

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>John H. Gomez (SBN 171485) John P. Fiske (SBN 249256)</b> <b>Stephanie S. Poli (SBN 286239)</b> <b>Gomez Trial Attorneys</b> <b>655 W Broadway, Suite 1700, San Diego, CA 92101</b> TELEPHONE NO.: 619-237-3490 FAX NO.: 619-237-3496		<b>FOR COURT USE ONLY</b>  <b>ELECTRONICALLY FILED</b> Superior Court of California, County of San Diego  <b>05/22/2015 at 12:41:53 PM</b> Clerk of the Superior Court By Adam Beason, Deputy Clerk
ATTORNEY FOR (Name): <b>Plaintiffs Laura Brown et al.</b>		CASE NUMBER: <b>37-2015-00017306-CU-PL-CTL</b>  JUDGE: <b>Judge Ronald S. Prager</b>  DEPT:
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b>  STREET ADDRESS: <b>330 West Broadway</b> MAILING ADDRESS: <b>330 West Broadway</b> CITY AND ZIP CODE: <b>San Diego, CA 92101</b> BRANCH NAME: <b>Hall of Justice</b>		
CASE NAME: <b>Laura Brown et al. v. Fitbit, Inc.</b>		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000)	<input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)	<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input checked="" type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input checked="" type="checkbox"/> Large number of separately represented parties  | d. <input type="checkbox"/> Large number of witnesses  |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial postjudgment judicial supervision  |
3. Remedies sought (check all that apply): a.  monetary    b.  nonmonetary; declaratory or injunctive relief    c.  punitive
4. Number of causes of action (specify): **Seven**
5. This case  is  is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: **May 22, 2015**  
 Stephanie S. Poli \_\_\_\_\_  
 (TYPE OR PRINT NAME) ▶ (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

**INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET**

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

**CASE TYPES AND EXAMPLES**

**Auto Tort**

- Auto (22)—Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

**Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort**

- Asbestos (04)
  - Asbestos Property Damage
  - Asbestos Personal Injury/Wrongful Death
- Product Liability *(not asbestos or toxic/environmental)* (24)
- Medical Malpractice (45)
  - Medical Malpractice—Physicians & Surgeons
  - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
  - Premises Liability (e.g., slip and fall)
  - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
  - Intentional Infliction of Emotional Distress
  - Negligent Infliction of Emotional Distress
  - Other PI/PD/WD

**Non-PI/PD/WD (Other) Tort**

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
  - Legal Malpractice
  - Other Professional Malpractice *(not medical or legal)*
- Other Non-PI/PD/WD Tort (35)

**Employment**

- Wrongful Termination (36) Other Employment (15)

**Contract**

- Breach of Contract/Warranty (06)
- Breach of Rental/Lease Contract *(not unlawful detainer or wrongful eviction)*
- Contract/Warranty Breach—Seller Plaintiff *(not fraud or negligence)*
- Negligent Breach of Contract/Warranty
- Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
- Collection Case—Seller Plaintiff
- Other Promissory Note/Collections Case
- Insurance Coverage *(not provisionally complex)* (18)
  - Auto Subrogation
  - Other Coverage
- Other Contract (37)
  - Contractual Fraud
  - Other Contract Dispute

**Real Property**

- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
  - Writ of Possession of Real Property
  - Mortgage Foreclosure
  - Quiet Title
  - Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

**Unlawful Detainer**

- Commercial (31)
- Residential (32)
- Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

**Judicial Review**

- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
  - Writ—Administrative Mandamus
  - Writ—Mandamus on Limited Court Case Matter
  - Writ—Other Limited Court Case Review
- Other Judicial Review (39)
  - Review of Health Officer Order
  - Notice of Appeal—Labor Commissioner Appeals

**Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)**

- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

**Enforcement of Judgment**

- Enforcement of Judgment (20)
  - Abstract of Judgment (Out of County)
  - Confession of Judgment *(non-domestic relations)*
  - Sister State Judgment
  - Administrative Agency Award *(not unpaid taxes)*
  - Petition/Certification of Entry of Judgment on Unpaid Taxes
  - Other Enforcement of Judgment Case

**Miscellaneous Civil Complaint**

- RICO (27)
- Other Complaint *(not specified above)* (42)
- Declaratory Relief Only
- Injunctive Relief Only *(non-harassment)*
- Mechanics Lien
- Other Commercial Complaint Case *(non-tort/non-complex)*
- Other Civil Complaint *(non-tort/non-complex)*

**Miscellaneous Civil Petition**

- Partnership and Corporate Governance (21)
- Other Petition *(not specified above)* (43)
  - Civil Harassment
  - Workplace Violence
  - Elder/Dependent Adult Abuse
  - Election Contest
  - Petition for Name Change
  - Petition for Relief From Late Claim
  - Other Civil Petition



**SUMMONS  
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:**

**(AVISO AL DEMANDADO):** FITBIT, INC., a Corporation; and DOES 1-100 INCLUSIVE.

**YOU ARE BEING SUED BY PLAINTIFF:**

**(LO ESTÁ DEMANDANDO EL DEMANDANTE):** LAURA BROWN, an individual, TIMOTHY LAPEAN, an individual, and JASON CRAIN, an individual ; STERLING DELA VALLADE, an individual ; STEVEN ALEMAN, an individual ; JAMES FRAZIER, an individual ; and NOEL GALLANT, an individual

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**ELECTRONICALLY FILED**

Superior Court of California,  
County of San Diego

**05/22/2015** at 12:41:53 PM

Clerk of the Superior Court  
By Adam Beason, Deputy Clerk

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

*Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una Cart a o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la Corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.*

*Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.*

The name and address of the court is:

*(El nombre y dirección de la corte es):*

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

- HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101 -3827  
 NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92081-6643  
 EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020-3941  
 RAMONA BRANCH 1428 MONTECITO RD., RAMONA CA 92065-5200  
 SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910-5649  
 JUVENILE COURT, 2851 MEADOW LARK DR., SAN DIEGO, CA 92123-2792

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

*(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):*

John H. Gomez, Esq. (SBN 171485) John P. Fiske, Esq. (SBN 249256)

T: 619.237.3490

Stephanie S. Poli (SBN 286239) Gomez Trial Attorneys

F: 619.237.3496

655 W Broadway, Suite 1700

San Diego, CA 92101

CASE NUMBER: 37-2015-00017306-CU-PL-CTL  
(Número del Caso):

**CLERK OF THE SUPERIOR COURT**

DATE: 05/26/2015  
(Fecha)

Clerk, by \_\_\_\_\_  
(Secretario)

*A. Beason*  
A. Beason

\_\_\_\_\_, Deputy  
(Adjunto)

*(For proof of service of this summons, use Proof of Service of Summons (form POS-010))*

*(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).*

**NOTICE TO THE PERSON SERVED: You are served**

1.  as an individual defendant.  
 2.  as the person sued under the fictitious name of (specify):  
 3.  on behalf of (specify):  
     under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
            CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
            CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
            other (specify):  
 4.  by personal delivery on (date):

[SEAL]



1 John H. Gomez (SBN 171485)  
John P. Fiske (SBN 249256)  
2 Stephanie S. Poli (SBN 286239)  
**GOMEZ TRIAL ATTORNEYS**  
3 655 West Broadway, #1700  
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4 Telephone: (619) 237-3490  
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6 spoli@ thegomezfirm.com

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**05/22/2015** at 12:41:53 PM  
Clerk of the Superior Court  
By Adam Beason, Deputy Clerk

7  
8 Attorneys for Plaintiff

9 **THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **COUNTY OF SAN DIEGO**

11 LAURA BROWN, an individual, TIMOTHY )  
LAPEAN, an individual, and JASON CRAIN, )  
12 an individual ; STERLING DE LA )  
VALLADE, an individual ; STEVEN )  
13 ALEMAN, an individual ; JAMES FRAZIER, )  
an individual ; and NOEL GALLANT, an )  
14 individual ; )

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PLAINTIFFS,

vs.

FITBIT, INC., a corporation; and DOES 1-100 )  
19 INCLUSIVE, )  
20 )  
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25 )  
26 )  
27 )  
28 )

DEFENDANTS.

CASE NO: 37-2015-00017306-CU-PL-CTL  
JUDGE:

COMPLAINT FOR DAMAGES FOR:

- 1) STRICT PRODUCTS LIABILITY-  
MANUFACTURING DEFECT
- 2) STRICT PRODUCTS LIABILITY-  
DESIGN DEFECT
- 3) STRICT PRODUCTS LIABILITY-  
FAILURE TO WARN
- 4) NEGLIGENCE
- 5) BREACH OF EXPRESS  
WARRANTY
- 6) BREACH OF IMPLIED  
WARRANTY OF  
MERCHANTABILITY
- 7) FRAUD

DEMAND FOR JURY TRIAL

1 Plaintiffs, by and through the undersigned counsel, hereby bring this Complaint for damages  
2 against Defendants, and allege the following:

3 **INTRODUCTION**

4 1. This is an action for damages relating to the Defendants’ design, manufacture, research,  
5 sale, testing, marketing, advertising, promotion, and/or distribution of the “Fitbit Surge™” and the  
6 “Fitbit Charge HR™.” The Fitbit Surge™ (referred to sometimes herein as the “Surge”) is an activity  
7 tracking wristwatch, which is a wireless-enabled wearable device that measures data such as the  
8 number of steps walked, quality of sleep, and other personal metrics. The Fitbit Charge HR™  
9 (referred to sometimes herein as the “Charge”) is a product, commonly referred to as an “activity  
10 tracker,” which is a wireless-enabled wearable device that measures data such as the number of steps  
11 walked, quality of sleep, and other personal metrics.

12 2. The Fitbit Surge™ is designed to be worn as a wristwatch, and the Fitbit Charge HR™  
13 is designed to be worn as a wristband . When worn as intended, Fitbit Surge™ and Fitbit Charge  
14 HR™ pose increased risks of skin irritation, rash, burns, blistering, bleeding, peeling, cracking,  
15 scarring, nerve damage, tissue damage and other injuries. Defendants, including Fitbit, Inc., had  
16 knowledge of these increased risks but hid them from its customers and the public as they continued to  
17 manufacture, sell, promote, market, and distribute the Fitbit Surge™ and Fitbit Charge HR™.

18 3. Plaintiffs bring these claims, individually, for personal injuries caused by Fitbit Surge™  
19 and Fitbit Charge HR™.

20 **PARTIES**

21 4. At all times relevant to this action, Plaintiff LAURA BROWN was an adult resident  
22 citizen of Mill Valley, California.

23 5. At all times relevant to this action, Plaintiff TIMOTHY LAPEAN was an adult resident  
24 citizen of Saint Paul, Minnesota.

25 6. At all times relevant to this action, Plaintiff JASON CRAIN was an adult resident  
26 citizen of Orlando, Florida.

27 7. At all times relevant to this action, Plaintiff STERLING DE LA VALLADE was an  
28 adult resident citizen of Lithonia, Georgia.

1 8. At all times relevant to this action, Plaintiff STEVEN ALEMAN was an adult resident  
2 citizen of Pasadena, Texas.

3 9. At all times relevant to this action, Plaintiff JAMES FRAZIER was an adult resident  
4 citizen of Lexington, Kentucky.

5 10. At all times relevant to this action, Plaintiff NOEL GALLANT was an adult resident  
6 citizen of Concord, California.

7 11. Defendant Fitbit, Inc. is a corporation organized and existing under the laws of  
8 Delaware with its principal place of business in San Francisco, California. At all times relevant  
9 hereto, Defendant Fitbit, Inc. regularly and continuously did business within this judicial district  
10 including designing, testing, manufacturing, researching, marketing, advertising, promoting, selling,  
11 and/or distributing the Fitbit Surge™ and Fitbit Charge HR™.

12 12. Plaintiffs do not know the true names and capacities of DOES 1-100 inclusive.  
13 Plaintiffs will seek leave to amend when the true names and identities of said fictitiously named  
14 defendants are ascertained. At all relevant times herein DOES 1-100 inclusive were the individuals,  
15 corporations, and/or business entities, which were agents, servants, joint venturers, partners, co-  
16 conspirators, participants or otherwise ratified or contributed to the conduct of the other Defendants as  
17 alleged herein.

