

**FILED**

Jul 23 2019

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY s/ jenniferv DEPUTY

1 DAVID F. MCDOWELL (CA SBN 125806)  
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4 707 Wilshire Boulevard  
5 Los Angeles, California 90017-3543  
6 Telephone: 213.892.5200

7 Attorney for Defendant  
8 FITBIT, INC.

9 **UNITED STATES DISTRICT COURT**  
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 BARON WILLIS, individually and on  
12 behalf of all those similarly situated,

13 Plaintiff,

14 v.

15 FITBIT, INC., a Delaware corporation;  
16 and DOES 1 through 50, inclusive,

17 Defendant.

Case No. **'19CV1377 DMS WVG**

**NOTICE OF REMOVAL OF  
ACTION TO UNITED  
STATES DISTRICT COURT**

[San Diego County Superior  
Court Case No. 37-2019-  
00031494-CU-BT-CTL]

**NOTICE OF REMOVAL**

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453, as amended by the Class Action Fairness Act of 2005 (“CAFA”), Defendant Fitbit, Inc. (“Fitbit”), hereby removes this action from the Superior Court of the State of California, County of San Diego, to the United States District Court for Southern District of California. The grounds for removal are as follows:

1. On June 18, 2019, Baron Willis (“Plaintiff”) filed a complaint in the Superior Court of the State of California, County of San Diego, against Fitbit, Case No. 37-2019-00031494-CU-BT-CTL (the “Complaint”). Attached hereto as **Exhibit A** is a true and correct copy of the Complaint.

2. Exhibit A constitutes all the process, pleadings, and orders provided by counsel for Plaintiff to counsel for Fitbit, which are hereby incorporated by reference.

3. On June 24, 2019, the Complaint was served on CT Corporation, Fitbit’s registered agent for service of process. Accordingly, this Notice of Removal is timely, as it is filed within thirty days of Fitbit’s receipt of the Complaint. *See* 28 U.S.C. § 1446(b).

**REMOVAL IS PROPER UNDER CAFA<sup>1</sup>**

4. This action is a civil action which may be removed to this Court by Fitbit pursuant to the provisions of 28 U.S.C. §§ 1332(d), 1441, and 1453.

5. The Complaint was filed by Plaintiff on behalf of two putative nationwide classes, defined as:

All persons in the United States who purchased Fitbit Trackers for personal use and had to replace them, or lost them because of defective bands or clasps (Nationwide Tracker Class).

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<sup>1</sup> This Notice of Removal is based on the allegations in the Complaint, and is filed subject to and with full reservation of rights. No admission of fact, law, or liability is intended by this Notice of Removal, and all defenses, motions, and pleas are expressly reserved.

1 and

2 All persons in the United States who purchased Fitbit Fitness Watches  
3 for personal use and had to replace them or lost them because of  
4 defective bands or clasps (Nationwide Watch Class).

5 and on behalf of two putative statewide sub-classes, defined as:

6 All persons in California who purchased Fitbit Trackers for personal  
7 use and had to replace them or lost them because of defective bands or  
8 clasps (California Tracker Class).

9 and

10 All persons in California who purchased Fitbit Fitness Watches for  
11 personal use and had to replace them or lost them because of defective  
12 bands or clasps (California Watch Class).

13 (Compl. ¶¶ 31-32.)

14 6. The Complaint alleges that, for years, Fitbit was on notice of a design  
15 defect that caused some of its products' bands to "regularly pop off the consumer's  
16 wrists," and "yet failed to correct [the defect] and continued to sell [defective  
17 products] to consumers, without providing them with notice of the defect."

18 (Compl. ¶¶ 56, 74.)

19 7. The Complaint asserts six causes of action: (i) violations of  
20 California's Consumer Legal Remedies Act, (ii) violations of California's Unfair  
21 Competition Law (unlawful, unfair and fraudulent practices), (iii) violations of  
22 California's False Advertising Law, (iv) breach of Express Warranty, (v) breach of  
23 Implied Warranty, and (vi) violations of the Magnuson-Moss Warranty Act.

24 (Compl. ¶¶ 43, 69-72, 78, 85, 97 and 112.) The Complaint seeks recovery of the  
25 purchase price paid by all of the class members for the relevant Fitbit products,  
26 restitution of all amounts obtained by Fitbit as a result of its alleged misconduct  
27 (plus interest), other compensatory damages, punitive damages, costs of suit,  
28 attorneys' fees, and an injunction. (Compl. ¶¶ 64, 95, 121, and Prayer For Relief.)

