for any costs and expenses of providing notice of the Settlement.

12. The Parties submit that the proposed content and manner of notice constitutes adequate and reasonable notice to Fitbit Stockholders pursuant to applicable law and due process.

**FINAL JUDGMENT; DISMISSAL OF THE ACTION**

13. If the Court approves the Settlement, the Parties shall jointly and promptly request that the Court enter the Final Judgment in the Action in substantially the form attached hereto as Exhibit C.

14. Upon entry of the Final Judgment, the Action shall be dismissed in its entirety with prejudice, with Plaintiffs, Defendants, and Fitbit each to bear his, her, or its own fees, costs and expenses, except as expressly provided in this Stipulation.

**CONDITIONS TO SETTLEMENT; TERMINATION OF SETTLEMENT**

15. The Effective Date of the Settlement shall be deemed to occur on the occurrence, or waiver in writing by all Parties, of all the events listed in paragraphs 15.1 through 15.4 below:

15.1 the Court has entered the Scheduling Order, substantially in the form attached hereto as Exhibit A;

15.2 the Court has conducted the Settlement Hearing;

15.3 the Court has approved the Settlement and entered the Final Judgment, substantially in the form attached hereto as Exhibit C; and

15.4 the Final Judgment has become Final,

15.5 provided that, the Effective Date, and the completion of this Settlement, are not conditioned in any respect on the closing or failure to close of Google's acquisition of Fitbit.

16. Plaintiffs (provided Plaintiffs unanimously agree among themselves), Fitbit, and Defendants (provided Defendants unanimously agree among themselves) shall each have the right to terminate the Settlement and this Stipulation, by providing written notice of their election to do so ("Termination Notice") to the other Parties within thirty calendar days of the date of:

16.1 the Court's final refusal to enter a Scheduling Order substantially in the form of Exhibit A;

16.2 the Court's final refusal to approve the Settlement or any material part thereof;

16.3 the Court's final refusal to enter the Final Judgment substantially in the form of Exhibit C; or

16.4 an order vacating, materially modifying or revising, or reversing the Final Judgment becomes Final;

16.5 the dismissal with prejudice of any of the Related Derivative Actions does not become Final;

16.6 provided that,

16.6.1 any decision or proceeding, whether in this Court or any appellate court, solely with respect to the Fee and Expense Application, or a Fee and Expense Award, shall not be considered material to the Settlement, shall not affect the finality of the Final Judgment, and shall not be grounds for termination of the Settlement;

16.6.2 the closing, or failure to close, of Google's acquisition of Fitbit shall not affect the finality of the Final Judgment, and shall not be grounds for termination of the Settlement.

17. If Plaintiffs or Defendants exercise their right to terminate the Settlement under paragraph 16 above, then:

17.1 the Settlement and the relevant portions of this Stipulation shall be canceled;

17.2 Plaintiffs, Defendants, and Fitbit shall revert to their respective litigation positions in the Action as they were on February 7, 2020; and

17.3 the terms and provisions of this Stipulation, with the exception of this paragraph 17 and paragraph 26 below, shall have no further force and effect with respect to the Parties and shall not be used in the Action or in any other proceeding for any purpose, and the Parties shall proceed in all respects as if this Stipulation had not been entered.

**FEE AND EXPENSE APPLICATION AND AWARD**

18. Plaintiffs will make their Fee and Expense Application in accordance with these provisions:

18.1 The Fee and Expense Application will include all fees and expenses sought both with respect to the Action and with respect to all of the Related Derivative Actions.

18.2 Fitbit, through its Board exercising its independent business judgment, agrees not to oppose Plaintiffs' Fee and Expense Application so long as the aggregate amount sought as a Fee and Expense Award does not exceed \$1,250,000.

18.3 The Parties' agreement on a Fee and Expense Award was reached (i) only after all other material terms of the Settlement were agreed and (ii) following good-faith negotiation, with the assistance of the mediator.

19. The Fee and Expense Award as awarded by the Court:

19.1 Will be paid, or caused to be paid, by Fitbit solely out of the \$5 million Settlement Payment.

19.2 Will be paid, or caused to be paid, by Fitbit within ten business days after the last of:

19.2.1 the date the Court enters the Judgment;

19.2.2 the date on which Fitbit receives the Settlement Payment; and

19.2.3 The date on which all of the Related Derivative Actions have been dismissed with prejudice by each and every one of the plaintiffs to those actions.