18 13. At all relevant times each Defendant acted in all aspects as an agent and alter ego of  
19 or for each corporate entity. Hereinafter, the terms “Defendants” shall refer to Fitbit, Inc. and all Doe  
20 Defendants, acting individually and/or in concert with each other.

21 14. At all relevant times, the Defendants, and each of them, were engaged in the business  
22 of designing, researching, testing, manufacturing, marketing, promoting, selling, labeling, packaging,  
23 and distributing Fitbit Surge™ and Fitbit Charge HR™ in the County of San Diego, and throughout  
24 the United States and at all times herein had the duty to protect Plaintiff from the health and safety  
25 hazards of the Fitbit Surge™ and Fitbit Charge HR™, including the increased risk of skin irritation,  
26 rash, burns, blistering, bleeding, peeling, cracking, scarring, nerve damage, tissue damage, and other  
27 injuries.

28 ///

1  
2 **JURISDICTION & VENUE**

3 15. The California Superior Court has jurisdiction over Defendant Fitbit, Inc. because it is a  
4 Delaware corporation registered with the California Secretary of State with its headquarters and  
5 principal place of business located at 150 Spear Street, San Francisco, California 94105.

6 16. Fitbit, Inc.'s founders and managers, James Park and Eric Friedman reside in California.

7 17. Further, Defendants have purposefully availed themselves of the benefits and the  
8 protections of the laws within the State of California. Fitbit, Inc.'s principle place of business is in  
9 California, and Fitbit conducts substantial business in California. Collectively, Defendants have had  
10 sufficient contact such that the exercise of jurisdiction would be consistent with the traditional notions  
11 of fair play and substantial justice.

12 18. Venue is proper in this court pursuant to California Code of Civil Procedure § 395 in  
13 that Defendant Fitbit, Inc. resides and maintains its principal place of business in the State of  
14 California.

15 19. This Court has personal jurisdiction over the Defendants. At all times material  
16 hereto, the Defendants maintained systematic and continuous contacts in this judicial district,  
17 regularly transacted business within this judicial district, employed numerous individuals in this  
18 district, and/or regularly availed themselves of the benefits of this judicial district by selling their  
19 products throughout this district. Defendants received substantial financial benefit and profits as a  
20 result of designing, researching, manufacturing, marketing, advertising, promoting, selling and/or  
21 distributing the Fitbit Surge™ and Fitbit Charge HR™ in this district and throughout the United States.

22 20. The combined acts and/or omissions of each Defendant resulted in indivisible injury to  
23 Plaintiffs. Each of the above-named Defendants is a joint tortfeasor and/or co-conspirator and is  
24 jointly and severally liable to Plaintiffs for the negligent acts and omissions alleged herein. Each of  
25 the above-named Defendants directed, authorized or ratified the conduct of each and every other  
26 Defendant, including each Defendant's officers, directors, managing agents, parent and subsidiary  
27 corporations and clinics.

28 21. The amount in controversy exceeds the jurisdictional limits of this court.

1  
2 **FACTUAL ALLEGATIONS**

3 22. At all relevant times, Defendants intentionally, recklessly and/or negligently hid,  
4 concealed, suppressed, omitted, and misrepresented the risks, dangers, defects, and/or disadvantages  
5 of the Fitbit Surge™ and Fitbit Charge HR™. This action results from the injuries and damages  
6 caused by the use the Fitbit Surge™ and/or Fitbit Charge HR™ by Plaintiffs.

7 **A. Fitbit, Inc.**

8 23. Fitbit, Inc. was founded in 2007 in San Francisco, California by James Park and Eric  
9 Friedman.

10 24. James Park and Eric Friedman also manage the company, as CEO/Co-founder and  
11 CTO/Co-founder respectively.

12 25. Fitbit, Inc. employs between 175-288 people, most if not all of whom are located in  
13 California.

14 **B. The Fitbit Surge™**

15 26. The Fitbit Surge™ is a product designed, developed, manufactured, promoted, sold,  
16 advertised, distributed, and marketed by Fitbit, Inc. throughout the State of California. The Surge  
17 product was launched and offered to the general public in January 2015.

18 27. Fitbit, Inc. advertises and markets its Surge product as “the ultimate fitness super  
19 watch.” The Fitbit Surge™ is advertised as follows:

- 20 a. See distance, pace and elevation climbed & review routes and split times;
- 21 b. Get continuous, automatic, wrist-based heart rate & simplified heart rate zones;
- 22 c. Track steps, distance, calories burned, floors climbed & active minutes;
- 23 d. Record running, cross training and cardio workouts & view workout
- 24 summaries;
- 25 e. Lasts longer than competing trackers with a battery life up to 7 days;
- 26 f. See call & text notifications on display and control songs from your mobile
- 27 playlist;
- 28 g. Monitor your sleep automatically & set a silent alarm; and



1 h. Sync stats wirelessly & automatically to leading smartphones and computers.

2 28. There are three Surge sizes:

3 a. Small: fits wrists 5.5 to 6.3 inches;

4 b. Large: fits wrists 6.3 to 7.8 inches; and

5 c. X-Large: fits wrists 7.8 to 8.9 inches.

6 29. At no time during the promotion, marketing, advertising, distributing, or selling of the  
7 Fitbit Surge™ did Fitbit, Inc. adequately warn its customers or the general public of any adverse  
8 health consequences such as skin irritation, rashes, burns, blisters, cuts, boils, open wounds, redness,  
9 itching, cracking, peeling, or any other physical injuries.

10 30. Fitbit, Inc. promotes, markets, advertises, distributes, and sells the Fitbit Surge™ as a  
11 health and wellness product to consumers specifically interested in tracking, monitoring, measuring,  
12 and improving their overall health and wellness.

13 31. When worn and operated as intended, the Surge product causes physical injuries,  
14 including but not limited to skin irritation, rashes, burns, blisters, cuts, boils, open wounds, redness,  
15 itching, cracking, peeling, or any other physical injuries.

16 **C. The Fitbit Charge HR™**

17 32. The Fitbit Charge HR™ is a product designed, developed, manufactured, promoted,  
18 sold, advertised, distributed, and marketed by Fitbit, Inc. throughout the State of California. The  
19 Charge product was launched and offered to the general public in January 2015.

20 33. Fitbit, Inc. advertises and markets its Charge product as giving the user “the power of  
21 heart rate on your wrist.” The Fitbit Charge HR™ is advertised as follows:

22 a. Get continuous, automatic, wrist-based heart rate & simplified heart rate zones;

23 b. Track workouts, heartrate, distance, calories burned, floors climbed, active  
24 minutes & steps;

25 c. See daily stats & time of day, and get call notifications with compatible  
26 devices;

27 d. Get real-time run stats & review routes, splits and workout summaries on the  
28 app;

- 1 e. Lasts longer than competing trackers with a battery life up to 5 days;  
2 f. Monitor your sleep automatically & set a silent alarm; and  
3 g. Sync stats wirelessly & automatically to leading smartphones and computers.

4 34. There are three Charge sizes:

- 5 a. Small: fits wrists 5.4 to 6.2 inches;  
6 b. Large: fits wrists 6.2 to 7.6 inches; and  
7 c. X-Large: fits wrists 7.6 to 8.7 inches.

8 35. At no time during the promotion, marketing, advertising, distributing, or selling of the  
9 Fitbit Charge HR™ did Fitbit, Inc. adequately warn its customers or the general public of any adverse  
10 health consequences such as skin irritation, rashes, burns, blisters, cuts, boils, open wounds, redness,  
11 itching, cracking, peeling, or any other physical injuries.

12 36. Fitbit, Inc. promotes, markets, advertises, distributes, and sells the Fitbit Charge HR™  
13 as a health and wellness product to consumers specifically interested in tracking, monitoring,  
14 measuring, and improving their overall health and wellness.

15 37. When worn and operated as intended, the Charge HR™ product causes physical  
16 injuries, including but not limited to skin irritation, rashes, burns, blisters, cuts, boils, open wounds,  
17 redness, itching, cracking, peeling, or any other physical injuries.

18 **D. Defendants' Knowledge That The Fitbit Surge™ and The Fitbit Charge HR™**  
19 **Cause Serious Adverse Events**

20 38. Defendants released the Fitbit Surge™ and Fitbit Charge HR™ products for public sale  
21 on or about January 6, 2015.

22 39. Shortly thereafter, purchasers of the Fitbit Surge™ and Fitbit Charge HR™ began  
23 suffering adverse physical events as a result of wearing the device on one's wrist.

24 40. Fitbit, Inc. consumers who experienced adverse events related to the Fitbit Surge™ and  
25 Fitbit Charge HR™ began posting concerns and questions on online social media, as well as directly  
26 writing to and calling Fitbit customer service. This was as early as January 2015.

27 41. During this time, Fitbit, Inc. did not adequately warn Plaintiff, its consumers, the public,  
28 or the United States Consumer Product Safety Commission.

1 42. Despite consumer safety issues, Fitbit, Inc. continues to aggressively market the Fitbit  
2 Surge™ and Fitbit Charge HR™. Because of Defendants' aggressive marketing and sales, Fitbit  
3 Surge™ and Fitbit Charge HR™ continue to do well in the market and remain in very high demand.

4 43. This failure to adequately warn the public and Fitbit, Inc. consumers by misrepresenting  
5 material information of the increased risk of injuries as a result of the Fitbit Surge™ and Fitbit Charge  
6 HR™ is solely because such information would cause a severe loss of sales to Fitbit, Inc.

7 44. Upon information and belief, there is collusion involving individuals at Fitbit, Inc. to  
8 hide, mislead, and obscure information about the consumer safety hazards and risks associated with  
9 use of the Fitbit Surge™ and Fitbit Charge HR™ in order to maintain their market share as well as to  
10 minimize and diffuse the legal risks for Fitbit, Inc.

11 45. At all times herein mentioned, top executives, directors, including Defendants, as well  
12 as the other specifically and/or fictitiously named Defendants, knew about the safety risks of the Fitbit  
13 Surge™ and Fitbit Charge HR™ yet fail and refuse to warn the public, its customers and the FDA  
14 despite having the duty to do so.

15 46. The Fitbit Surge™ and Fitbit Charge HR™ are not the first Fitbit Inc., products to be  
16 associated with adverse physical events as a result of wearing the device.

17 47. Defendants are currently involved in litigation regarding two of their preceding  
18 wearable devices, the Fitbit Force™ and the Fitbit Flex™, both of which resulted in rashes, blisters,  
19 scarring, and other serious and permanent skin reactions.

20 48. Defendants claim that the Fitbit Surge™ and Fitbit Charge HR™ were developed in a  
21 different manner in order to eliminate the injuries that had previously been experienced by users of the  
22 Fitbit Force™ and Fitbit Flex™. However, Fitbit Surge™ and Fitbit Charge HR™ consumers are  
23 experiencing and continue to experience the same injuries and reactions seen with the Fitbit Force™  
24 and the Fitbit Flex™.

25 **E. Fitbit, Inc.'s Profits From Wrongdoing**

26 49. The Defendants continue to intentionally and recklessly proceed with the  
27 manufacturing, marketing, advertising, sale and distribution of the Fitbit Surge™ and Fitbit Charge  
28 HR™ knowing that consumers will be exposed to injuries.

1 50. The tortious actions and misdeeds of the Defendants as alleged herein are ongoing and  
2 at all times relevant hereto were ongoing and continuous and constituted ongoing and continuous torts.

3 51. The Defendants sold the Fitbit Surge™ and Fitbit Charge HR™ by misleading users  
4 about the products and by failing to adequately warn the users of the potential dangers, which it knew  
5 or should have known, might result from using the Fitbit Surge™ and Fitbit Charge HR™.

6 52. The Defendants widely and successfully market the Fitbit Surge™ and Fitbit Charge  
7 HR™ throughout the United States by, among other things, conducting promotional campaigns that  
8 misrepresent the safety and efficacy of the products, in order to induce widespread use and  
9 consumption.

10 53. The Defendants made misrepresentations by means including but not limited to media  
11 advertisements and statements contained in sales literature.

12 54. The Defendants intentionally ignored, withheld, and/or misrepresented information  
13 regarding the increased risks of injury associated with and/or caused by the Fitbit Surge™ and Fitbit  
14 Charge HR™ at the time Defendants manufactured, marketed, advertised, promoted, sold and  
15 distributed the products.

