

UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

TIM FLYNN, Individually and on Behalf of All	X	
Others Similarly Situated,)	
)	
Plaintiff,)	
)	Civil Action No. _____
v.)	
)	CLASS ACTION
FITBIT, INC., JAMES PARK, ERIC N.)	
FRIEDMAN, LAURA J. ALBER,)	JURY TRIAL DEMAND
MATTHEW BRONBERG, GLENDA)	
FLANAGAN, BRADLEY M. FLUEGEL,)	
STEVEN MURRAY, CHRISTOPHER)	
PAISLEY, MAGNOLIOPHYTA INC., and)	
GOOGLE LLC,)	
)	
Defendants.)	

**CLASS ACTION COMPLAINT FOR VIOLATIONS OF SECTIONS 14(a) AND 20(a)
OF THE SECURITIES EXCHANGE ACT OF 1934**

Plaintiff Tim Flynn (“Plaintiff”), individually and on behalf of all others similarly situated, alleges the following upon information and belief, including investigation of counsel and review of publicly-available information, except as to those allegations pertaining to Plaintiff, which are alleged upon personal knowledge:

NATURE OF THE ACTION

1. Plaintiff brings this class action on behalf of the public stockholders of Fitbit, Inc. (“Fitbit” or the “Company”) against Fitbit’s Board of Directors (the “Board” or the “Individual Defendants”) for their violations of Sections 14(a) and 20(a) of the Securities Exchange Act of 1934, 15.U.S.C. §§ 78n(a), 78t(a), and SEC Rule 14a-9, 17 C.F.R. 240.14a-9, arising out of the Board’s attempt to sell the Company to Google LLC through its wholly-owned subsidiary Magnoliophyta Inc. (collectively, “Google”).



2. Defendants have violated the above-referenced sections of the Exchange Act by causing a materially incomplete and misleading preliminary proxy statement (the “Proxy”) to be filed with the United States Securities and Exchange Commission (“SEC”) on November 25, 2019. The Proxy recommends that Fitbit shareholders vote in favor of a proposed transaction (the “Proposed Transaction”) whereby Fitbit is acquired by Google. The Proposed Transaction was first disclosed on November 1, 2019, when Fitbit and Google announced that they had entered into a definitive merger agreement (the “Merger Agreement”) pursuant to which Google will acquire all of the outstanding shares of common stock of Fitbit for \$7.35 per share (the “Merger Consideration”). The deal is valued at approximately \$2.1 billion and is expected to close in 2020.

3. The process leading to the execution of the Merger Agreement was tainted by allowing the Company’s co-founders to take part, given their control over the Company with their combined voting power. Furthermore, the Proxy is materially incomplete and contains misleading representations and information in violation of Sections 14(a) and 20(a) of the Exchange Act. Specifically, the Proxy contains materially incomplete and misleading information concerning the sales process, financial projections prepared by Fitbit management, and the financial analyses conducted by Qatalyst Partners LP (“Qatalyst”), Fitbit’s financial advisor.

4. For these reasons, and as set forth in detail herein, Plaintiff seeks to enjoin defendants from taking any steps to consummate the Proposed Transaction unless and until the material information discussed below is disseminated to Fitbit’s shareholders. In the event the Proposed Transaction is consummated without the material omissions referenced below being remedied, Plaintiff seeks to recover damages resulting from the defendants’ violations.

PARTIES

5. Plaintiff is, and has been at all relevant times, the owner of shares of common stock

of Fitbit.

6. Defendant Fitbit is a corporation organized and existing under the laws of the State of Delaware. The Company's principal executive offices are located at 199 Fremont Street, 14th Floor, San Francisco, California 94105. Fitbit common stock trades on NYSE under the ticker symbol "FIT."

7. Defendant James Park ("Park") has been President, Chief Executive Officer ("CEO") and a director of the Company since 2007. Defendant Park has been Chairman of the Board since 2015.

8. Defendant Eric N. Friedman ("Friedman") has been a director of the Company since 2007. Defendant Friedman currently serves as Chief Technology Officer.

9. Defendant Laura J. Alber ("Alber") has been a director of the Company since 2016.

10. Defendant Matthew Bromberg ("Bromberg") has been a director of the Company since 2018.

11. Defendant Glenda Flanagan ("Flanagan") has been a director of the Company since 2016.

12. Defendant Bradley M. Fluegel ("Fluegel") has been a director of the Company since 2018.

13. Defendant Steven Murray ("Murray") has been a director of the Company since 2013.

14. Defendant Christopher Paisley ("Paisley") has been a director of the Company since 2015.

15. Defendants James, Friedman, Alber, Bromberg, Flanagan, Fluegel, Murray and Paisley are collectively referred to herein as the "Board" or the "Individual Defendants."

16. Defendant Google LLC is a Delaware limited liability company based at 1600 Amphitheatre Parkway, Mountain View, California 94043.

17. Defendant Magnoliophyta Inc. is a Delaware corporation and is a wholly-owned subsidiary of Google LLC.

JURISDICTION AND VENUE

18. This Court has subject matter jurisdiction pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331 (federal question jurisdiction) as Plaintiff alleges violations of Section 14(a) and 20(a) of the Exchange Act and SEC Rule 14a-9.

19. Personal jurisdiction exists over each defendant either because the defendant conducts business in or maintains operations in this District, or is an individual who is either present in this District for jurisdictional purposes or has sufficient minimum contacts with this District as to render the exercise of jurisdiction over defendant by this Court permissible under traditional notions of fair play and substantial justice.

20. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C. § 78aa, as well as under 28 U.S.C. § 1391, because: (i) a significant amount of the conduct at issue took place and had an effect in this District; and (ii) Fitbit is incorporated in this District.

CLASS ACTION ALLEGATIONS

21. Plaintiff brings this action on his own behalf and as a class action on behalf of all owners of Fitbit common stock and their successors in interest and/or their transferees, except defendants and any person, firm, trust, corporation or other entity related to or affiliated with the defendants (the “Class”).

22. This action is properly maintainable as a class action for the following reasons:

(a) The Class is so numerous that joinder of all members is impracticable. As of October 28, 2019, Fitbit had approximately 228.8 million shares of Class A common stock outstanding.

(b) Questions of law and fact are common to the Class, including, *inter alia*, the following:

- (i) Whether defendants have violated Section 14(a) of the Exchange Act and Rule 14a-9 promulgated thereunder;
- (ii) Whether the Individual Defendants have violated Section 20(a) of the Exchange Act;
- (iii) Whether Plaintiff and other members of the Class would suffer irreparable injury if the Proposed Transaction is consummated as presently anticipated; and
- (iv) Whether the Class is entitled to injunctive relief or damages as a result of Individual Defendants' wrongful conduct.

(c) Plaintiff is committed to prosecuting this action, is an adequate representative of the Class, and has retained competent counsel experienced in litigation of this nature.

(d) Plaintiff's claims are typical of those of the other members of the Class.

(e) Plaintiff has no interests that are adverse to the Class.

(f) The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications for individual members of the Class and of establishing incompatible standards of conduct for the party opposing the Class.

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