8. CAFA provides that a class action against a non-governmental entity may be removed if (1) the number of proposed class members is not less than 100; (2) any member of the proposed plaintiff class is a citizen of a State different from any defendant; and (3) the aggregate amount in controversy, exclusive of interest and costs, exceeds \$5,000,000. Each of these requirements is met here.

9. The Declaration of Mandy Lau in Support of Notice of Removal (“Lau Declaration”) is being filed concurrently with this Notice of Removal.

**MATTER IN CONTROVERSY IN EXCESS OF \$5,000,000**

10. CAFA provides that, “[i]n any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs.” 28 U.S.C. § 1332(d)(6).

11. Where, as here, a complaint does not specify the amount of damages sought, “a defendant can establish the amount in controversy by an unchallenged, plausible assertion of the amount in controversy in its notice of removal.” *Ibarra v. Manheim Invs.*, 775 F.3d 1193, 1197-98 (9th Cir. 2015). No submission of evidence accompanying the removal notice is required. *Dart Cherokee Basin Operating Co. v. Owens*, 135 S. Ct. 547, 554 (2014). If the defendant’s assertions are challenged, the defendant bears the burden of establishing the amount in controversy by a “preponderance of the evidence.” *Id.* at 554; *Abrego v. Dow Chemical Co.*, 443 F.3d 676, 683 (9th Cir. 2006) (sufficient evidence shows “more likely than not” that jurisdictional minimum is met). This burden is not “daunting” and only requires that the defendant “provide evidence establishing that it is more likely than not that the amount in controversy exceeds [\$5,000,000].” *Blevins v. Republic Refrigeration, Inc.*, No. CV-04019-MMM (MRWx), 2015 WL 12516693, at \*6 (C.D. Cal. Sept. 25, 2015).

12. Plaintiff’s request for restitution alone places more than \$5,000,000 in controversy. On behalf of “[a]ll persons on the United States” who purchased Fitbit

1 Trackers or Fitness Watches “for personal use and had to replace them or lost them  
 2 because of defective bands or clasps,” Plaintiff seeks “all amounts obtained by  
 3 Fitbit” from sales of those products over the past four years, the applicable  
 4 limitations period. (Compl. ¶¶ 26, 50.) *Hunter v. Nature’s Way Prods., LLC*, 2016  
 5 WL 4262188, at \*11 (S.D. Cal. Aug. 12, 2016) (explaining that the “statute of  
 6 limitations for actions under FAL or CLRA is three years” and “[t]he statute of  
 7 limitations for UCL . . . is four years”). Plaintiff does not allege whether he is  
 8 seeking a full refund of the full purchase price or a price premium—the difference  
 9 he would have paid but for Fitbit’s alleged misrepresentations.

10 13. Since January 1, 2019, Fitbit, through its website alone, has sold more  
 11 than 335,593 units of the following products: Ace 2, Inspire, Inspire HR, Charge 3,  
 12 Ionic, Versa, Versa Lite, and Versa Special Edition. These sales were made to well  
 13 over 1,000 different customers. In total, consumers have purchased these items for  
 14 a combined price of well over \$5,000,000. (Lau Decl. ¶ 3.)

15 14. Plaintiff’s remaining requests for relief substantially increase the  
 16 amount in controversy. Plaintiff requests punitive damages and an injunction, the  
 17 latter of which would presumably include an order requiring Fitbit to alter its  
 18 design for all of its relevant products. This cost, which would be substantial, is  
 19 properly considered part of the amount in controversy. *See, e.g., Anderson v.*  
 20 *Seaworld Parks & Entm’t, Inc.*, 132 F. Supp. 3d 1156, 1161 (N.D. Cal. 2015) (“The  
 21 amount in controversy in class actions requesting an injunction may be determined  
 22 by the cost of compliance by Defendant.”)

23 15. Finally, Plaintiff seeks attorneys’ fees and costs, which add to the  
 24 amount in controversy where, as here, the underlying statute provides for an  
 25 attorneys’ fee award. *See Alexander v. FedEx Ground Packaging Sys., Inc.*, No.  
 26 C-05-0038-MHP, 2005 WL 701601, at \*5 (N.D. Cal. Mar. 25, 2005); *see* Cal. Civ.  
 27 Code § 1780(e) (court must award costs and attorneys’ fees to prevailing plaintiff in  
 28 CLRA case).