16 55. Defendants knew that if such increased risks of injury were disclosed, consumers would  
17 not purchase the Fitbit Surge™ and Fitbit Charge HR™.

18 56. At all times relevant herein, Defendants engaged in a marketing campaign with the  
19 intent that consumers purchase the Fitbit Surge™ and Fitbit Charge HR™.

20 57. As a result of the manufacturing and marketing of the Defendants' products the Fitbit  
21 Surge™ and Fitbit Charge HR™, Defendants reap huge profits while concealing from and misleading  
22 the public of the knowledge of the potential hazards associated with the Fitbit Surge™ and Fitbit  
23 Charge HR™.

24 58. The Defendants should have taken appropriate measures to ensure that the Fitbit  
25 Surge™ and Fitbit Charge HR™ would not be placed into the stream of commerce and/or should  
26 have provided full and proper warnings accurately and fully reflecting the risks associated with using  
27 the products.

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1           59. Defendants now include a webpage for the general “Wear and Care” of their  
2 devices. On this webpage, the following language can be seen:

- 3           • If you have eczema, allergies, or asthma you may be more likely to experience a  
4 skin irritation or allergy from a wearable device.
- 5           • Whether you have one of the above conditions or not, if you start to experience  
6 redness or skin irritation on your wrist, remove your device. If symptoms persist  
7 longer than 2-3 days of not using your device, contact a dermatologist.
- 8           • If you sweat for more than two hours while wearing your Fitbit Band, be sure to  
9 wash your band and your wrist using the directions above to avoid skin irritation.

10           60. Defendants also provide the following language within the Fitbit Surge™ Product  
11 Manual and the Fitbit Charge HR™ Product Manual: “If you notice any signs of skin redness,  
12 swelling, itchiness, or other skin irritation, please discontinue use or wear the product clipped over  
13 a piece of clothing. Continued use, even after symptoms subside, may result in renewed or  
14 increased irritation. If symptoms persist, consult your doctor. The device contains electrical  
15 equipment that could cause injury if not handled properly.”

16           61. The language in the Fitbit Surge™ Product Manual is located on pages 40 and 41, in  
17 a 42 page document. The language in the Fitbit Charge HR™ Product manual is located on page 25  
18 of a 29 page document. In both manuals, the language is located after ‘Regulatory & Safety  
19 Notices’ for other countries and in other languages.

20           62. Defendants include language in a document titled “Safety Instructions & Limited  
21 Warranty” which is enclosed in the Fitbit Surge™ box. This language states: “Caution: the device  
22 may cause skin irritation. Prolonged contact may contribute to skin irritation or allergies in some  
23 users. If you notice any signs of skin redness, swelling, itchiness or other skin irritation, please  
24 discontinue use or wear the product clipped over a piece of clothing. Continued use, even after  
25 symptoms subside, may result in renewed or increased irritation. If symptoms persist, consult your  
26 doctor.”

27           63. These limited warnings provided by defendants are inadequate because they  
28 mislead the public and consumers as to the seriousness of the skin irritation. Additionally, these



1 limited warnings do not warn of rashes, blistering, boils, burns, open wounds, peeling or  
2 permanent scarring.

3 64. Prior to the manufacturing, sale and distribution of the Fitbit Surge™ and Fitbit Charge  
4 HR™, Defendants, through their officers, directors and managing agents, had notice and knowledge  
5 that the Fitbit Surge™ and Fitbit Charge HR™ presented substantial and unreasonable risks of harm  
6 to the consumer. As such, consumers were unreasonably subjected to risk of injury from the use of  
7 Defendants' products, the Fitbit Surge™ and Fitbit Charge HR™.

8 65. Prior to the use of the Fitbit Surge™ and Fitbit Charge HR™, as alleged herein, the  
9 Defendants, through their officers, directors and managing agents, had notice and knowledge, that the  
10 Fitbit Surge™ and Fitbit Charge HR™ presented substantial and unreasonable risks of harm. As  
11 such, consumers were unreasonably subjected to risk of injury from the use of Defendants' product,  
12 the Fitbit Surge™ and Fitbit Charge HR™.

13 66. Defendants, through their officers, directors and managing agents for the purpose of  
14 increasing sales and enhancing its profits, knowingly, intentionally, deliberately and recklessly failed  
15 to remedy the known defects of the Fitbit Surge™ and Fitbit Charge HR™.

16 67. Defendants and their officers, agents and managers intentionally proceeded with the  
17 manufacturing, marketing, advertising, promotion, distribution and sale of the Fitbit Surge™ and  
18 Fitbit Charge HR™, knowing that persons would be exposed to injury, in order to advance their  
19 own pecuniary interests.

20 68. Defendants' conduct was wanton, willful, malicious, and displayed a conscious  
21 disregard for the safety of the public.

22 69. Rather than provide adequate warning, Defendants instead engaged in a pattern of  
23 reckless behavior and manipulation in a successful effort to enhance profits at the expense of the  
24 public health.

25 70. The above-described wrongful conduct is done with the knowledge, authorization,  
26 and ratification of officers, directors, and managing agents of Defendants.

27 71. Plaintiff requests an award of additional damages for the sake of example and for  
28 the purpose of punishing such entities for their conduct, in an amount sufficiently large to deter

1 Defendants from engaging in similar conduct in the future as Defendants' actions, and/or lack  
2 thereof, demonstrate gross negligence, reckless disregard, and intentional and malicious conduct,  
3 which caused in whole or in part, the damages alleged.

4 **F. Laura Brown**

5 72. Laura Brown used the Fitbit Surge™ in Mill Valley, California.

6 73. At all times herein mentioned, and prior to the use of the Fitbit Surge™ by Laura  
7 Brown, Defendants had knowledge that there was an increased risk of skin irritation, rashes, burns,  
8 blisters, cuts, boils, open wounds, redness, itching, cracking, peeling, or any other physical injuries  
9 from the Fitbit Surge™ and despite this knowledge Fitbit, Inc. continued to manufacture, market,  
10 distribute, sell and profit from sales the Fitbit Surge™ despite Defendants' knowledge of the risks  
11 associated with it.

12 74. Despite such knowledge, the Defendants, failed to properly warn Laura Brown,  
13 consumers, and the public of the increased risk of injury associated with using the Fitbit Surge™.

14 75. As a direct and proximate result of Defendants' culpable acts, omissions,  
15 misrepresentations and failure to warn, Laura Brown suffered injuries from the using the Fitbit  
16 Surge™, including redness around both wrists, irritation, warmth in the affected area, itching, burning,  
17 and severe blistering beginning approximately February 2015 and continuing to date.



1           76. As a direct and proximate consequence of Defendants' negligence, negligent  
2 misrepresentations, omissions and/or otherwise culpable acts described herein, Laura Brown sustained  
3 injuries and damages, including incurring bodily injury, pain and suffering, disability, the costs for  
4 necessary healthcare, treatment and medical services, loss of wages, mental anguish, diminished  
5 capacity for the enjoyment of life and diminished quality of life, aggravation of preexisting  
6 conditions and activation of latent conditions.

7           **G. Timothy LaPean**

8           77. Timothy LaPean purchased the Fitbit Surge™ on or around December 29, 2014. He  
9 purchased and used the device in Saint Paul, Minnesota.

10          78. At all times herein mentioned, and prior to the use of the Fitbit Surge™ by Timothy  
11 LaPean, Defendants had knowledge that there was an increased risk of skin irritation, rashes, burns,  
12 blisters, cuts, boils, open wounds, redness, itching, cracking, peeling, or any other physical injuries  
13 from the Fitbit Surge™ and despite this knowledge Fitbit, Inc. continued to manufacture, market,  
14 distribute, sell and profit from sales the Fitbit Surge™ despite Defendants' knowledge of the risks  
15 associated with it.

16          79. Despite such knowledge, the Defendants, failed to properly warn Timothy LaPean,  
17 consumers, and the public of the increased risk of injury associated with using the Fitbit Surge™.

18          80. As a direct and proximate result of Defendants culpable acts, omissions,  
19 misrepresentations and failure to warn, Timothy LaPean suffered injuries from the using the Fitbit  
20 Surge™, including redness and a rash on his left wrist, irritation, itchiness, and flaking of the skin  
21 beginning approximately March 5, 2015 and continuing to date.

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12 81. Upon alerting Defendants of the symptoms he began to experience, Timothy LaPean,  
13 was told, by a Customer Support Representative, that the symptoms were the result of user error, and  
14 directed Timothy LaPean to a PDF document about cleaning the device.

15 82. As a direct and proximate consequence of Defendants' negligence, negligent  
16 misrepresentations, omissions and/or otherwise culpable acts described herein, Timothy LaPean  
17 sustained injuries and damages, including incurring bodily injury, pain and suffering, disability, the  
18 costs for necessary healthcare, treatment and medical services, loss of wages, mental anguish,  
19 diminished capacity for the enjoyment of life and diminished quality of life, aggravation of  
20 preexisting conditions and activation of latent conditions

21 **H. Jason Crain**

22 83. Jason Crain purchased the Fitbit Surge™ on or around February 1, 2015. He purchased  
23 and used the device in Orlando, Florida.

24 84. At all times herein mentioned, and prior to the use of the Fitbit Surge™ by Jason Crain,  
25 Defendants had knowledge that there was an increased risk of skin irritation, rashes, burns, blisters,  
26 cuts, boils, open wounds, redness, itching, cracking, peeling, or any other physical injuries from the  
27 Fitbit Surge™ and despite this knowledge Fitbit, Inc. continued to manufacture, market, distribute, sell  
28 and profit from sales the Fitbit Surge™ despite Defendants' knowledge of the risks associated with it.

1 85. Despite such knowledge, the Defendants, failed to properly warn Jason Crain,  
2 consumers, and the public of the increased risk of injury associated with using the Fitbit Surge™.



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14 86. As a direct and proximate result of Defendants culpable acts, omissions,  
15 misrepresentations and failure to warn, Jason Crain suffered injuries from the using the Fitbit Surge™,  
16 including redness and a rash on both wrists, irritation, itchiness, and flaking of the skin beginning  
17 approximately April 2015 and continuing to date.

18 87. As a direct and proximate consequence of Defendants' negligence, negligent  
19 misrepresentations, omissions and/or otherwise culpable acts described herein, Jason Crain sustained  
20 injuries and damages, including incurring bodily injury, pain and suffering, disability, the costs for  
21 necessary healthcare, treatment and medical services, loss of wages, mental anguish, diminished  
22 capacity for the enjoyment of life and diminished quality of life, aggravation of preexisting  
23 conditions and activation of latent conditions.

24 **I. Sterling De Lavallade**

25 88. Sterling De Lavallade purchased the Fitbit Charge HR™ on or around April 13, 2015.  
26 He purchased and used the device in Conyers, Georgia.

27 89. At all times herein mentioned, and prior to the use of the Fitbit Charge HR™ by  
28 Sterling De Lavallade, Defendants had knowledge that there was an increased risk of skin irritation,



1 rashes, burns, blisters, cuts, boils, open wounds, redness, itching, cracking, peeling, or any other  
2 physical injuries from the Fitbit Charge HR™ and despite this knowledge Fitbit, Inc. continued to  
3 manufacture, market, distribute, sell and profit from sales the Fitbit Charge HR™ despite Defendants’  
4 knowledge of the risks associated with it.

5 90. Despite such knowledge, the Defendants, failed to properly warn Sterling De  
6 Lavallade, consumers, and the public of the increased risk of injury associated with using the Fitbit  
7 Charge HR™.



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20 91. As a direct and proximate result of Defendants culpable acts, omissions,  
21 misrepresentations and failure to warn, Sterling De Lavallade suffered injuries from the using the Fitbit  
22 Charge HR™, including redness and a rash on his left wrist, irritation, itchiness, scabbing, and flaking  
23 of the skin beginning approximately April 15, 2015 and continuing to date.

24 92. As a direct and proximate consequence of Defendants’ negligence, negligent  
25 misrepresentations, omissions and/or otherwise culpable acts described herein, Sterling De Lavallade  
26 sustained injuries and damages, including incurring bodily injury, pain and suffering, disability, the  
27 costs for necessary healthcare, treatment and medical services, loss of wages, mental anguish,  
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1 diminished capacity for the enjoyment of life and diminished quality of life, aggravation  
2 of preexisting conditions and activation of latent conditions.