19.3 Will be paid to an account designated by Plaintiffs' Counsel.

19.4 Will be paid whether or not anyone objects to the Fee and Expense Award of the Settlement, or appeals from the Fee and Expense Award, or collaterally attacks the Fee and Expense Award or the Settlement, subject to paragraph 22 below.

19.5 Plaintiffs' Counsel has informed Fitbit and Defendants that they intend to apply to the Court for a special award to each of the three named Plaintiffs for his or her services as a derivative representative of up to \$2,500 to be payable from the fees and expenses the Court awards to Plaintiffs' Counsel in connection with the Fee and Expense Application (the "Special Award Application"). Defendants and Fitbit do not oppose the Special Award Application.

20. The Parties agree that:

20.1 The Fee and Expense Award, once paid, shall fully satisfy any and all claims for an award of attorneys' fees and expenses by Plaintiffs, Plaintiffs'

Counsel, or any other counsel purporting to represent any other Fitbit Stockholder in connection with the Action, the Settlement, and the Related Derivative Actions.

20.2 The Fee and Expense Award, once paid, shall constitute final and complete payment for Plaintiffs' attorneys' fees and expenses that have been incurred or will be incurred in connection with the filing and prosecution of the Action and the Settlement.

20.3 Defendants, their attorneys, and their insurers, and Fitbit, its attorneys and its insurers shall have no responsibility for the allocation of the Fee and Expense Award among Plaintiffs' Counsel and/or among Plaintiffs' Counsel and counsel for the plaintiffs in the Related Derivative Actions.

20.4 Defendants shall have no obligation to pay any portion of the Fee and Expense Award.

21. This Settlement is not contingent upon any particular amount of Fee and Expense Award being awarded by the Court. Plaintiffs may not terminate this Settlement on the ground that the Court awards a smaller Fee and Expense Award than they sought.

22. If, after payment of the Fee and Expense Award, any of the following occur, Plaintiffs' Counsel shall, within twenty business days, repay the Fee and Expense Award (or the portion that has been disallowed, as appropriate) to Fitbit:

22.1 the Fee and Expense Award is reversed, vacated, or reduced by Final Order;

22.2 there is an appeal or review of the Judgment before the Judgment becomes Final and the appeal or review results in a reversal of the Judgment in whole or in part and if within 30 days after entry of the order or reversal, the Parties have not fully cured to their satisfaction whatever defect in the Settlement caused the reversal;

22.3 the Settlement is otherwise terminated; or

22.4 the dismissal with prejudice of any of the Related Derivative Actions does not become Final.

23. Each Plaintiffs' Counsel and each Plaintiff who receives any portion of the Fee and Expense Award is subject to the Court's jurisdiction for the purposes of enforcing paragraph 22 and other provisions related to the Fee and Expense Award.

24. Except as otherwise provided in this Stipulation, each Party shall bear his, her, or its own attorneys' fees, expenses, and costs.

### **COOPERATION**

25. In addition to performing the acts specifically required by this Stipulation, the Parties will use their best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things reasonably necessary, proper or

advisable under applicable laws, regulations or agreements to consummate the Settlement. The Parties and their attorneys will cooperate fully with one another in:

25.1 seeking the Court's approval of the Settlement;

25.2 seeking the dismissal with prejudice of the Related Derivative Actions;

25.3 resolving any objections raised with respect to the Settlement;

and

25.4 using their best efforts to consummate the Settlement.

**STIPULATION NOT AN ADMISSION**

26. Neither this Stipulation nor any act or omission in connection therewith is intended or shall be deemed to be a presumption, concession or admission by:

26.1 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.

26.2 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.

26.3 The existence of this 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.

26.4 Notwithstanding the foregoing, any of the Released Parties may file this 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.

#### **NO WAIVER**

27. Any failure by any Party to insist upon the strict performance by any other Party of any of the provisions of this Stipulation shall not be deemed a waiver of any provisions of this Stipulation. Notwithstanding such failure, each Party shall have the right thereafter to insist upon the strict performance of all provisions of this Stipulation by all other Parties. All waivers must be in writing and signed by the Party against whom the waiver is asserted.

28. No waiver, express or implied, by any Party of any breach or default in the performance by any other Party of its obligations under this Stipulation shall be deemed or construed to be a waiver of any other breach, whether prior, subsequent or contemporaneous, of this Stipulation.