1           16. Accordingly, based on the Complaint’s allegations and Fitbit’s sales  
2 data, the \$5,000,000 amount in controversy requirement is satisfied here, exclusive  
3 of interest and costs.

4 **MINIMAL DIVERSITY OF CITIZENSHIP**

5           17. As alleged in the Complaint, Plaintiff resides in the State of California.  
6 (Compl. ¶ 2.) Fitbit is informed and believes that Plaintiff is a California resident.

7           18. Fitbit is a Delaware corporation and has its principal place of business  
8 in California. (Compl. ¶ 3.) Thus, Fitbit is a citizen of Delaware and California.  
9 *See City of Vista v. Gen. Reinsurance Corp.*, 295 F. Supp. 3d 1119, 1123-24 (S.D.  
10 Cal. 2018) (for purposes of diversity jurisdiction, a corporation “is a citizen of the  
11 state in which it was incorporated and the state in which its principal place of  
12 business is located” (citing 28 U.S.C. 1332(c))).

13           19. Accordingly, the “minimal diversity” requirement under CAFA—*i.e.*,  
14 that “any member of a class of plaintiffs is a citizen of a State different from any  
15 defendant”—is satisfied for purposes of removal of this action. 28 U.S.C.  
16 § 1332(d)(2)(A).

17           20. Moreover, 28 U.S.C. § 1332(d)(4) does not require this Court to  
18 decline jurisdiction because less than two-third of the members of all proposed  
19 plaintiff classes in the aggregate are citizens of the State in which the action was  
20 originally filed. (Lau Decl. ¶ 4.)

21           21. This action does not fall within any exclusion in 28 U.S.C.  
22 §§ 1332(d)(9) and 1453(d) because it does not involve certain securities or  
23 corporate governance issues; it involves only causes of action arising under  
24 California common law and consumer protection statutes.<sup>2</sup>

25  
26 <sup>2</sup> *See* 28 U.S.C. § 1332(d)(9) (explaining that § 1332(d)(2) does not apply to  
27 cases arising under several sections of the Securities Act of 1933, several sections  
28 of the Securities Exchange Act of 1934, and certain state corporate governance  
laws); *id.* § 1453(d) (same).

1           22. For all the foregoing reasons, this Court has original jurisdiction under  
2 28 U.S.C. §§ 1332(d), 1441, and 1453.

3 **NOTICE TO STATE COURT AND PLAINTIFF**

4           23. Counsel for Fitbit certifies, pursuant to 28 U.S.C. § 1446(d), that it will  
5 promptly give notice of filing of this Notice of Removal to Plaintiff through  
6 Plaintiff's counsel of record and will promptly file with the Clerk of the Superior  
7 Court of the State of California, County of San Diego, a copy of this Notice of  
8 Removal.

9  
10  
11 Dated: July 23, 2019

DAVID F. MCDOWELL  
MORRISON & FOERSTER LLP

12  
13 By: /s/ David F. McDowell  
14 DAVID F. MCDOWELL  
DMcDowell@mofo.com

15 Attorney for Defendant  
16 FITBIT, INC.  
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## CIVIL COVER SHEET

FILED

JUL 23 2019

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the clerk of the court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS** Baron Willis, individually and on behalf of all those similarly situated)

**DEFENDANTS** Fitbit, Inc., a Delaware corporation, and its subsidiaries through 50, inclusive

CLERK U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY s/ jenniferv DEPUTY

**(b)** County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant San Francisco  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

**(c)** Attorneys (Firm Name, Address, and Telephone Number) Robert W. Thompson and David G. Jensen; Callahan, Thompson, Sherman & Caudill LLP; 1230 Columbia Street, Suite 930, San Diego, CA 92101; (619) 232-5700

Attorneys (If Known) David D. McDowell; Morrison & Foerster LLP; 707 Wilshire Boulevard, Los Angeles, California 90017-3543; (213) 892-5200

**'19CV1377 DMS WVG**

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5            |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input checked="" type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
 28 U.S.C. sections 1332, 1442, 1332, 1441, 1446, and 1453, as amended by the Class Action Fairness Act of 2005

Brief description of cause:  
 Alleged misrepresentations through omission and failure to honor warranties