3 **J. Steven Aleman**

4 93. Steven Aleman purchased the Fitbit Charge HR™ on or around January of 2015. He  
5 purchased and used the device in PortArthur, Texas.

6 94. At all times herein mentioned, and prior to the use of the Fitbit Charge HR™ by Steven  
7 Aleman, Defendants had knowledge that there was an increased risk of skin irritation, rashes, burns,  
8 blisters, cuts, boils, open wounds, redness, itching, cracking, peeling, or any other physical injuries  
9 from the Fitbit Charge HR™ and despite this knowledge Fitbit, Inc. continued to manufacture, market,  
10 distribute, sell and profit from sales the Fitbit Charge HR™ despite Defendants' knowledge of the  
11 risks associated with it.

12 95. Despite such knowledge, the Defendants, failed to properly warn Steven Aleman,  
13 consumers, and the public of the increased risk of injury associated with using the Fitbit Charge  
14 HR™.



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23 96. As a direct and proximate result of Defendants culpable acts, omissions,  
24 misrepresentations and failure to warn, Steven Aleman suffered injuries from the using the Fitbit  
25 Charge HR™, including redness and a rash on both wrists, irritation, itchiness, and flaking of the skin  
26 beginning approximately March 18, 2015 and continuing to date.

27 97. As a direct and proximate consequence of Defendants' negligence, negligent  
28 misrepresentations, omissions and/or otherwise culpable acts described herein, Steven Aleman

1 sustained injuries and damages, including incurring the costs for necessary healthcare, treatment and  
2 medical services, loss of wages, mental anguish, diminished capacity for the enjoyment of life and  
3 diminished quality of life, aggravation of preexisting conditions and activation of latent conditions.

4 **K. James Frazier**

5 98. James Frazier purchased the Fitbit Surge™ on or around February 8, 2015. He  
6 purchased and used the device in Lexington, Kentucky.

7 99. At all times herein mentioned, and prior to the use of the Fitbit Surge™ by James  
8 Frazier, Defendants had knowledge that there was an increased risk of skin irritation, rashes, burns,  
9 blisters, cuts, boils, open wounds, redness, itching, cracking, peeling, or any other physical injuries  
10 from the Fitbit Surge™ and despite this knowledge Fitbit, Inc. continued to manufacture, market,  
11 distribute, sell and profit from sales the Fitbit Surge™ despite Defendants' knowledge of the risks  
12 associated with it.

13 100. Despite such knowledge, the Defendants, failed to properly warn James Frazier,  
14 consumers, and the public of the increased risk of injury associated with using the Fitbit Surge™.



24 101. As a direct and proximate result of Defendants culpable acts, omissions,  
25 misrepresentations and failure to warn, James Frazier suffered injuries from the using the Fitbit  
26 Surge™, including redness and a rash on both wrists, irritation, itchiness, and flaking of the skin  
27 beginning approximately April 4, 2015 and continuing to date.

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1 102. As a direct and proximate consequence of Defendants' negligence, negligent  
2 misrepresentations, omissions and/or otherwise culpable acts described herein, James Frazier sustained  
3 injuries and damages, including incurring bodily injury, pain and suffering, disability, the costs for  
4 necessary healthcare, treatment and medical services, loss of wages, mental anguish, diminished  
5 capacity for the enjoyment of life and diminished quality of life, aggravation of preexisting  
6 conditions and activation of latent conditions.

7 **L. Noel Gallant**

8 103. Noel Gallant purchased the Fitbit Surge™ on or around March of 2015. He purchased  
9 and used the device in Pleasant Hills, California.

10 104. At all times herein mentioned, and prior to the use of the Fitbit Surge™ by Noel  
11 Gallant, Defendants had knowledge that there was an increased risk of skin irritation, rashes, burns,  
12 blisters, cuts, boils, open wounds, redness, itching, cracking, peeling, or any other physical injuries  
13 from the Fitbit Surge™ and despite this knowledge Fitbit, Inc. continued to manufacture, market,  
14 distribute, sell and profit from sales the Fitbit Surge™ despite Defendants' knowledge of the risks  
15 associated with it.

16 105. Despite such knowledge, the Defendants, failed to properly warn Noel Gallant,  
17 consumers, and the public of the increased risk of injury associated with using the Fitbit Surge™.



26 106. As a direct and proximate result of Defendants culpable acts, omissions,  
27 misrepresentations and failure to warn, Noel Gallant suffered injuries from the using the Fitbit  
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1 107. Surge™, including redness and a rash on his left wrists, irritation, itchiness, redness,  
2 and flaking/peeling of the skin beginning approximately April 21, 2015 and continuing to date.

3 108. As a direct and proximate consequence of Defendants' negligence, negligent  
4 misrepresentations, omissions and/or otherwise culpable acts described herein, James Frazier sustained  
5 injuries and damages, including incurring bodily injury, pain and suffering, disability, the costs for  
6 necessary healthcare, treatment and medical services, loss of wages, mental anguish, diminished  
7 capacity for the enjoyment of life and diminished quality of life, aggravation of preexisting  
8 conditions and activation of latent conditions.

9 **M. Delayed Discovery & Fraudulent Concealment**

10 109. The discovery rule applies to toll the running of the statute of limitations until Plaintiffs  
11 knew, or through the exercise of reasonable care and diligence, should have known of the existence of  
12 their claims against all Defendants. The nature of plaintiffs' injuries, and subsequent damages, and  
13 their relationship to the use of the Fitbit Surge™ or Fitbit Charge HR™, was not discussed, and  
14 through reasonable care and diligence could not have been discovered.

15 110. Defendants, through their affirmative misrepresentations and omissions, actively  
16 concealed from Plaintiffs the true risks associated with the Fitbit Surge™ and Fitbit Charge HR™.

17 111. As a result of Defendants' actions, Plaintiffs were unaware, and could not have  
18 reasonably known or have learned through reasonable diligence, they had been exposed to the risks  
19 identified in this Complaint, and that those risks were the result of these acts, omissions, and  
20 misrepresentations.

21 112. Plaintiffs first learned of the risks associated with the Fitbit Surge™ and Fitbit Charge  
22 HR™ and Defendants' concealment of those risks within two years of filing this complaint.

23 113. Accordingly, no limitations period ought to accrue until such time as Plaintiffs knew or  
24 reasonably should have known of some causal connection between the use of the Fitbit Surge™ or  
25 Fitbit Charge HR™ and/or the harm suffered as a result. As such, Plaintiffs hereby invoke the  
26 discovery rule based on the fact that this Complaint is filed well within the time Plaintiffs knew or  
27 should have known the facts as alleged herein.

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1 114. Additionally, the accrual and running of any applicable statute of limitations has  
2 been tolled by reason of Defendants' fraudulent concealment.

3 115. Additionally, each Defendant is equitably estopped from asserting any limitations  
4 defense by virtue of its fraudulent concealment and other misconduct as described in this Complaint.

5 116. Additionally, the limitations period is tolled under principles of equitable tolling.

6 **FIRST CAUSE OF ACTION**

7 **STRICT PRODUCTS LIABILITY- MANUFACTURING DEFECT**

8 **(Against All Defendants)**

9 Plaintiffs incorporate by reference each and every paragraph of this Complaint as though set  
10 forth in full in this cause of action and further allege:

11 117. At all times relevant and material to this action, the Defendants designed, tested,  
12 manufactured, packaged, marketed, advertised, distributed, promoted, and sold the Fitbit Surge™ and  
13 Fitbit Charge HR™, placing the products into the stream of commerce.

14 118. At all times relevant and material, the Fitbit Surge™ and Fitbit Charge HR™ were  
15 designed, tested, inspected, manufactured, assembled, developed, labeled, sterilized, licensed,  
16 marketed, advertised, promoted, sold, packaged, supplied and/or distributed by Defendants in a  
17 defective and/or unreasonably dangerous condition when it left Defendants' possession.

18 119. The Fitbit Surge™ and Fitbit Charge HR™ were expected to reach, and did reach,  
19 users and/or consumers, including Plaintiffs, without substantial change in the defective and/or  
20 unreasonably dangerous condition.

21 120. The Fitbit Surge™ and Fitbit Charge HR™ were used by Plaintiffs in the foreseeable  
22 manner normally intended, recommended, promoted, and/or marketed by Defendants.

23 121. The Fitbit Surge™ and Fitbit Charge HR™ were defective and unreasonably dangerous  
24 when they entered the stream of commerce in one or more of the following particulars:

- 25 a. The Fitbit Surge™ and Fitbit Charge HR™ contained manufacturing defects in that  
26 they caused and/or increased the risk of skin irritation, rashes, burns, blisters, cuts,  
27 boils, open wounds, redness, itching, cracking, peeling, or any other physical injuries.

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- 1           b. The Fitbit Surge™ and Fitbit Charge HR™ contained manufacturing defects in that  
2           they differed from the Defendants’ design and specifications of other typical units of the  
3           same product line.
- 4           i. The Fitbit Surge™ and Fitbit Charge HR™ were not safe because the health  
5           risks associated with them outweighed the benefits.
  - 6           ii. The Fitbit Surge™ and Fitbit Charge HR™ were marketed and promoted for use  
7           when they carried an unreasonable and unnecessary risk of injury.
  - 8           iii. The Fitbit Surge™ and Fitbit Charge HR™ were insufficiently and/or  
9           inadequately tested by Defendants.
  - 10          iv. The Fitbit Surge™ and Fitbit Charge HR™ were not safe due, in part, to  
11          inadequate and/or defective instructions and inadequate and defective warnings  
12          provided by Defendants.
  - 13          v. The Fitbit Surge™ and Fitbit Charge HR™ were marketed and promoted for use  
14          as safe when they were not. They were unreasonably dangerous in that, as  
15          designed, they failed to perform safely when used by ordinary consumers,  
16          including Plaintiffs.
  - 17          vi. The Fitbit Surge™ and Fitbit Charge HR™ were unreasonably dangerous in  
18          that, as designed, the risks of injury posed by using the products exceeded any  
19          benefits the products were designed to or might in fact bestow.
  - 20          vii. The Fitbit Surge™ and Fitbit Charge HR™ were defective in design in that the  
21          products neither bore, nor were packaged with, nor accompanied by, warnings  
22          adequate to alert users, including Plaintiffs, of the increased risks associated  
23          with using the products including, but not limited to, the risk of injury.
  - 24          viii. The Fitbit Surge™ and Fitbit Charge HR™ were not accompanied by adequate  
25          warnings and/or instructions for use that included inadequate information to  
26          fully apprise the medical, and/or scientific communities, and users and/or  
27          consumers of the potential risks and side effects associated with using the  
28          products.

- 1 ix. The Fitbit Surge™ and Fitbit Charge HR™ were unsafe for normal or  
2 reasonably anticipated use. Said products were defective and/or unreasonably  
3 dangerous in design, construction and/or composition.
- 4 x. The Fitbit Surge™ and Fitbit Charge HR™ were defective and/or unreasonably  
5 dangerous because the products did not conform to express warranties of the  
6 manufacturer about the products.
- 7 xi. The Fitbit Surge™ and Fitbit Charge HR™ were defective and/or unreasonably  
8 dangerous due to inadequate warnings, testing and study, and inadequate  
9 reporting regarding the results of the clinical trials, testing and/or study.

10 122. The Fitbit Surge™ and Fitbit Charge HR™ devices, as manufactured and supplied by  
11 the Defendants were defective due to inadequate post-marketing warnings or instructions because, after  
12 Defendants knew or should have known of the risk of injuries from use of these devices, Defendants  
13 failed to provide adequate warnings to the community and the consumers, to whom it was directly  
14 marketing and advertising; and, further, it continued to affirmatively promote both the Fitbit Surge™  
15 and Fitbit Charge HR™ as safe and effective.

16 123. A reasonable person who had actual knowledge of the increased risks associated with  
17 using the Fitbit Surge™ and Fitbit Charge HR™ would have concluded that they should not have been  
18 marketed and/or used.

19 124. Despite the fact that Defendants knew or should have known of the defective  
20 nature of the Fitbit Surge™ and Fitbit Charge HR™, Defendants continued to design, manufacture  
21 and sell both the Fitbit Surge™ and Fitbit Charge HR™ so as to maximize sales and profits at the  
22 expense of the public health and safety. Defendant thus acted with conscious and deliberate  
23 disregard of the foreseeable harm caused by the Fitbit Surge™ and Fitbit Charge HR™.

