1   Courtland L. Reichman
(California Bar No. 268873)
2   Jennifer P. Estremera
(California Bar No. 251076)
3   MCKOOL SMITH PC
255 Shoreline Drive, Suite 510
4   Redwood Shores, California 94065
Telephone: (650) 394-1400
5   Facsimile: (650) 394-1422
creichman@mckoolsmith.com
6   jestremera@mckoolsmith.com
7
8   John B. Campbell (Admitted *Pro Hac Vice*)
Kathy H. Li *(Admitted Pro Hac Vice)*
9   MCKOOL SMITH PC
300 W. 6th Street, Suite 1700
10 Austin, Texas 78701
Telephone: (512) 692-8700
11 Facsimile: (512) 692-8744
jcampbell@mckoolsmith.com
12 kli@mkoolsmith.com
13
Attorneys for Plaintiff
14 Immersion Corporation

Adam R. Alper (SBN 196834)
adam.alper@kirkland.com
555 California Street
KIRKLAND & ELLIS LLP
San Francisco, California 94104
Telephone: (415) 439-1400
Facsimile: (415) 439-1500

Michael W. De Vries (SBN 211001)
michael.devries@kirkland.com
KIRKLAND & ELLIS LLP
333 South Hope Street
Los Angeles, California 90071
Telephone: (213) 680-8400
Facsimile: (213) 680-8500

Lien Dang (SBN 254221)
lien.dang@kirkland.com
KIRKLAND & ELLIS LLP
3330 Hillview Avenue
Palo Alto, California 94304
Telephone: (650) 859-7000
Facsimile: (650) 859-7500
Attorneys for Defendant
Fitbit, Inc.

15

16 **UNITED STATES DISTRICT COURT**

17 **NORTHERN DISTRICT OF CALIFORNIA**

18 **SAN JOSE DIVISION**

19 IMMERSION CORPORATION,   )
)   CASE NO. 5:17-CV-03886-LHK
20   Plaintiff,   )
)
21   v.   )
)   [~~PROPOSED~~] **STIPULATED**
22 FITBIT, INC.,   )   **PROTECTIVE ORDER REGARDING**
)   **CONFIDENTIAL INFORMATION**
23   Defendant.   )
)   DEMAND FOR JURY TRIAL
24   )
)   Judge: Honorable Lucy Koh
25 _____)

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STIPULATED PROTECTIVE ORDER

1.   PURPOSES AND LIMITATIONS

        This action is brought by Plaintiff ("Immersion") against Defendant ("Fitbit"). The litigation of this action may require the Parties or nonparties to disclose information that contains proprietary, confidential, commercially sensitive, trade secret, or otherwise nonpublic information. If such information is disclosed or disseminated in an unprotected manner, it may cause substantial harm to Plaintiff, Defendant, and/or nonparties, including loss of competitive advantage, loss of existing business, and loss of business opportunities. Accordingly, the Parties, by and between their representative counsel have stipulated and agreed, pursuant to Federal Rule of Civil Procedure 26(c) and subject to the approval of the Court, that the following Stipulated Protective Order (the "Order") shall govern the handling of Disclosure or Discovery Material in the above-captioned action (the "Present Litigation").

        The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 14.4 below, that this Stipulated Protective Order does not entitle the Parties to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

2.   DEFINITIONS

        2.1   Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

        2.2   "CONFIDENTIAL" Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), including material which reflects or contains any of the following: (i) confidential, proprietary, or commercially sensitive information; (ii) any information which is not generally known and which the Producing Party would not normally reveal to third parties or would

1 cause third parties to maintain in confidence; or (iii) confidential information of a nonparty that the

2 Producing Party is bound by a separate confidentiality agreement or court order to maintain in

3 confidence and that the Producing Party is permitted to produce in the Action.

4   2.3   Counsel (without qualifier): Outside Counsel of Record and In-House Counsel.

5   2.4   Designating Party: a Party or Non-Party designating Disclosure or Discovery Material

6 as "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY,"

7 or "HIGHLY CONFIDENTIAL – SOURCE CODE."

8   2.5   Disclosure or Discovery Material: all items or information, regardless of the medium

9 or manner in which it is generated, stored, or maintained (including, among other things, testimony,

10 transcripts, and tangible things), that are produced or generated in disclosures or responses to

11 discovery in this matter.