**VII. REQUESTED IN COMPLAINT:**

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

**DEMAND \$**

CHECK YES only if demanded in complaint:  
**JURY DEMAND:** ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE Joel R. Wohlfeil

DOCKET NUMBER 37201900031494CUBTCTL

DATE

07/23/2019

SIGNATURE OF ATTORNEY OF RECORD

/s/ David F. McDowell

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE



**FILED**

Jul 23 2019

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY s/ jenniferv DEPUTY

1 DAVID F. MCDOWELL (CA SBN 125806)  
2 MORRISON & FOERSTER LLP  
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4 Los Angeles, California 90017-3543  
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8 Attorney for Defendant  
9 FITBIT, INC.

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**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

11 BARON WILLIS, individually and on  
12 behalf of all those similarly situated,

13 Plaintiff,

14 v.

15 FITBIT, INC., a Delaware corporation;  
16 and DOES 1 through 50, inclusive,

17 Defendant.

Case No. '19CV1377 DMS WVG

**DECLARATION OF  
MANDY LAU IN SUPPORT  
OF NOTICE OF REMOVAL  
BY DEFENDANT FITBIT,  
INC.**

[San Diego County Superior  
Court Case No. 37-2019-  
00031494-CU-BT-CTL]

1 I, MANDY LAU, declare as follows:

2 1. I am the Senior Director of the Financial Planning and Analysis team  
3 for Defendant Fitbit, Inc. (“Fitbit”). In the course of my duties at Fitbit, I have  
4 access to, and have become closely familiar with, sales information about all of  
5 Fitbit’s products. I make the statements in this declaration based upon both my  
6 personal knowledge and corporate records maintained by Fitbit in its ordinary  
7 course of business. If called upon to do so, I could and would testify competently  
8 to the matters set forth herein.

9 2. Fitbit sells the products both directly (through its own website,  
10 www.fitbit.com), and indirectly (through a network of authorized distributors and  
11 retailers).

12 3. Since January 1, 2019, Fitbit, through its website alone, has directly  
13 sold more than 335,593 units of the following products: Ace 2, Inspire, Inspire HR,  
14 Charge 3, Ionic, Versa, Versa Lite, and Versa Special Edition (“the Relevant  
15 Products”). These sales were made to well over 1,000 different customers. In total,  
16 consumers have purchased these items for a combined price of well over  
17 \$5,000,000.

18 4. Because Fitbit delivers the products purchased directly from its  
19 website to its customers, Fitbit’s sales records identify the shipping addresses for  
20 those products. I have reviewed this address information for the Relevant Products  
21 identified above. This information shows that only about 10% of these products  
22 sold in the United States were shipped to California mailing addresses.

23 I declare under penalty of perjury that the foregoing is true and correct.

24 Executed on July 23, 2019, at San Francisco, California.

25  
26  
27  
28

DocuSigned by:  
*Mandy Lau*  
528C842935AA474...  
MANDY LAU

## **EXHIBITS**

Exhibit A: Complaint (pgs. 1-28)

ROBERT W. THOMPSON, Esq. (SBN 106411)  
 DAVID G. JENSEN, Esq. (SBN 202673)  
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 & CAUDILL, LLP**  
 1230 Columbia Street, Suite 930  
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[djensen@ctsclaw.com](mailto:djensen@ctsclaw.com)

**ELECTRONICALLY FILED**  
 Superior Court of California,  
 County of San Diego

**06/18/2019** at 08:25:24 AM  
 Clerk of the Superior Court  
 By Lee McAister, Deputy Clerk

Attorney for Plaintiff,  
**BARON WILLIS, individually and  
 on behalf of those similarly situated**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 COUNTY OF SAN DIEGO - CENTRAL DIVISION**

BARON WILLIS, individually and on behalf  
 of all those similarly situated,

Case No.: 37-2019-00031494-CU-BT-CTL

**CLASS ACTION COMPLAINT FOR  
 DAMAGES FOR:**

Plaintiff,  
 vs.

- (1) Violation of Consumer Legal Remedies Act;
- (2) Unlawful Business Practices in Violation of California Business & Professions Code §17200, *et. seq.*;
- (3) False & Misleading Advertising In Violation of California Business & Professions Code §17500, *et. seq.*;
- (4) Breach of Express Warranty;
- (5) Breach of Consumer Warranty Act, California Civil Code §1790, *et. seq.*;
- (6) Violations of The Magnuson-Moss Warranty Act.