24 125. Plaintiffs, prior to injury, through the exercise of reasonable care, could not have  
25 discovered the risks of injury associated with and/or caused by the Fitbit Surge™ and Fitbit Charge  
26 HR™.

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1 126. As a direct and proximate cause of the defective and/or unreasonably dangerous  
2 conditions of Fitbit Surge™ and Fitbit Charge HR™, the products were used by Plaintiffs. As a result,  
3 Plaintiffs suffered the injuries and damages alleged herein.

4 127. The defective natures of the Fitbit Surge™ and Fitbit Charge HR™ were substantial  
5 factors in causing each Plaintiff's harm.

6 128. Information given by Defendants to the consumers concerning the safety and efficacy  
7 of the Fitbit Surge™ and Fitbit Charge HR™, especially the information contained in the advertising  
8 and promotional materials, and the inadequate warnings did not accurately reflect the risks associated  
9 with using the products.

10 129. Had adequate information regarding the safety of the products been provided to  
11 Plaintiffs, they would not have used the Fitbit Surge™ and Fitbit Charge HR™. Had adequate  
12 warnings and/or instructions been provided, they would not have used the Fitbit Surge™ and Fitbit  
13 Charge HR™.

14 130. Defendants acted with conscious and/or deliberate disregard of the foreseeable harm  
15 caused by use of its products.

16 131. As a direct and proximate consequence of Defendants negligence, willful, wanton,  
17 and/or intentional acts, omissions, misrepresentations and/or otherwise culpable acts Plaintiff suffered  
18 the injuries, damages, and harm as alleged herein.

19 WHEREFORE, Plaintiffs demand judgment against Defendants and seek compensatory,  
20 exemplary and punitive damages, together with interest, and such other and further relief as this  
21 Court deems just and proper.

22 **SECOND CAUSE OF ACTION**

23 **STRICT PRODUCTS LIABILITY- DESIGN DEFECT**

24 (Against All Defendants)

25 Plaintiffs incorporate by reference each and every paragraph of this Complaint as though set forth  
26 in full in this cause of action and further allege:

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1           132. At all times relevant and material to this action, the Defendants designed, tested,  
2 manufactured, packaged, marketed, advertised, distributed, promoted, and sold the Fitbit Surge™ and  
3 Fitbit Charge HR™, placing the products into the stream of commerce.

4           133. At all times relevant and material, the Fitbit Surge™ and Fitbit Charge HR™ were  
5 designed, tested, inspected, manufactured, assembled, developed, labeled, sterilized, licensed,  
6 marketed, advertised, promoted, sold, packaged, supplied and/or distributed by Defendants in a  
7 defective and/or unreasonably dangerous condition.

8           134. The Fitbit Surge™ and Fitbit Charge HR™ were expected to reach, and did reach,  
9 users and/or consumers, including Plaintiffs, without substantial change in the defective and/or  
10 unreasonably dangerous condition.

11           135. The Fitbit Surge™ and Fitbit Charge HR™ were used by Plaintiffs in the foreseeable  
12 manner normally intended, recommended, promoted, and/or marketed by Defendants.

13           136. The Fitbit Surge™ and Fitbit Charge HR™ were defective in that they did not perform  
14 as safely as an ordinary consumer would have expected them to perform when used or misused in an  
15 intended or reasonably foreseeable way.

16           137. The Fitbit Surge™ and Fitbit Charge HR™ were defective and unreasonably dangerous  
17 when they entered the stream of commerce in one or more of the following particulars:

- 18           a. The Fitbit Surge™ and Fitbit Charge HR™ contained design defects in that they  
19 caused and/or increased the risk of skin irritation, rashes, burns, blisters, cuts,  
20 boils, open wounds, redness, itching, cracking, peeling, or any other physical  
21 injuries.
- 22           b. The Fitbit Surge™ and Fitbit Charge HR™ were not safe because the health  
23 risks associated with them outweighed their benefits.
- 24           c. The Fitbit Surge™ and Fitbit Charge HR™ were marketed and promoted for use  
25 when they carried unreasonable and unnecessary risks of injury.
- 26           d. The Fitbit Surge™ and Fitbit Charge HR™ were insufficiently and/or  
27 inadequately tested by Defendants.

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- 1 e. The Fitbit Surge™ and Fitbit Charge HR™ were not safe due, in part, to  
2 inadequate and/or defective instructions and inadequate and defective warnings  
3 provided by Defendants.
- 4 f. The Fitbit Surge™ and Fitbit Charge HR™ were marketed and promoted for use  
5 as safe when they were not. They were unreasonably dangerous in that, as  
6 designed, they failed to perform safely when used by ordinary consumers,  
7 including Plaintiffs.
- 8 g. The Fitbit Surge™ and Fitbit Charge HR™ were unreasonably dangerous in  
9 that, as designed, the risks of injury posed by using the products exceeded any  
10 benefits the products were designed to or might in fact bestow.
- 11 h. The Fitbit Surge™ and Fitbit Charge HR™ were defective in design in that the  
12 products neither bore, nor were packaged with, nor accompanied by, warnings  
13 adequate to alert users, including Plaintiffs, of the increased risks associated  
14 with using the products including, but not limited to, the risk of injury.
- 15 i. The Fitbit Surge™ and Fitbit Charge HR™ were not accompanied by adequate  
16 warnings and/or instructions for use that included adequate information to fully  
17 apprise the medical, and/or scientific communities, and users and/or consumers  
18 of the potential risks and side effects associated with using the products.
- 19 j. The Fitbit Surge™ and Fitbit Charge HR™ were unsafe for normal or  
20 reasonably anticipated use. Said products were defective and/or unreasonably  
21 dangerous in design, construction and/or composition.
- 22 k. The Fitbit Surge™ and Fitbit Charge HR™ were defective and/or unreasonably  
23 dangerous because the products did not conform to express warranties of the  
24 manufacturer about the products.
- 25 l. The Fitbit Surge™ and Fitbit Charge HR™ were defective and/or unreasonably  
26 dangerous due to inadequate warnings, testing and study, and inadequate  
27 reporting regarding the results of the clinical trials, testing and/or study.

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1           138. The Fitbit Surge™ and Fitbit Charge HR™, as designed and supplied by the Defendants  
2 were defective due to inadequate post-marketing warnings or instructions because, after Defendants  
3 knew or should have known of the risk of injuries from use, Defendants failed to provide adequate  
4 warnings to the community and the consumers, to whom it was directly marketing and advertising; and,  
5 further, it continued to affirmatively promote the Fitbit Surge™ and Fitbit Charge HR™ as safe and  
6 effective.

7           139. A reasonable person who had actual knowledge of the increased risks associated with  
8 using the Fitbit Surge™ and Fitbit Charge HR™ would have concluded that they should not have been  
9 marketed and/or used.

10           140. Despite the fact that Defendants knew or should have known of the defective  
11 nature of the Fitbit Surge™ and Fitbit Charge HR™, Defendants continued to design, manufacture  
12 and sell the Fitbit Surge™ and Fitbit Charge HR™ so as to maximize sales and profits at the expense  
13 of the public health and safety. Defendant thus acted with conscious and deliberate disregard of the  
14 foreseeable harm caused by Fitbit Surge™ and Fitbit Charge HR™.

15           141. Plaintiffs, prior to injury, through the exercise of reasonable care, could not have  
16 discovered the risks of injury associated with and/or caused by the Fitbit Surge™ and Fitbit Charge  
17 HR™.

18           142. As a direct and proximate cause of the defective and/or unreasonably dangerous  
19 conditions of the Fitbit Surge™ and Fitbit Charge HR™, the products were used by Plaintiffs. As a  
20 result, Plaintiffs suffered the injuries and damages alleged herein.

21           143. Information given by Defendants to the consumers concerning the safety and efficacy  
22 of both the Fitbit Surge™ and Fitbit Charge HR™, especially the information contained in the  
23 advertising and promotional materials and inadequate warnings, did not accurately reflect the risks  
24 associated with using the products.

25           144. Had adequate information regarding the safety of the products been provided to  
26 Plaintiffs, they would not have used the Fitbit Surge™ or Fitbit Charge HR™. Had adequate  
27 warnings and/or instructions been provided, they would not have used the Fitbit Surge™ or Fitbit  
28 Charge HR™.

1 145. Defendants acted with conscious and/or deliberate disregard of the foreseeable harm  
2 caused by use of its products.

3 146. As a direct and proximate consequence of Defendants negligent, willful, wanton,  
4 and/or intentional acts, omissions, misrepresentations and/or otherwise culpable acts Plaintiffs  
5 suffered the injuries, damages, and harm as alleged herein.

6 147. The defective nature and failure of the Fitbit Surge™ and Fitbit Charge HR™ to  
7 perform safely was a substantial factor in causing each Plaintiffs' harm.

8 WHEREFORE, Plaintiffs demand judgment against Defendants and seek compensatory,  
9 exemplary and punitive damages, together with interest, and such other and further relief as this  
10 Court deems just and proper.

11 **THIRD CAUSE OF ACTION**

12 **STRICT PRODUCTS LIABILITY- FAILURE TO WARN**

13 (Against All Defendants)

14 Plaintiffs incorporate by reference each and every paragraph of this Complaint as though set forth  
15 in full in this cause of action, and further allege:

16 148. Defendants manufactured, distributed, and sold the Fitbit Surge™ and Fitbit Charge  
17 HR™.

18 149. The Fitbit Surge™ and Fitbit Charge HR™ are unreasonably dangerous, even when  
19 used in a foreseeable manner as designed and intended by the Defendants.

20 150. The Fitbit Surge™ and Fitbit Charge HR™ had potential risks that were knowable in  
21 light of the scientific knowledge generally accepted in the scientific community at the time of  
22 manufacture, distribution, and sale.

23 151. These potential risks presented a substantial danger when the Fitbit Surge™ and Fitbit  
24 Charge HR™ were used or misused in an intended or reasonably foreseeable way.

25 152. Ordinary consumers, including Plaintiffs, would not have recognized the potential  
26 risks associated with the Fitbit Surge™ and Fitbit Charge HR™.

27 153. Defendants failed to adequately warn Plaintiff and consumers of the potential risks  
28 associated with using the Fitbit Surge™ and Fitbit Charge HR™.

1 154. Plaintiff did not have the same knowledge as Defendants and no adequate warning was  
2 communicated to her.

3 155. Defendants had a continuing duty to warn consumers and the public of increased  
4 health risks associated with its products, and negligently and/or wantonly breached its duty as  
5 follows:

- 6 a. Failed to include adequate warnings of the increased risk of injury associated  
7 with using the Fitbit Surge™ and Fitbit Charge HR™;
- 8 b. Failed to provide adequate and/or proper instructions regarding the proper use  
9 of the Fitbit Surge™ and Fitbit Charge HR™;
- 10 c. Failed to inform Plaintiffs that the Fitbit Surge™ and Fitbit Charge HR™ had  
11 not been adequately tested to determine the safety and risks associated with  
12 using them.

13 156. Defendants had a duty to warn its customers and the public about the increased risks of  
14 injury and refused to do so placing profits, stock options and bonuses ahead of consumer safety.

15 157. Defendants breached their duty to warn consumers, including Plaintiffs, of the risks  
16 associated with the Fitbit Surge™ and Fitbit Charge HR™.

17 158. As a direct and proximate result of the actions and inactions of the Defendants as set forth  
18 above, Plaintiffs sustained injuries, damages, and harm as alleged herein.

19 159. The lack of sufficient warning and instructions associated with the Fitbit Surge™ and  
20 Fitbit Charge HR™ were a substantial factor in causing each Plaintiff's harm.

21 WHEREFORE, Plaintiffs demand judgment against Defendants and seek compensatory  
22 damages, and exemplary and punitive damages together with interest, and such other and further relief as  
23 this Court deems just and proper.

24 **FOURTH CAUSE OF ACTION**

25 **NEGLIGENCE**

26 (Against All Defendants)

27 Plaintiffs incorporate by reference each and every paragraph of this Complaint as though set forth  
28 in full in this cause of action and further allege:

1           160. Defendants negligently manufactured, designed, tested, researched, developed, labeled,  
2 packaged, distributed, promoted, marketed, advertised, and sold the Fitbit Surge™ and Fitbit Charge  
3 HR™ in this district and throughout the United States.