12   2.6   Expert: a person with specialized knowledge or experience in a matter pertinent to the

13 Present Litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or

14 as a consultant in the Present Litigation, (2) is not a past or current employee of a Party or of a

15 Party's competitor, and (3) at the time of retention, is not anticipated to become an employee of a

16 Party or of a Party's competitor.

17   2.7   "HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY"

18 Information or Items: extremely sensitive "CONFIDENTIAL Information or Items," disclosure of

19 which to another Party or Non-Party would create a substantial risk of serious harm that could not be

20 avoided by less restrictive means. Such information or items may include, for example:

21   a)   information concerning proposed or actual research and development, whether or not

22   such research and development has resulted in a commercial product that has been

23   disclosed to the public;

24   b)   business, marketing, or strategic proposals or plans; customer, vendor, and employee

25   lists, whether targeted or actual; and

26   c)   financial information, such as that related to expenses, costs, pricing, sales, or profits;

27   d)   highly sensitive design, development, technical, or manufacturing information;

28   e)   licensing agreements and communications; and

1   f)   alleged trade secrets, *i.e.*, information, including a formula, pattern, compilation,

2   program, device, method, technique, or process, that: (i) derives independent

3   economic value, actual or potential, from not being generally known to, and not being

4   readily ascertainable by proper means by, other persons who can obtain economic

5   value from its disclosure or use, and (ii) is the subject of efforts that are reasonable

6   under the circumstances to maintain its secrecy.

7   2.8   "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items: extremely

8   sensitive "Confidential Information or Items" representing computer code and associated comments

9   and revision histories, formulas, engineering specifications, or schematics that define or otherwise

10   describe in detail the algorithms or structure of software or hardware designs, disclosure of which to

11   another Party or Non-Party would create a substantial risk of serious harm that could not be avoided

12   by less restrictive means. Source code includes, without limitation, computer code, scripts,

13   assembly, object code, RTL code, source code listings and descriptions of source code, object code

14   listings and descriptions of object code, formulas, engineering specifications, electronic production

15   files, including net lists, GDS files, CAD files, and the like, or schematics or databases that define or

16   otherwise describe in detail the algorithms or structure of software or hardware. Source code

17   documents at least include (1) printed documents that contain selected source code or hardware

18   components ("printed source code"); (2) electronic communications and descriptive documents, such

19   as emails, design documents and programming examples, which contain selected source code or

20   hardware components ("described source code"); (3) electronic source code documents that reside in

21   a source code repository from which software and related data files may be compiled, assembled,

22   linked, executed, debugged and/or tested ("source code files"); (4) electronic production files,

23   schematics, or databases as described above; and (5) transcripts, reports, video, audio, or other media

24   that include, quote, cite, describe, or otherwise refer to source code, source code files, and/or the

25   development thereof. Source code files may include "header files," "make" files, project files, link

26   files, and other human-readable text files used in the generation, compilation, translation, and/or

27   building of executable software, including software intended for execution by an interpreter.

28   2.9   In-House Counsel: attorneys who are employees of a party to the Present Litigation.

1   In-House Counsel does not include Outside Counsel of Record or any other outside counsel.

2   2.10   Non-Party: any natural person, partnership, corporation, association, or other legal

3   entity not named as a Party to the Present Litigation.

4   2.11   Outside Counsel of Record: law firms and/or attorneys that have been retained by a

5   Party to provide advice in connection with the Present Litigation, have appeared in the Present

6   Litigation on behalf of that Party, and are not employees of that Party. Outside Counsel of Record

7   includes attorneys, paralegals, assistants, and stenographic, clerical, and support employees and

8   vendors of the respective law firms and/or attorneys.

9   2.12   Party: any party to the Present Litigation, including all of its officers, directors,

10   employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

11   2.13   Producing Party: a Party or Non-Party that produces Disclosure or Discovery

12   Material in the Present Litigation.

13   2.14   Professional Vendors: persons or entities that provide litigation support services (e.g.,

14   jury and trial consultation, photocopying, videotaping, translating, preparing exhibits or

15   demonstrations, and organizing, storing, or retrieving data in any form or medium) and their

16   employees and subcontractors.

17   2.15   Protected Material: any Disclosure or Discovery Material that is designated as

18   "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY," or

19   "HIGHLY CONFIDENTIAL – SOURCE CODE."

20   2.16   Receiving Party: a Party to whom Disclosure or Discovery Material is produced,

21   disclosed, or made available for inspection from a Producing Party.

22   3.   SCOPE

23   The protections conferred by this Order cover not only Protected Material (as defined above),

24   but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts,

25   summaries, or compilations of Protected Material; and (3) any testimony, conversations, or

26   presentations by Parties or their Counsel that might reveal Protected Material. However, the

27   protections conferred by this Order do not cover the following information: (a) any information that

28   is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public

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