

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

IN RE FITBIT, INC. STOCKHOLDER  
DERIVATIVE LITIGATION

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

**NOTICE OF PENDENCY OF DERIVATIVE ACTION, PROPOSED  
SETTLEMENT OF DERIVATIVE ACTION, SETTLEMENT HEARING,  
AND RIGHT TO APPEAR**

*The Delaware Court of Chancery authorized this Notice.  
This is not a solicitation from an attorney.*

TO: ALL RECORD HOLDERS AND BENEFICIAL OWNERS OF SHARES OF COMMON STOCK OF FITBIT, INC. (“FITBIT”) AS OF THE CLOSE OF BUSINESS ON JULY 9, 2020 (“FITBIT STOCKHOLDERS”).

IF YOU ARE A NOMINEE WHO OR WHICH HELD FITBIT COMMON STOCK AS OF THE CLOSE OF BUSINESS ON JULY 9, 2020 FOR THE BENEFIT OF ANOTHER, PLEASE READ THE SECTION BELOW ENTITLED “NOTICE TO PERSONS OR ENTITIES HOLDING RECORD OWNERSHIP ON BEHALF OF OTHERS.”

**PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY.  
YOUR RIGHTS WILL BE AFFECTED BY THIS LITIGATION.**

This Notice relates to a proposed settlement (the “Settlement”) of the lawsuit whose caption appears on page 1 of this Notice (the “Action”). The Action was brought by Fitbit stockholders on behalf of Fitbit in the Court of Chancery of the State of Delaware (the “Court”). If the Court approves the Settlement, it will resolve all claims brought, or that could have been brought, in the Action.

The complete terms of the Settlement, which will not take effect unless approved by the Court, are set forth in a Stipulation and Agreement of Compromise, Settlement, and Release, dated July 1, 2020 (the “Stipulation”), entered into by and among (i) plaintiffs Anne Bernstein, Michael Hackett, and Bright Agyapong (“Plaintiffs”), derivatively on behalf of Fitbit; (ii) defendants James Park, William Zerella, Eric N. Friedman, Jonathan D. Callaghan, Steven Murray, and Christopher Paisley (collectively, “Defendants”); and (iii) Fitbit, as nominal defendant (together with Plaintiffs and Defendants, the “Parties”).<sup>1</sup>

Because this Action was brought as a derivative action on behalf of Fitbit, the benefits of the Settlement will go directly to Fitbit and not to Fitbit Stockholders. Thus, Fitbit Stockholders will not submit claims in connection with the Settlement.

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<sup>1</sup> Unless otherwise defined herein, capitalized terms used in this Notice shall have the meanings assigned to them in the Stipulation. A copy of the Stipulation is available for review at the following website hosted by Co-Lead Counsel for Plaintiffs: <https://ksfcounsel.com/settlements/fitbit>.

## WHAT IS THE PURPOSE OF THIS NOTICE?

The purpose of this Notice is to inform Fitbit Stockholders about (a) the Action; (b) the Settlement; (c) Fitbit Stockholders' rights with respect to the Settlement; and (d) the hearing that the Court will hold on October 27, 2020, at 1:30 p.m., at 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).

At this hearing (the "Settlement Hearing"), the Court will, among other things: (a) determine whether Plaintiffs and Plaintiffs' Counsel have adequately represented the interests of Fitbit and its stockholders; (b) determine whether the Settlement is fair, reasonable, and adequate to Plaintiffs, Fitbit and its stockholders, and should be approved by the Court; (c) determine whether a Final Judgment should be entered dismissing the Action with prejudice; (d) determine whether the Fee and Expense Application and Special Award Application should be approved; (e) hear and consider any objections to the Settlement or the Fee and Expense Application and Special Award Application to be submitted by Plaintiffs' Counsel; and (f) consider any other matters concerning the Settlement that may properly be brought before the Court.

## WHAT IS THIS CASE ABOUT?

THE FOLLOWING DESCRIPTION OF THE ACTION HAS BEEN PREPARED BY COUNSEL FOR THE PARTIES. THE COURT HAS MADE NO FINDINGS WITH RESPECT TO SUCH MATTERS. THIS NOTICE IS NOT AN EXPRESSION OR STATEMENT BY THE COURT OF ANY FINDINGS OF FACT.

Between May and August 2017, Plaintiffs Bernstein, Hackett, and Agyapong filed derivative actions on behalf of Fitbit against Defendants in the Court. The Court consolidated the actions as C.A. No. 2017-0402-JRS (the "Action") and appointed co-lead counsel. On March 20, 2018, Plaintiffs filed a Verified Second Amended Consolidated Stockholder Derivative Complaint (the "Complaint") on behalf of Fitbit against Defendants. Plaintiffs allege that Defendants breached their fiduciary duties by selling or allowing sales of Fitbit stock based on insider information and for improperly waiving lock-up agreements entered into in connection with Fitbit's initial public offering.