4           161. At all times relevant and material hereto, Defendants had a duty to exercise reasonable  
5 care in the design, manufacture, research and development, testing, processing, advertising,  
6 marketing, labeling, packaging, distribution, promotion and sale of the Fitbit Surge™ and Fitbit  
7 Charge HR™.

8           162. Defendants breached their duty and were negligent in their actions, misrepresentations,  
9 and omissions in numerous ways including the following:

- 10           a. Failing to test the Fitbit Surge™ and Fitbit Charge HR™ properly and  
11           thoroughly before releasing the products on the market;
- 12           b. Failing to analyze properly and thoroughly the data resulting from the pre-  
13           marketing tests of the Fitbit Surge™ and Fitbit Charge HR™;
- 14           d. Failing to conduct adequate post-market monitoring and surveillance of the  
15           Fitbit Surge™ and Fitbit Charge HR™ and analysis of adverse events;
- 16           e. Designing, manufacturing, marketing, advertising, distributing, and selling the  
17           Fitbit Surge™ and Fitbit Charge HR™ to consumers, including Plaintiffs,  
18           without an adequate warning of risks associated with using the products and  
19           without proper and/or adequate instructions to avoid the harm which could  
20           foreseeably occur as a result of using the products;
- 21           f. Failing to exercise due care when advertising and promoting the Fitbit Surge™  
22           and Fitbit Charge HR™;
- 23           g. Negligently continuing to manufacture, market, advertise, sell, promote and  
24           distribute the Fitbit Surge™ and Fitbit Charge HR™ after Defendant knew or  
25           should have known of the risks of serious injury and/or death associated with  
26           using the products;

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- 1 h. Failing to use due care in the preparation, design and development of the Fitbit  
2 Surge™ and Fitbit Charge HR™ to prevent and/or avoid and/or minimize the  
3 risk of injury to individuals when the product was used;
- 4 i. Failing to conduct adequate pre-market testing and research, post-marketing  
5 surveillance, and exposure studies to determine the safety of the Fitbit Surge™  
6 and Fitbit Charge HR™;
- 7 j. Failing to completely, accurately and in a timely fashion, disclose the results of  
8 testing and surveillance to Plaintiffs and consumers;
- 9 k. Failing to accompany the Fitbit Surge™ and Fitbit Charge HR™ with proper  
10 warnings regarding all possible risks associated with using the products;
- 11 l. Failing to use due care in the manufacture, inspection, and labeling of the Fitbit  
12 Surge™ and Fitbit Charge HR™ to prevent risk of injuries to individuals who  
13 used the products;
- 14 m. Failing to use due care in the promotion and selling of the Fitbit Surge™ and  
15 Fitbit Charge HR™ to prevent the risk of injuries to individuals when the  
16 products were used;
- 17 n. Failing to provide adequate and accurate training and information to those who  
18 sold the products;
- 19 o. Failing to provide adequate and accurate warning/training and information to  
20 non- defendant entities that sold the Fitbit Surge™ and Fitbit Charge HR™;
- 21 p. Failing to educate non-defendant entities and the public about the safest use of  
22 the products;
- 23 q. Failing to give non-defendant entities adequate information to weigh the risks of  
24 injury associated with the product;
- 25 r. Failing to test and inspect the Fitbit Surge™ and Fitbit Charge HR™ in a  
26 reasonable manner in order to ascertain whether or not they were safe and  
27 proper for the purpose for which they were designed, manufactured, and sold;

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- 1 s. Failing to utilize and implement reasonably safe designs in the manufacture of  
2 the Fitbit Surge™ and Fitbit Charge HR™;
- 3 u. Failing to label the Fitbit Surge™ and Fitbit Charge HR™ to adequately warn  
4 Plaintiffs of the increased risk of injury associated with the product including an  
5 increased risk of skin irritation, rash, burns, blistering, bleeding, peeling,  
6 cracking, scarring, nerve damage, tissue damage and other injuries;
- 7 v. Defendants knew or should have known that the Fitbit Surge™ and Fitbit Charge  
8 HR™ have unreasonable risks and caused side effects of which Plaintiffs would  
9 not have been aware.

10 163. Defendants advertised, marketed, sold and distributed the Fitbit Surge™ and Fitbit  
11 Charge HR™ despite the fact that the Defendants knew or should have known of the increased risks  
12 associated with using the products.

13 164. Defendants had a duty to warn their customers, the medical community and public about  
14 the increased risks of injury and refused to do so placing profits, stock options and bonuses ahead of  
15 consumer safety.

16 165. Defendants knew or should have known that the Fitbit Surge™ and Fitbit Charge HR™  
17 had unreasonably dangerous risks of which consumers would not be aware. Defendants nevertheless  
18 advertised, marketed, sold and distributed the Fitbit Surge™ and Fitbit Charge HR™.

19 166. Despite the fact that Defendant knew or should have known that the Fitbit Surge™  
20 and Fitbit Charge HR™ increased the risk of injury, Defendants continued to manufacture, market,  
21 advertise, promote, sell and distribute the Fitbit Surge™ and Fitbit Charge HR™ to consumers,  
22 including Plaintiffs.

23 167. Defendants recklessly, and/or negligently represented to Plaintiffs, as well as any non-  
24 defendant entities, and those who Defendants knew would justifiably rely and accept, that the Fitbit  
25 Surge™ and Fitbit Charge HR™ were safe and that the utility of the devices outweighed any risk in  
26 use for their intended purposes.

27 168. Defendants recklessly and/or negligently failed to disclose to Plaintiffs, and others,  
28 important safety and efficacy information, thereby suppressing material facts about the Fitbit Surge™



1 and Fitbit Charge HR™, while having a duty to disclose such information, which duty arose from  
2 their actions of making, marketing, promoting, distributing and selling the Fitbit Surge™ and Fitbit  
3 Charge HR™ as alleged.

4 169. Defendants led Plaintiffs to rely upon the safety of the Fitbit Surge™ and Fitbit Charge  
5 HR™ in their use of the products.

6 170. Defendants' false representations were recklessly and/or negligently made in that  
7 both the Fitbit Surge™ and Fitbit Charge HR™ in fact caused injury, were unsafe, and the benefits  
8 of their use were far outweighed by the risk associated with use thereof.

9 171. Defendants knew or should have known that its representations and/or omissions  
10 were false. Defendants made such false, negligent and/or reckless representations with the intent  
11 or purpose that Plaintiffs, and any non-defendant entity would rely upon such representations,  
12 leading to the use of the Fitbit Surge™ and Fitbit Charge HR™ as described.

13 172. Defendants recklessly and/or negligently misrepresented and/or omitted information  
14 with respect to the Fitbit Surge™ and Fitbit Charge HR™ as set forth above.

15 173. Defendants omitted, suppressed, and/or concealed material facts concerning the  
16 dangers and risk of injuries associated with the use of the Fitbit Surge™ and Fitbit Charge HR™.  
17 Furthermore, Defendants' purpose was willfully blind to, ignored, downplayed, avoided, and/or  
18 otherwise understated the nature of the risks associated with the Fitbit Surge™ and Fitbit Charge  
19 HR™ in order to increase sales.

20 174. At the time Defendants made these misrepresentations and/or omissions, they knew or  
21 should have known that both the Fitbit Surge™ and Fitbit Charge HR™ were unreasonably dangerous  
22 and not what Defendants had represented to Plaintiffs.

23 175. Defendants' misrepresentations and/or omissions were undertaken with an intent that  
24 Plaintiffs rely upon them.

25 176. Plaintiffs, as well as any non-defendant entities, relied on and were induced by  
26 Defendants' misrepresentations, omissions, and/or active concealment of the dangers of the Fitbit  
27 Surge™ and Fitbit Charge HR™ to employ these products.

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1 177. Plaintiffs did not know that these representations were false and therefore were  
2 justifiably relied upon.

3 178. As a direct and proximate consequence of Defendants' negligent, willful, wanton,  
4 and/or intentional acts, omissions, misrepresentations and/or otherwise culpable acts described herein,  
5 Plaintiffs sustained injuries and damages as alleged herein.

6 179. Had Plaintiffs been aware of the increased risk of injury associated with the Fitbit  
7 Surge™ and Fitbit Charge HR™ and the relative efficacy of the Fitbit Surge™ and Fitbit Charge  
8 HR™ compared with other readily available products, they would not have used the Fitbit  
9 Surge™ and Fitbit Charge HR™.

10 180. As a direct and proximate consequence of Defendants' negligence, willful, wanton,  
11 and/or intentional acts, omissions, misrepresentations and/or otherwise culpable acts described  
12 herein, Plaintiff sustained the injuries, damages, and harm as alleged herein.

13 181. Defendants' negligence was a substantial factor in causing Plaintiffs' harm.

14 WHEREFORE, Plaintiffs demand judgment against Defendants and seek compensatory  
15 damages, and exemplary and punitive damages together with interest, and such other and further relief  
16 as this Court deems just and proper.

17 **FIFTH CAUSE OF ACTION**

18 **BREACH OF EXPRESS WARRANTY**

19 (Against All Defendants)

20 Plaintiffs incorporate by reference each and every paragraph of this Complaint as though set forth  
21 in full in this cause of action and further alleges:

22 182. Defendants made statements of fact and promises to consumers, including Plaintiffs, that  
23 the Fitbit Surge™ and Fitbit Charge HR™ were:

- 24 a. Safe;
- 25 b. Efficacious;
- 26 c. fit for use;
- 27 d. of merchantable quality;
- 28 e. adequately tested;

1 f. did not increase the risk of injury;

2 183. Defendants breached the express warranties as follows:

- 3 a. Defendants misrepresented the safety of the Fitbit Surge™ and Fitbit Charge  
4 HR™ in the products' labeling, advertising, marketing materials, detail persons,  
5 seminar presentations, publications, and/or notice letters;
- 6 b. Defendants misrepresented the risks associated with using the Fitbit Surge™  
7 and Fitbit Charge HR™;
- 8 c. Defendants withheld and/or concealed and/or downplayed the information  
9 and/or evidence that the products were associated with an increased risk of  
10 injuries;
- 11 d. Defendants misrepresented that the Fitbit Surge™ and Fitbit Charge HR™ were  
12 as safe, and/or safer than other similar products used;
- 13 e. Defendants fraudulently concealed information about the safety of the Fitbit  
14 Surge™ and Fitbit Charge HR™ including information that the products were  
15 not safer than alternative products available on the market; and
- 16 f. Defendants misrepresented information regarding the true safety and/or efficacy  
17 of the Fitbit Surge™ and Fitbit Charge HR™.

18 184. The Fitbit Surge™ and Fitbit Charge HR™ did not conform to Defendants' express  
19 representations and warranties or meet the quality of Defendants descriptions of safety and efficacy.

20 185. At all relevant times, including during the period that Plaintiffs used the Fitbit Surge™  
21 or Fitbit Charge HR™, it did not perform as safely as an ordinary consumer would expect when used  
22 as intended or in a reasonably foreseeable manner.

23 186. At all relevant times, including during the period Plaintiffs used the Fitbit Surge™ or  
24 Fitbit Charge HR™, the devices did not perform in accordance with the Defendants' representations.

25 187. In deciding to purchase and/or use the Fitbit Surge™ or Fitbit Charge HR™, Plaintiffs  
26 and other consumers, and the medical community relied upon Defendants' express warranties.

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1 188. As a direct and proximate consequence of Defendants' negligence, willful, wanton,  
2 and/or intentional acts, omissions, misrepresentations and/or otherwise culpable acts described herein,  
3 Plaintiffs sustained injuries, damages, and harm as alleged herein.

4 189. The failures of the Fitbit Surge™ and Fitbit Charge HR™ to perform as represented  
5 was a substantial factor in causing Plaintiffs; harm.

6 WHEREFORE, Plaintiffs demand judgment against Defendants and seek compensatory  
7 damages, and exemplary and punitive damages together with interest, and such other and further relief  
8 as this Court deems just and proper.

9 **SIXTH CAUSE OF ACTION**

10 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

11 (Against All Defendants)

12 Plaintiffs incorporate by reference each and every paragraph of this Complaint as though set  
13 forth in full in this cause of action and further allege:

14 190. Plaintiff BROWN purchased the Fitbit Surge™ from Defendants.

15 191. Plaintiff LAPEAN purchased the Fitbit Surge™ from a third-party retailer.

