

**UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE**

JOHN THOMPSON, Individually and On)
Behalf of All Others Similarly Situated,)
)
Plaintiff,) Case No. _____
)
v.) JURY TRIAL DEMANDED
)
FITBIT, INC., JAMES PARK, ERIC N.) CLASS ACTION
FRIEDMAN, LAURA ALBER, MATTHEW)
BROMBERG, GLENDA FLANAGAN,)
BRADLEY M. FLUEGEL, STEVEN)
MURRAY, and CHRISTOPHER PAISLEY,)
)
Defendants.)

COMPLAINT FOR VIOLATION OF THE SECURITIES EXCHANGE ACT OF 1934

Plaintiff, by his undersigned attorneys, for this complaint against defendants, alleges upon personal knowledge with respect to himself, and upon information and belief based upon, *inter alia*, the investigation of counsel as to all other allegations herein, as follows:

NATURE OF THE ACTION

1. This action stems from a proposed transaction announced on November 1, 2019 (the “Proposed Transaction”), pursuant to which Fitbit, Inc. (“Fitbit” or the “Company”) will be acquired by Google LLC (“Parent”) and Magnoliophyta Inc. (“Merger Sub,” and together with Parent, “Google”).

2. On November 1, 2019, Fitbit’s Board of Directors (the “Board” or “Individual Defendants”) caused the Company to enter into an agreement and plan of merger (the “Merger Agreement”) with Google. Pursuant to the terms of the Merger Agreement, Fitbit’s stockholders will receive \$7.35 in cash for each share of Fitbit common stock they own.

3. On November 25, 2019, defendants filed a proxy statement (the “Proxy Statement”) with the United States Securities and Exchange Commission (the “SEC”) in connection with the Proposed Transaction.

4. The Proxy Statement omits material information with respect to the Proposed Transaction, which renders the Proxy Statement false and misleading. Accordingly, plaintiff alleges herein that defendants violated Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 (the “1934 Act”) in connection with the Proxy Statement.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the claims asserted herein pursuant to Section 27 of the 1934 Act because the claims asserted herein arise under Sections 14(a) and 20(a) of the 1934 Act and Rule 14a-9.

6. This Court has jurisdiction over defendants because each defendant is either a corporation that conducts business in and maintains operations within this District, or is an individual with sufficient minimum contacts with this District so as to make the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

7. Venue is proper under 28 U.S.C. § 1391(b) because a substantial portion of the transactions and wrongs complained of herein occurred in this District.

PARTIES

8. Plaintiff is, and has been continuously throughout all times relevant hereto, the owner of Fitbit common stock.

9. Defendant Fitbit is a Delaware corporation and maintains its principal executive offices at 199 Fremont Street, 14th Floor, San Francisco, California 94105. Fitbit’s common stock is traded on the New York Stock Exchange under the ticker symbol “FIT.”

10. Defendant James Park is Chief Executive Officer and Chairman of the Board of the Company.

11. Defendant Eric N. Friedman is Chief Technology Officer, Executive Officer, and a director of the Company.

12. Defendant Laura Alber is a director of the Company.

13. Defendant Matthew Bromberg is a director of the Company.

14. Defendant Glenda Flanagan is a director of the Company.

15. Defendant Bradley M. Fleugel is a director of the Company.

16. Defendant Steven Murray is a director of the Company.

17. Defendant Christopher Paisley is a director of the Company.

18. The defendants identified in paragraphs 10 through 17 are collectively referred to herein as the “Individual Defendants.”

CLASS ACTION ALLEGATIONS

19. Plaintiff brings this action as a class action on behalf of himself and the other public stockholders of Fitbit (the “Class”). Excluded from the Class are defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any defendant.

20. This action is properly maintainable as a class action.

21. The Class is so numerous that joinder of all members is impracticable. As of October 28, 2019, there were approximately 228,873,413 shares of Fitbit common stock outstanding, held by hundreds, if not thousands, of individuals and entities scattered throughout the country.

22. Questions of law and fact are common to the Class, including, among others, whether defendants will irreparably harm plaintiff and the other members of the Class if

defendants' conduct complained of herein continues.

23. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. Plaintiff's claims are typical of the claims of the other members of the Class and plaintiff has the same interests as the other members of the Class. Accordingly, plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class.

24. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for defendants, or adjudications that would, as a practical matter, be dispositive of the interests of individual members of the Class who are not parties to the adjudications or would substantially impair or impede those non-party Class members' ability to protect their interests.

25. Defendants have acted, or refused to act, on grounds generally applicable to the Class as a whole, and are causing injury to the entire Class. Therefore, final injunctive relief on behalf of the Class is appropriate.

SUBSTANTIVE ALLEGATIONS

Background of the Company and the Proposed Transaction

26. Fitbit designs products and experiences that track and provide motivation for everyday health and fitness.

27. The Company's line of products includes Fitbit Charge 3™, Fitbit Inspire HR™, Fitbit Inspire™, and Fitbit Ace 2™ activity trackers, as well as the Fitbit Ionic™ and Fitbit Versa™ family of smartwatches, Fitbit Flyer™ wireless headphones, and Fitbit Aria family of smart scales.

28. The Company's products are carried in approximately 39,000 retail stores and in over 100 countries around the world.

29. On November 1, 2019, Fitbit's Board caused the Company to enter into the Merger Agreement with Google.

30. Pursuant to the terms of the Merger Agreement, Fitbit's stockholders will receive \$7.35 in cash for each share of Fitbit common stock they own.

31. According to the press release announcing the Proposed Transaction:

Fitbit, Inc. (NYSE: FIT) today announced that it has entered into a definitive agreement to be acquired by Google LLC for \$7.35 per share in cash, valuing the company at a fully diluted equity value of approximately \$2.1 billion. . . .

The transaction is expected to close in 2020, subject to customary closing conditions, including approval by Fitbit's stockholders and regulatory approvals.

Qatalyst Partners LLP acted as financial advisor to Fitbit, and Fenwick & West LLP acted as legal advisor.

The Proxy Statement Omits Material Information, Rendering It False and Misleading

32. Defendants filed the Proxy Statement with the SEC in connection with the Proposed Transaction.

33. As set forth below, the Proxy Statement omits material information with respect to the Proposed Transaction, which renders the Proxy Statement false and misleading.

34. First, the Proxy Statement omits material information regarding the Company's financial projections.

35. The Proxy Statement fails to disclose, for each set of projections: (i) all line items used to calculate (a) Non-GAAP Cost of Revenue, (b) Non-GAAP Gross Profit, (c) Non-GAAP Operating Expense, (d) Non-GAAP Operating Income (Loss), (e) NOPAT, (f) Adjusted EBITDA, (g) Non-GAAP Net Income (Loss), and (h) Non-GAAP Earnings Per Share; and (ii) a

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