Derivative actions on behalf of Fitbit were also filed against Defendants in the United States District Court for the Northern District of California and United States District Court for the District of Delaware (the “Related Derivative Actions”). The Related Derivative actions were stayed pending resolution of this Action.

On December 14, 2018, the Court issued a Memorandum Opinion denying Defendants’ motion to dismiss the Complaint. The Court also ordered that discovery into and adjudication of Plaintiffs’ standing to bring this Action would occur before merits discovery commenced. Attempts to appeal the Court’s ruling were declined.

The Parties thereafter engaged in limited discovery directed at the issue of whether Plaintiffs have standing to assert the claims alleged in the Complaint.

On October 4, 2019, the Court entered a stipulated order dismissing without prejudice Plaintiffs’ claims arising out of the IPO.

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.

The Parties participated in a full-day mediation in December 2019. That mediation followed the Parties’ previous unsuccessful attempts to settle the Action through mediations held in September 2017, January 2018, and April 2019. At the December 2019 mediation, the Parties made progress but did not reach a settlement. After the mediation, the Parties continued to negotiate through the mediator and ultimately reached an agreement in principle to settle the Action on February 10, 2020. The Parties then drafted and negotiated the Stipulation to memorialize the terms of the Settlement. Plaintiffs intend to submit a Fee and Expense Application and a Special Award Application to the Court.

#### WHAT ARE THE TERMS OF THE PROPOSED SETTLEMENT?

In consideration of the Proposed Settlement, Defendants will cause their insurance carriers to pay \$5 million to Fitbit (the “Settlement Payment”). The Fee and Expense Award will be paid by Fitbit to the Plaintiffs’ Counsel out of that Settlement Payment. Defendants shall have no responsibility for, and no liability with respect to, the payment of the Settlement Payment or the Fee and Expense Award. The Action will be dismissed with prejudice. Plaintiffs will release Defendants from claims relating to the Action, and Defendants will release Plaintiffs from any claim relating to the bringing and prosecution of the Action. The Related Derivative Actions also will be dismissed with prejudice.

## HOW WILL PLAINTIFFS' COUNSEL BE PAID?

Before final approval of the Proposed Settlement, Plaintiffs' Counsel will file a Fee and Expense Application with the Court. Fitbit, through its Board of Directors 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. Any resulting Fee and Expense Award will be paid, or caused to be paid, by Fitbit solely out of the Settlement Payment.

Plaintiff's Counsel will 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.

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

## WHY ARE THE PARTIES SETTLING?

The Parties have determined that it is desirable and beneficial that the Action and any dispute related thereto is fully and finally settled in the manner and upon the terms and conditions set forth in the Stipulation.

Plaintiffs and Plaintiffs' Counsel have thoroughly considered the facts and law underlying the Action. They believe that the claims asserted in the Action have merit. Nonetheless, Plaintiffs and Plaintiffs' Counsel also recognize the significant risk, expense, and length of continued proceedings necessary to prosecute the Action against Defendants through trial and appeal. Plaintiffs and Plaintiffs' Counsel recognize the uncertain outcome and risk of any litigation, especially in complex cases such as the Action, as well as the difficulties and delays inherent in such litigation. Plaintiffs and Plaintiffs' Counsel are also mindful of the difficulty proving the violations asserted in the Action. In consideration of the mediation that led to the Settlement and after weighing the risks of continued litigation, Plaintiffs and Plaintiffs' Counsel 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 the Stipulation, and that these terms and conditions are fair, reasonable, and adequate.

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. Defendants have denied and continue to deny that they acted improperly in connection with the matters alleged in the Action, that they sold or allowed 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.

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. Nevertheless, Defendants have concluded that further litigation 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. Defendants do so with the understanding that neither the Stipulation, nor any document referred to therein, nor any action taken to carry out the Stipulation, is, may be construed as, or may be used as an admission by or against Defendants of any fault, wrongdoing, or liability whatsoever or the lack of merit of any defense that has been or could have been asserted in the Action.

<b>WHAT CLAIMS WILL THE SETTLEMENT RELEASE?</b>
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If the Settlement is approved, the Court will enter an order and final judgment (the “Final Judgment”). Pursuant to the Final Judgment, upon the Effective Date of the Settlement, the Action will be dismissed with prejudice and the following Releases will occur:

- (a) 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, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged the Released Plaintiff Parties’ Claims.
- (b) 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, fully, finally, and forever released, relinquished, and discharged the Released Defendant Parties’ Claims.