16 192. Plaintiff CRAIN purchased the Fitbit Surge™ from a third-party retailer.

17 193. Plaintiff DE LAVALLADE purchased the Fitbit Charge HR™ from a third-party  
18 retailer

19 194. Plaintiff ALEMAN purchased the Fitbit Charge HR™ from a third-party retailer.

20 195. Plaintiff FRAZIER purchased the Fitbit Surge™ from a third-party retailer.

21 196. Plaintiff GALLANT purchased the Fitbit Surge™ from Defendants.

22 197. At all relevant and material times, including the time of Plaintiffs' purchases,  
23 Defendants were in the business of manufacturing, distributing, advertising, promoting, and selling the  
24 Fitbit Surge™ and Fitbit Charge HR™.

25 198. Defendants by their occupation held themselves out as having special knowledge or  
26 skill regarding the Fitbit Surge™ and Fitbit Charge HR™.

27 199. Defendants knew and intended that both the Fitbit Surge™ and Fitbit Charge HR™ be  
28 used when they were placed into the stream of commerce.

1           200. Defendants knew and intended that the Fitbit Surge™ and Fitbit Charge HR™ be used  
2 as they were used by Plaintiffs.

3           201. Defendants impliedly warranted to Plaintiffs that the Fitbit Surge™ and Fitbit Charge  
4 HR™ were safe for use.

5           202. Plaintiffs reasonably relied upon the expertise, skill, judgment and knowledge of the  
6 Defendants and upon the Defendants' express and/or implied warranty that the Fitbit Surge™ and  
7 Fitbit Charge HR™ were safe, of merchantable quality, and fit for use.

8           203. The Fitbit Surge™ and Fitbit Charge HR™ used were not safe, of merchantable  
9 quality, fit for use, of the quality that a buyer would expect, or of the same quality of those products  
10 generally acceptable in the trade.

11           204. The Fitbit Surge™ and Fitbit Charge HR™ were not fit for the ordinary purposes for  
12 which such goods are used and did not conform to the quality established by the parties' prior dealings  
13 or by usage of trade.

14           205. The Fitbit Surge™ and Fitbit Charge HR™ devices used by Plaintiffs were neither safe  
15 nor fit for use.

16           206. As a direct and proximate result of the breach of warranties by the Defendants,  
17 Plaintiffs sustained injuries and damages alleged herein.

18           207. Defendants were aware that consumers, including Plaintiffs, would use the Fitbit  
19 Surge™ and Fitbit Charge HR™; which is to say that each Plaintiff was a foreseeable user of  
20 Defendants' products, the Fitbit Surge™ or Fitbit Charge HR™.

21           208. Plaintiffs were at all relevant times in privity with Defendants.

22           209. Plaintiffs took reasonable steps to notify Defendants within a reasonable time that the  
23 Fitbit Surge™ and Fitbit Charge HR™ did not have the expected quality.

24           210. The Fitbit Surge™ and Fitbit Charge HR™ were expected to reach and did in fact  
25 reach consumers, including Plaintiffs, without substantial change in the condition in which the  
26 products were manufactured and sold by Defendants.

27           211. Defendants breached various implied warranties with respect to the Fitbit Surge™  
28 and Fitbit Charge HR™ as set forth above.

1 212. Defendants breached the implied warranties in that the Fitbit Surge™ and Fitbit Charge  
2 HR™ did not conform to Defendants' implied representations and warranties.

3 213. Plaintiffs reasonably relied upon one and/or several of the Defendants' implied  
4 warranties.

5 214. Plaintiffs used the Fitbit Surge™ or Fitbit Charge HR™ as intended and directed by  
6 the Defendants and in a foreseeable manner as intended, recommended, promoted, and/or marketed  
7 by Defendants.

8 215. Defendants breached one or several of the implied warranties provided to and  
9 relied on by Plaintiffs.

10 216. As a direct and proximate consequence of Defendants' negligence, willful, wanton,  
11 and/or intentional acts, omissions, misrepresentations and/or otherwise culpable acts described  
12 herein, Plaintiffs sustained injuries, damages, and harm as alleged herein.

13 217. The failure of the Fitbit Surge™ and Fitbit Charge HR™ to have the expected quality  
14 was a substantial factor in causing Plaintiffs' harm.

15 WHEREFORE, Plaintiffs demand judgment against Defendants and seek compensatory,  
16 exemplary and punitive damages together with interest, and such other and further relief as this Court  
17 deems just and proper.

18 **SEVENTH CAUSE OF ACTION**

19 **FRAUD**

20 (Against All Defendants)

21 Plaintiffs incorporate by reference each and every paragraph of this Complaint as though set  
22 forth in full in this cause of action and further allege:

23 218. At all relevant and material times, Defendants expressly and/or impliedly warranted the  
24 Fitbit Surge™ and Fitbit Charge HR™ products were safe, of merchantable quality and fit for use.

25 219. Defendants' superior knowledge and expertise, its relationship of trust and confidence  
26 with the public, its specific knowledge regarding the risks and dangers of the Fitbit Surge™ and Fitbit  
27 Charge HR™, and its intentional dissemination of promotional and marketing information about the  
28 Fitbit Surge™ and Fitbit Charge HR™ for the purpose of maximizing its sales, each gave rise to

1 the affirmative duty to meaningfully disclose and provide all material information about the risks  
2 and harms associated with the Fitbit Surge™ and Fitbit Charge HR™.

3 220. At all times herein mentioned Defendants fraudulently represented to Plaintiffs,  
4 physicians, and other persons and professionals, upon whom Defendants knew would justifiably rely,  
5 as well as the public at large, that the Fitbit Surge™ and Fitbit Charge HR™ were safe for use and  
6 that the utility of the products outweighed any risk associated with using them.

7 221. At all times herein mentioned Defendants represented to Plaintiffs, as well as others,  
8 that the facts alleged herein were true.

9 222. Defendants intentionally failed to disclose to Plaintiffs, as well as others, important  
10 safety and injury information, thereby suppressing material facts about the products, while having a  
11 duty to disclose such information, which duty arose, in part, from the Defendants designing,  
12 manufacturing, making, marketing, advertising, promoting, distributing and selling the products.

13 223. The false representations of Defendants were fraudulently and recklessly made,  
14 without regard for the truth, and with the intent or purpose that Plaintiffs would justifiably rely,  
15 leading to the use of the Fitbit Surge™ or Fitbit Charge HR™.

16 224. Defendants made fraudulent misrepresentations with respect to the Fitbit Surge™  
17 and Fitbit Charge HR™ in the manner set forth above and incorporated herein.

18 225. By these acts, Defendants willfully, wantonly, and recklessly disregarded their duty  
19 to provide truthful representations regarding the safety and risk of the Fitbit Surge™ and Fitbit  
20 Charge HR™.

21 226. Defendants made these misrepresentations with the intent that Plaintiffs rely upon  
22 them.

23 227. Defendants' misrepresentations were made with the intent of defrauding and  
24 deceiving Plaintiffs, other consumers, and the public to induce and encourage the sale of the Fitbit  
25 Surge™ and Fitbit Charge HR™.

26 228. Defendants' fraudulent representations evidence their callous, reckless, willful, and  
27 depraved indifference to the health, safety, and welfare of consumers, including Plaintiffs.

28

1 229. Defendants omitted, misrepresented, suppressed and/or concealed material facts  
2 concerning the dangers and risk of injuries associated with the use of the Fitbit Surge™ and Fitbit  
3 Charge HR™ and the fact that the products were unreasonably dangerous.

4 230. Defendants' purpose was willfully blind to, ignored, downplayed, avoided, and/or  
5 otherwise understated the nature of the risks associated with the use of the Fitbit Surge™ and Fitbit  
6 Charge HR™ in order to increase sales.

7 231. Defendants undertook the false and/or misleading representations and concealment  
8 with an intent that consumers, including Plaintiffs, rely upon them.

9 232. Plaintiffs and others did not know that these representations were false and/or  
10 misleading and were justified in their reliance.

11 233. Defendants had sole access to material facts concerning the dangers and unreasonable  
12 risks of the Fitbit Surge™ and Fitbit Charge HR™.

13 234. The intentional concealment of information by Defendants about the substantial  
14 risks of injury associated with the Fitbit Surge™ and Fitbit Charge HR™, was known by Defendants  
15 to be wrongful.

16 235. Defendants made the concealment of information and the misrepresentations about the  
17 Fitbit Surge™ and Fitbit Charge HR™ with the intent that Plaintiffs and others rely upon them.

18 236. Had Defendants not fraudulently concealed such information, the Fitbit Surge™ or  
19 Fitbit Charge HR™ would not have been used by Plaintiffs.

20 237. Had Plaintiffs been aware of the increased risks of injury associated with the Fitbit  
21 Surge™ and Fitbit Charge HR™, they would not have used it.

22 238. As a direct and proximate result of Defendants' fraudulent misrepresentations and  
23 intentional concealment of facts, upon which Plaintiffs reasonably relied, they suffered injuries  
24 and damages as alleged herein.

25 239. As a direct and proximate consequence of Defendants' negligence, willful, wanton,  
26 and/or intentional acts, omissions, misrepresentations and/or otherwise culpable acts described  
27 herein, Plaintiffs sustained the injuries, damages, and harms as alleged herein.

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**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a jury trial on all issues.

Dated: May 22, 2015

**GOMEZ TRIAL ATTORNEYS**

By: Step: Pol.

John H. Gomez  
John P. Fiske  
Stephanie Poli

Attorneys for Plaintiffs

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  <b>John H. Gomez (171485) John P. Fiske (249256)</b>  <b>Stephanie S. Poli (286239)</b>  <b>Gomez Trial Attorneys</b>  <b>655 W Broadway, Suite 1700 San Diego, CA 92101</b>          TELEPHONE NO.: <b>(619) 237-3490</b> FAX NO. (Optional): <b>(619) 237-3496</b>          E-MAIL ADDRESS (Optional): <b>stephanie@gomeztrialattorneys</b>          ATTORNEY FOR (Name): <b>Plaintiffs Laura Brown et al.</b></p>	<p>FOR COURT USE ONLY</p> <p><b>ELECTRONICALLY FILED</b>          Superior Court of California,          County of San Diego</p> <p><b>05/22/2015</b> at 12:41:53 PM          Clerk of the Superior Court          By Adam Beason, Deputy Clerk</p>
<p><b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b>          STREET ADDRESS: <b>330 West Broadway</b>          MAILING ADDRESS: <b>330 West Broadway</b>          CITY AND ZIP CODE: <b>San Diego, CA 92101</b>          BRANCH NAME: <b>Hall of Justice</b></p>	
<p>PLAINTIFF/PETITIONER: <b>Laura Brown et al.</b>           DEFENDANT/RESPONDENT: <b>Fitbit, Inc.</b></p>	<p>CASE NUMBER:  <b>37-2015-00017306-CU-PL-CTL</b></p> <p>JUDICIAL OFFICER: <b>Judge Ronald S. Prager</b></p>
<p><b>NOTICE OF RELATED CASE</b></p>	<p>DEPT.:</p>

Identify, in chronological order according to date of filing, all cases related to the case referenced above.

1. a. Title: **Fitbit Cases**
  - b. Case number: **JCCP 4880**
  - c. Court:  same as above  
 other state or federal court (name and address):
  - d. Department: **C-67**
  - e. Case type:  limited civil  unlimited civil  probate  family law  other (specify):
  - f. Filing date: **4/2/2014**
  - g. Has this case been designated or determined as "complex?"  Yes  No
  - h. Relationship of this case to the case referenced above (check all that apply):
    - involves the same parties and is based on the same or similar claims.
    - arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
    - involves claims against, title to, possession of, or damages to the same property.
    - is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
    - Additional explanation is attached in attachment 1h
  - i. Status of case:
    - pending
    - dismissed  with  without prejudice
    - disposed of by judgment
2. a. Title: **Kristin Cacchio et al. v. Fitbit, Inc.**
  - b. Case number: **37-2014-00037195-CU-PL-CTL**
  - c. Court:  same as above  
 other state or federal court (name and address):
  - d. Department: **C-67**

PLAINTIFF/PETITIONER: Laura Brown et al.	CASE NUMBER:
DEFENDANT/RESPONDENT: Fitbit, Inc.	

