

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GREGORY TESNAR,	:	Case No.: _____
	:	
Plaintiff,	:	COMPLAINT
	:	
-against-	:	DEMAND FOR JURY TRIAL
	:	
FITBIT, INC., JAMES PARK, ERIC N.	:	
FRIEDMAN, LAURA ALBER, MATTHEW	:	
BROMBERG, GLENDA FLANAGAN,	:	
BRADLEY M. FLUEGEL, STEVEN	:	
MURRAY, and CHRISTOPHER PAISLEY,	:	
	:	
Defendants.	:	
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Plaintiff, Gregory Tesnar (“Plaintiff”), by his undersigned attorneys, alleges upon personal knowledge with respect to himself, and 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 is an action brought by Plaintiff against Fitbit, Inc. (“Fitbit” or the “Company”) and the members of the Company’s board of directors (collectively referred to as the “Board” or the “Individual Defendants” and, together with Fitbit, the “Defendants”) for their violations of Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78n(a) and 78t(a), and SEC Rule 14a-9, 17 C.F.R. § 240.14a-9, in connection with the proposed merger (the “Proposed Merger”) between Fitbit and Google LLC (“Google”).

2. On November 1, 2019, Fitbit entered into an Agreement and Plan of Merger (the “Merger Agreement”), pursuant to which the Company’s shareholders will receive \$7.35 in exchange for each share of Fitbit common stock they own (the “Merger Consideration”).

3. On November 25, 2019, in order to convince Fitbit’s shareholders to vote in favor of the Proposed Merger, Defendants authorized the filing of a materially incomplete and

misleading preliminary proxy statement (the “Proxy”) with the Securities and Exchange Commission (“SEC”), in violation of Sections 14(a) and 20(a) of the Exchange Act.

4. In particular, the Proxy contains materially incomplete and misleading information concerning certain financial projections for the Company and the valuation analyses performed by Fitbit’s financial advisor, Qatalyst Partners LP (“Qatalyst”) in support of their fairness opinion.

5. The special meeting of Fitbit shareholders to vote on the Proposed Merger is forthcoming (the “Shareholder Vote”). It is imperative that the material information that has been omitted from the Proxy is disclosed prior to the Shareholder Vote so Plaintiff can cast an informed vote and properly exercise his corporate suffrage rights.

6. For these reasons, and as set forth in detail herein, Plaintiff asserts claims against Defendants for violations of Sections 14(a) and 20(a) of the Exchange Act. Plaintiff seeks to enjoin Defendants from taking any steps to consummate the Proposed Merger until the material information discussed herein is disclosed to Fitbit’s shareholders sufficiently in advance of the Shareholder Vote or, in the event the Proposed Merger is consummated, to recover damages resulting from the Defendants’ violations of the Exchange Act.

JURISDICTION AND VENUE

7. 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 Sections 14(a) and 20(a) of the Exchange Act.

8. 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 the Defendants by this Court permissible

under traditional notions of fair play and substantial justice. “Where a federal statute such as Section 27 of the [Exchange] Act confers nationwide service of process, the question becomes whether the party has sufficient contacts with the United States, not any particular state.” *Sec. Inv’r Prot. Corp. v. Vigman* 764 F.2d 1309, 1305 (9th Cir. 1985). “[S]o long as a defendant has minimum contacts with the United States, Section of the Act confers personal jurisdiction over the defendant in any federal district court.” *Id.* At 1316.

9. Venue is proper in this District under Section 27 of the Exchange Act and 28 U.S.C. § 1391, because Defendants are found or are inhabitants or transact business in this District. Fitbit’s common stock trades on New York Stock Exchange, which is headquartered in this District, Fitbit hired Innisfree M&A Incorporated, which is also headquartered in this District, as a proxy solicitor for the purpose of the Proposed Merger, and the closing of the Merger Agreement and Proposed Merger is scheduled to take place in this District rendering venue in this District appropriate. *See, e.g., United States v. Svoboda*, 347 F.3d 471, 484 n.13 (2d Cir. 2003) (collecting cases).