Until the Court decides whether to approve the Settlement, Plaintiffs and all other Fitbit Stockholders are barred and enjoined from commencing, instituting, or

prosecuting any of the Released Plaintiff Parties' Claims against any of the Released Defendant Parties.

The Stipulation defines these capitalized terms as follows:

“‘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.’”

“‘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.’”

“‘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.’”

“‘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:

“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.

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

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

“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.”

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

Plaintiffs asserted in the Action; or

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

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. Shareholders Litig.*, 67 A.3d 455 (Del. Ch. 2013) and *In re Riverstone National, Inc. Stockholder Litigation*, 2016 WL 4045411 (Del. Ch. July 28, 2016).

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 [of the Stipulation].”

**WHEN AND WHERE WILL THE SETTLEMENT HEARING BE HELD?  
DO I HAVE THE RIGHT TO APPEAR AT THE SETTLEMENT HEARING?**

The Court will consider the Settlement and all matters related to the Settlement at the Settlement Hearing. The Settlement Hearing will be held before The Honorable Joseph R. Slights III, Vice Chancellor, on October 27, 2020 at 1:30 p.m., at 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). The Court may change the date or time of the Settlement Hearing without further notice to the stockholders.

At the Settlement Hearing, the Court will consider, among other things: the matters listed on page 3 under the heading “WHAT IS THE PURPOSE OF THIS NOTICE?”

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 or 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 twenty-one 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 twenty-one 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

*Co-Lead Counsel for Plaintiffs*

To Defendants Callaghan, Murray,  
and Paisley: David Teklits  
Kevin Coen  
Alexandra Cumings  
MORRIS, NICHOLS, ARSHT & TUNNELL LLP  
1201 North Market Street  
Wilmington, DE 19801

*Counsel for Defendants Callaghan, Murray, and Paisley*

To Defendants Friedman, Park,  
and Zerella: Jody C. Barillare  
MORGAN LEWIS & BOCKIUS LLP  
1007 North Orange Street, Suite 501  
Wilmington, DE 19801

*Counsel for Defendants Friedeman, Park, and Zerella*

To Fitbit: Elena C. Norman  
Nicholas J. Rohrer  
Lakshmi A Muthu  
Peter J. Artese  
YOUNG CONAWAY STARGATT & TAYLOR, LLC  
1000 North King Street  
Wilmington, DE 19801

*Counsel for Nominal Defendant Fitbit, Inc.*

**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 Settlement and shall be forever barred and foreclosed from objecting to the fairness, reasonableness or adequacy of the Settlement, or from otherwise being heard concerning the Settlement in this or any other proceeding.**

**NOTICE TO PERSONS OR ENTITIES HOLDING  
RECORD OWNERSHIP ON BEHALF OF OTHERS**

If you are a brokerage firm, bank, or other person or entity who or that held shares of common stock of Fitbit as of the close of business on July 9, 2020, as a record holder for the beneficial interest of persons or organizations other than yourself, you are hereby requested to promptly send this Notice to all of the respective beneficial owners. If additional copies of this Notice are needed for forwarding to such beneficial owners, any requests for such copies may be made to:

Broadridge Corporate Issuer Solutions  
c/o Broadridge Investor Communications Solutions, Inc.  
51 Mercedes Way, Edgewood NY 11717  
Attn: Reorg Dept.  
E-mail: ReorgOpsCAMailingService@Broadridge.com

WHERE CAN I FIND ADDITIONAL INFORMATION?

This Notice contains only a summary of the terms of the Settlement. For more detailed information about the matters involved in the Action, you may refer to the papers on file in the Action, including the Stipulation, which may be inspected during regular office hours at the Office of the Register in Chancery in the Court of Chancery of the State of Delaware, Leonard L. Williams Justice Center, 500 N. King Street, Wilmington, Delaware 19801. Additionally, copies of the Stipulation and any related orders entered by the Court will be posted at the following website hosted by Co-Lead Counsel for Plaintiffs: <https://ksfcounsel.com/settlements/fitbit>.

For more information concerning the Settlement, you may also call or write to Co-Lead Counsel for Plaintiffs at ANDREWS & SPRINGER LLC, 3801 Kennett Pike, Building C, Suite 1305 Wilmington, DE 19807, Telephone: 1 (800) 423-6013.

**DO NOT CALL OR WRITE THE COURT OR THE OFFICE OF  
THE REGISTER IN CHANCERY REGARDING THIS NOTICE.**

Dated: July 30<sup>th</sup>, 2020



BY ORDER OF THE COURT OF  
CHANCERY OF THE STATE OF  
DELAWARE