2. (continued)

- e. Case type:  limited civil  unlimited civil  probate  family law  other (specify):
- f. Filing date: 7/11/2014
- g. Has this case been designated or determined as "complex?"  Yes  No
- h. Relationship of this case to the case referenced above (check all that apply):
  - involves the same parties and is based on the same or similar claims.
  - arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
  - involves claims against, title to, possession of, or damages to the same property.
  - is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
  - Additional explanation is attached in attachment 2h
- i. Status of case:
  - pending
  - dismissed  with  without prejudice
  - disposed of by judgment

3. a. Title:

- b. Case number:
- c. Court:  same as above  
 other state or federal court (name and address):
- d. Department:
- e. Case type:  limited civil  unlimited civil  probate  family law  other (specify):
- f. Filing date:
- g. Has this case been designated or determined as "complex?"  Yes  No
- h. Relationship of this case to the case referenced above (check all that apply):
  - involves the same parties and is based on the same or similar claims.
  - arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
  - involves claims against, title to, possession of, or damages to the same property.
  - is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
  - Additional explanation is attached in attachment 3h
- i. Status of case:
  - pending
  - dismissed  with  without prejudice
  - disposed of by judgment

4.  Additional related cases are described in Attachment 4. Number of pages attached: \_\_\_\_\_

Date: May 22, 2015

Stephanie S. Poli  
(TYPE OR PRINT NAME OF PARTY OR ATTORNEY)

  
(SIGNATURE OF PARTY OR ATTORNEY)

PLAINTIFF/PETITIONER: Laura Brown et al. DEFENDANT/RESPONDENT: Fitbit, Inc.	CASE NUMBER:
--	--------------

**PROOF OF SERVICE BY FIRST-CLASS MAIL  
NOTICE OF RELATED CASE**

**(NOTE: You cannot serve the Notice of Related Case if you are a party in the action. The person who served the notice must complete this proof of service. The notice must be served on all known parties in each related action or proceeding.)**

1. I am at least 18 years old and **not a party to this action**. I am a resident of or employed in the county where the mailing took place, and my residence or business address is *(specify)*:

2. I served a copy of the *Notice of Related Case* by enclosing it in a sealed envelope with first-class postage fully prepaid and *(check one)*:

- a.  deposited the sealed envelope with the United States Postal Service.
- b.  placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

3. The *Notice of Related Case* was mailed:

- a. on *(date)*:
- b. from *(city and state)*:

4. The envelope was addressed and mailed as follows:

a. Name of person served:

Street address:  
City:  
State and zip code:

c. Name of person served:

Street address:  
City:  
State and zip code:

b. Name of person served:

Street address:  
City:  
State and zip code:

d. Name of person served:

Street address:  
City:  
State and zip code:

Names and addresses of additional persons served are attached. *(You may use form POS-030(P).)*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

---

(TYPE OR PRINT NAME OF DECLARANT)
▶
(SIGNATURE OF DECLARANT)

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

STREET ADDRESS: 330 W Broadway  
 MAILING ADDRESS: 330 W Broadway  
 CITY AND ZIP CODE: San Diego, CA 92101-3827  
 BRANCH NAME: Central  
 TELEPHONE NUMBER: (619) 450-7071

PLAINTIFF(S) / PETITIONER(S): Laura Brown et.al.

DEFENDANT(S) / RESPONDENT(S): Fitbit Inc

LAURA BROWN VS. FITBIT INC [E-FILE]

**NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT  
 CONFERENCE on MANDATORY eFILE CASE**

CASE NUMBER:  
 37-2015-00017306-CU-PL-CTL

**CASE ASSIGNMENT**

Judge: Ronald S. Prager

Department: C-71

**COMPLAINT/PETITION FILED: 05/22/2015**

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	10/30/2015	01:00 pm	C-71	Ronald S. Prager

A case management statement must be completed by counsel for all parties or self-represented litigants and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR\* options.

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT), THE ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730), A STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (SDSC FORM #CIV-359), AND OTHER DOCUMENTS AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, parking citation appeals, and family law proceedings.

COMPLAINTS: Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

JURY FEES: In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

MANDATORY eFILE: Case assigned to mandatory eFile program per CRC 3.400-3.403 and SDSC Rule 2.4.11. All documents must be eFiled at [www.onelegal.com](http://www.onelegal.com). Refer to General Order 051414 at [www.sdcourt.ca.gov](http://www.sdcourt.ca.gov) for guidelines and procedures.

\*ALTERNATIVE DISPUTE RESOLUTION (ADR): THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b> STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827 BRANCH NAME: Central	<i>FOR COURT USE ONLY</i>
PLAINTIFF(S): Laura Brown et.al.	
DEFENDANT(S): Fitbit Inc	
SHORT TITLE: LAURA BROWN VS. FITBIT INC [E-FILE]	
<b>STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR)</b>	CASE NUMBER: 37-2015-00017306-CU-PL-CTL

Judge: Ronald S. Prager

Department: C-71

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution (ADR) process. Selection of any of these options will not delay any case management timelines.

- |  |  |
|--|--|
| <input type="checkbox"/> Mediation (court-connected)   | <input type="checkbox"/> Non-binding private arbitration   |
| <input type="checkbox"/> Mediation (private)   | <input type="checkbox"/> Binding private arbitration   |
| <input type="checkbox"/> Voluntary settlement conference (private)                                     | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 15 days before trial) |
| <input type="checkbox"/> Neutral evaluation (private)  | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 30 days before trial) |
| <input type="checkbox"/> Other (specify e.g., private mini-trial, private judge, etc.): _____<br>_____ |  |

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Alternate neutral (for court Civil Mediation Program and arbitration only): \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
 Name of Plaintiff

\_\_\_\_\_  
 Name of Defendant

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Name of Plaintiff's Attorney

\_\_\_\_\_  
 Name of Defendant's Attorney

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Signature

If there are more parties and/or attorneys, please attach additional completed and fully executed sheets.

It is the duty of the parties to notify the court of any settlement pursuant to Cal. Rules of Court, rule 3.1385. Upon notification of the settlement, the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court.

**IT IS SO ORDERED.**

Dated: 05/26/2015

\_\_\_\_\_  
 JUDGE OF THE SUPERIOR COURT





# SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

## ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

CASE NUMBER: 37-2015-00017306-CU-PL-CTL CASE TITLE:  
Laura Brown vs. Fitbit Inc [E-FILE]

**NOTICE: All plaintiffs/cross-complainants in a general civil case are required to serve a copy of the following three forms on each defendant/cross-defendant, together with the complaint/cross-complaint:**

- (1) this Alternative Dispute Resolution (ADR) Information form (SDSC form #CIV-730),**
- (2) the Stipulation to Use Alternative Dispute Resolution (ADR) form (SDSC form #CIV-359), and**
- (3) the Notice of Case Assignment form (SDSC form #CIV-721).**

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts, community organizations, and private providers offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial. The San Diego Superior Court expects that litigants will utilize some form of ADR as a mechanism for case settlement before trial, and it may be beneficial to do this early in the case.

Below is some information about the potential advantages and disadvantages of ADR, the most common types of ADR, and how to find a local ADR program or neutral. A form for agreeing to use ADR is attached (SDSC form #CIV-359).

### **Potential Advantages and Disadvantages of ADR**

ADR may have a variety of advantages or disadvantages over a trial, depending on the type of ADR process used and the particular case:

#### **Potential Advantages**

- Saves time
- Saves money
- Gives parties more control over the dispute resolution process and outcome
- Preserves or improves relationships

#### **Potential Disadvantages**

- May take more time and money if ADR does not resolve the dispute
- Procedures to learn about the other side's case (discovery), jury trial, appeal, and other court protections may be limited or unavailable

### **Most Common Types of ADR**

You can read more information about these ADR processes and watch videos that demonstrate them on the court's ADR webpage at <http://www.sdcourt.ca.gov/adr>.

**Mediation:** A neutral person called a "mediator" helps the parties communicate in an effective and constructive manner so they can try to settle their dispute. The mediator does not decide the outcome, but helps the parties to do so. Mediation is usually confidential, and may be particularly useful when parties want or need to have an ongoing relationship, such as in disputes between family members, neighbors, co-workers, or business partners, or when parties want to discuss non-legal concerns or creative resolutions that could not be ordered at a trial.

**Settlement Conference:** A judge or another neutral person called a "settlement officer" helps the parties to understand the strengths and weaknesses of their case and to discuss settlement. The judge or settlement officer does not make a decision in the case but helps the parties to negotiate a settlement. Settlement conferences may be particularly helpful when the parties have very different ideas about the likely outcome of a trial and would like an experienced neutral to help guide them toward a resolution.

**Arbitration:** A neutral person called an "arbitrator" considers arguments and evidence presented by each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are usually relaxed. If the parties agree to binding arbitration, they waive their right to a trial and agree to accept the arbitrator's decision as final. With nonbinding arbitration, any party may reject the arbitrator's decision and request a trial. Arbitration may be appropriate when the parties want another person to decide the outcome of their dispute but would like to avoid the formality, time, and expense of a trial.



**Other ADR Processes:** There are several other types of ADR which are not offered through the court but which may be obtained privately, including neutral evaluation, conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR processes. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute. Be sure to learn about the rules of any ADR program and the qualifications of any neutral you are considering, and about their fees.

### **Local ADR Programs for Civil Cases**

**Mediation:** The San Diego Superior Court maintains a Civil Mediation Panel of approved mediators who have met certain minimum qualifications and have agreed to charge \$150 per hour for each of the first two (2) hours of mediation and their regular hourly rate thereafter in court-referred mediations.

**On-line mediator search and selection:** Go to the court's ADR webpage at [www.sdcourt.ca.gov/adr](http://www.sdcourt.ca.gov/adr) and click on the "Mediator Search" to review individual mediator profiles containing detailed information about each mediator including their dispute resolution training, relevant experience, ADR specialty, education and employment history, mediation style, and fees and to submit an on-line Mediator Selection Form (SDSC form #CIV-005). The Civil Mediation Panel List, the Available Mediator List, individual Mediator Profiles, and Mediator Selection Form (CIV-005) can also be printed from the court's ADR webpage and are available at the Mediation Program Office or Civil Business Office at each court location.

**Settlement Conference:** The judge may order your case to a mandatory settlement conference, or voluntary settlement conferences may be requested from the court if the parties certify that: (1) settlement negotiations between the parties have been pursued, demands and offers have been tendered in good faith, and resolution has failed; (2) a judicially supervised settlement conference presents a substantial opportunity for settlement; and (3) the case has developed to a point where all parties are legally and factually prepared to present the issues for settlement consideration and further discovery for settlement purposes is not required. Refer to SDSC Local Rule 2.2.1 for more information. To schedule a settlement conference, contact the department to which your case is assigned.

**Arbitration:** The San Diego Superior Court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. Refer to SDSC Local Rules Division II, Chapter III and Code Civ. Proc. § 1141.10 et seq or contact the Arbitration Program Office at (619) 450-7300 for more information.

**More information about court-connected ADR:** Visit the court's ADR webpage at [www.sdcourt.ca.gov/adr](http://www.sdcourt.ca.gov/adr) or contact the court's Mediation/Arbitration Office at (619) 450-7300.

**Dispute Resolution Programs Act (DRPA) funded ADR Programs:** The following community dispute resolution programs are funded under DRPA (Bus. and Prof. Code §§ 465 et seq.):

- In Central, East, and South San Diego County, contact the National Conflict Resolution Center (NCRC) at [www.ncrconline.com](http://www.ncrconline.com) or (619) 238-2400.
- In North San Diego County, contact North County Lifeline, Inc. at [www.nclifeline.org](http://www.nclifeline.org) or (760) 726-4900.

**Private ADR:** To find a private ADR program or neutral, search the Internet, your local telephone or business directory, or legal newspaper for dispute resolution, mediation, settlement, or arbitration services.

### **Legal Representation and Advice**

To participate effectively in ADR, it is generally important to understand your legal rights and responsibilities and the likely outcomes if you went to trial. ADR neutrals are not allowed to represent or to give legal advice to the participants in the ADR process. If you do not already have an attorney, the California State Bar or your local County Bar Association can assist you in finding an attorney. Information about obtaining free and low cost legal assistance is also available on the California courts website at [www.courtinfo.ca.gov/selfhelp/lowcost](http://www.courtinfo.ca.gov/selfhelp/lowcost).