### **AUTHORITY**

29. This Stipulation will be executed by counsel to the Parties, each of whom represents and warrants that he, she, or it has been duly authorized and empowered to execute this Stipulation on behalf of such Party, and that it shall be binding on such Party in accordance with its terms.

### **SUCCESSORS AND ASSIGNS**

30. This Stipulation is, and shall be binding upon the Parties and their assigns, estates, heirs, spouses and successors—and for Fitbit its parents, predecessors, subsidiaries and successors;

31. No Party shall assign or delegate its rights or responsibilities under this Stipulation without the prior written consent of the other Parties.

### **BREACH**

32. The Parties agree that in the event of any breach of this Stipulation, all of the Parties' rights and remedies at law, equity or otherwise are expressly reserved.

### **GOVERNING LAW AND FORUM**

33. This Stipulation shall be governed by, and construed in accordance with, the laws of the State of Delaware, without regard to conflict of laws principles. Any action relating to this Stipulation will be filed exclusively in the Court. Each Party: (i) consents to personal jurisdiction in any such action (but no other action) brought in the Court (or any other state or federal court in the State of Delaware should the Court lack subject matter jurisdiction); (ii) consents to service of process by registered mail upon such Party and/or such Party's agent; and (iii) waives any objection to venue in the Court and any claim or defense that Delaware or the Court is an inconvenient forum.

#### **REPRESENTATIONS AND WARRANTIES**

34. Plaintiffs and Plaintiffs' Counsel represent and warrant that: (i) each Plaintiff is a stockholder of Fitbit; (ii) none of the Released Plaintiff Parties' Claims has been assigned, encumbered or in any manner transferred, in whole or in part, by Plaintiffs or Plaintiffs' Counsel; and (iii) neither Plaintiffs nor Plaintiffs' Counsel will attempt to assign, encumber or in any manner transfer, in whole or in part, any of the Released Plaintiff Parties' Claims.

#### **ENTIRE AGREEMENT**

35. This Stipulation and the attached exhibits constitute the entire agreement among the Parties with respect to the subject matter hereof and supersede all prior or contemporaneous oral or written agreements, understandings, or

representations. Each Party agrees that no representations, warranties, or inducements have been made to any Party concerning this Stipulation or its exhibits other than the representations, warranties, and covenants contained and memorialized in such documents. Each Party further agrees that he, she, or it is not relying on any representations, warranties, or covenants that are not expressly contained and memorialized in this Stipulation or its exhibits. All of the exhibits hereto are material and integral parts hereof and are fully incorporated herein by reference.

### **INTERPRETATION**

36. This Stipulation will be deemed to have been mutually prepared by the Parties and will not be construed against any of them by reason of authorship.

37. Section or paragraph titles have been inserted for convenience only and will not be used in interpreting the terms of this Stipulation.

### **AMENDMENTS**

38. This Stipulation may not be amended, changed, waived, discharged, or terminated (except as explicitly provided herein), in whole or in part, except by an instrument in writing signed by counsel to each of the Parties to this Stipulation, on behalf of each such Party.

### **COUNTERPARTS**

39. This Stipulation may be executed in any number of actual, copied, or electronically-mailed counterparts and by each of the different Parties on several counterparts, each of which when so executed and delivered will be an original. This Stipulation will become effective when the actual, copied, or electronically-mailed counterparts have been signed by each of the Parties to this Stipulation and delivered to the other Parties. The executed signature page(s) from each actual, copied, or electronically-mailed counterpart may be joined together and attached and will constitute one and the same instrument.

### **CONTINUING JURISDICTION**

40. The consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court, and the Court shall retain exclusive jurisdiction for the purpose of enforcing the terms of this Stipulation.

### **NOTICE TO PARTIES**

41. If any Party is required to give notice to any other Party under this Stipulation, such notice shall be in writing and shall be deemed to have been duly given upon receipt of hand or courier delivery, or facsimile transmission with confirmation of receipt. Notice shall be provided as follows:

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*Of Counsel for Nominal Defendant Fitbit, Inc.*

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IN WITNESS WHEREOF, the Parties hereto have caused this Stipulation to be executed by their duly authorized counsel, as of July 1, 2020.

ANDREWS & SPRINGER LLC

/s/ Peter B. Andrews

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