PARTIES

10. Plaintiff is, and at all relevant times has been, a holder of Fitbit common stock.

11. Defendant Fitbit is a global manufacturer and marketer of beauty and related products. The Company’s common stock trades on the New York Stock Exchange under the ticker symbol “FIT”.

12. Individual Defendant James Park is, and has been at all relevant times, a director of Fitbit.

13. Individual Defendant Eric N. Friedman is, and has been at all relevant times, a director of Fitbit.

14. Individual Defendant Laura Alber is, and has been at all relevant times, a director

of Fitbit.

15. Individual Defendant Matthew Bromberg is, and has been at all relevant times, a director of Fitbit.

16. Individual Defendant Glenda Flanagan is, and has been at all relevant times, a director of Fitbit.

17. Individual Defendant Bradley M. Fluegel is, and has been at all relevant times, a director of Fitbit.

18. Individual Defendant Steven Murray is, and has been at all relevant times, a director of Fitbit.

19. Individual Defendant Christopher Paisley is, and has been at all relevant times, a director of Fitbit.

20. The Individual Defendants referred to in ¶¶ 12-19 are collectively referred to herein as the “Individual Defendants” and/or the “Board”, and together with Fitbit they are referred to herein as the “Defendants.”

SUBSTANTIVE ALLEGATIONS

I. Background and the Proposed Merger

21. Fitbit is a provider of health and fitness devices. The Company's platform combines connected health and fitness devices with software and services, including an online dashboard and mobile applications, data analytics, motivational and social tools, personalized insights and virtual coaching through customized fitness plans and interactive workouts. It offers various fitness devices, including Fitbit Zip, Fitbit One, Fitbit Flex, Fitbit Flex 2, Fitbit Charge, Fitbit Charge 2, Fitbit Blaze, Fitbit Charge HR, Fitbit Surge, Fitbit Accessories and Aria. Its platform includes wearable connected health and fitness trackers, which are wrist-based and clippable devices that automatically track users' daily steps, calories burned, distance traveled, and active minutes and

display real-time feedback. Its trackers also measure sleep duration and quality, and its products track heart rate and global positioning system-based information. It also offers a wireless fidelity connected scale.

22. Google is a subsidiary of Alphabet Inc., one of the largest companies in the world.

23. On November 1, 2019, Fitbit issued a press release announcing the Proposed

Merger, which states in relevant part:

Fitbit to be Acquired by Google

SAN FRANCISCO, 1 November 2019 - 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.

“More than 12 years ago, we set an audacious company vision - to make everyone in the world healthier. Today, I’m incredibly proud of what we’ve achieved towards reaching that goal. We have built a trusted brand that supports more than 28 million active users around the globe who rely on our products to live a healthier, more active life,” said James Park, co-founder and CEO of Fitbit. “Google is an ideal partner to advance our mission. With Google’s resources and global platform, Fitbit will be able to accelerate innovation in the wearable’s category, scale faster, and make health even more accessible to everyone. I could not be more excited for what lies ahead.”

"Fitbit has been a true pioneer in the industry and has created terrific products, experiences and a vibrant community of users," said Rick Osterloh, Senior Vice President, Devices & Services at Google. "We're looking forward to working with the incredible talent at Fitbit, and bringing together the best hardware, software and AI, to build wearables to help even more people around the world."

Fitbit pioneered the wearables category by delivering innovative, affordable and engaging devices and services. Being “on Fitbit” is not just about the device - it is an immersive experience from the wrist to the app, designed to help users understand and change their behavior to improve their health. Because of this unique approach, Fitbit has sold more than 100 million devices and supports an engaged global community of millions of active users, utilizing data to deliver unique personalized guidance and coaching to its users. Fitbit will continue to remain platform-agnostic across both Android and iOS.

Consumer trust is paramount to Fitbit. Strong privacy and security guidelines have been part of Fitbit’s DNA since day one, and this will not change. Fitbit will continue to put users in control of their data and will remain transparent about the data it collects and why. The company never sells personal information, and Fitbit health and wellness data will not be used for Google ads.

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