FITBIT, INC., a Delaware corporation; and  
 DOES 1 through 50, inclusive,

Defendants.

**JURY TRIAL DEMANDED**

Plaintiff BARON WILLIS, (hereinafter "Plaintiff"), on behalf of himself, and on behalf of all other similarly situated persons, alleges the following facts and claims:

1. This consumer class action arises out of Defendant FITBIT, Inc.'s ("Defendant") misrepresentations through omission and failure to honor warranties with respect to Defendant's wearable health and fitness devices.

///

Exhibit A



**THE PARTIES**

2. Plaintiff is, and at all relevant times was, a resident of San Diego County, California.

3. Defendant is a Delaware corporation that was qualified to do business in California by the California Secretary of State on January 22, 2008. Although a Delaware corporation, Defendant lists its corporate headquarters as 199 Fremont Street, 14<sup>th</sup> Floor, San Francisco, California 94105, and it also maintains an additional office at 15255 Innovation Drive, Suite 200, San Diego, California 92128.

4. Defendant has a website at <http://www.fitbit.com> where it publishes photographs and information about its wearable health and fitness devices and where it allows consumers to purchase such devices directly from Defendant. At its website, Defendant also has individual discussion forums for each of its wearable devices.

5. The true names and capacities of Defendants sued in this Complaint as Does 1-50, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by such fictitious names. Each of the Defendants designated herein as a Doe is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will amend this complaint to reflect the true names and capacities of the Defendants designated herein as Does 1 through 50 when such identities become known.

6. At all times herein mentioned, all Defendants were co-conspirators, agents, servants, employees, and/or joint venturers of each of the other Defendants and were acting within the scope of said conspiracy, agency, employment, and/or joint venture and with the permissions and consent of each of the other Defendants.

**JURISDICTION AND VENUE**

7. Court has jurisdiction over all causes of action asserted herein pursuant to California Constitution, Article VI, Section 10, which grants to the Superior Court "original jurisdiction in all cases except those given by statute to other trial courts." This Court also has jurisdiction by the authority given to it by California Code of Civil Procedure § 410.10.

///

Exhibit A

- 2 -

8. Venue is proper in San Diego County under California Code of Civil Procedure §§ 395 and 395.5 because Defendant is, and at all relevant times was, transacting business in California, because it maintains an office in San Diego County, and because Plaintiff purchased and replaced his Fitbit devices in San Diego County.

### **STATUTES OF LIMITATIONS**

9. Any applicable statutes of limitation have been tolled by Defendant's continuing, knowing, and active concealment of the facts alleged herein. Defendant has concealed material information from Plaintiff and the Class that is essential to the pursuit of their claims, despite Plaintiff's and the Class's due diligence.

### **INTRODUCTION**

10. Defendant is in the business of manufacturing, producing, distributing, and/or selling wearable health and fitness devices, and Defendant sells such devices in California and throughout the rest of the United States and world. These wearable devices generally fall into two categories: activity trackers and smart fitness watches.

11. Activity trackers allow consumers to monitor fitness-related metrics such as steps, running distance, heart rate, sleep patterns, and calories burned. Defendant currently sells multiple types of activity trackers under the names Ace 2, Inspire, Inspire HR, Charge 3, and Charge HR ("Trackers"). On information and belief, Defendant may have sold other types of activity trackers during the class period.

12. Smart fitness watches are devices that combine the functions of an activity tracker with a watch and a smart phone, and Defendant currently sells multiple types of smart watches under the names Blaze, Ionic, Versa, Versa Lite, and Versa Special Edition ("Watches"). On information and belief, Defendant may have sold other types of smart fitness watches during the class period.

13. According to Defendant's website, [www.fitbit.com/productcare](http://www.fitbit.com/productcare), Trackers and Watches are intended to be worn by users on their wrists, throughout the day and night, and while users are physically active or sleeping. Defendant instructs users to wear the bands loosely enough that they can move back and forth on their wrists. Defendant's representations show its

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CLASS ACTION COMPLAINT



1 Trackers and Watches as always remaining on the wrists of users, even when they are running,  
2 weightlifting, playing basketball, and engaging in other forms of physical activity, and not just  
3 sitting or sleeping.

4 14. Defendant manufactured, produced, distributed, and/or sold Trackers and  
5 Watches for sale through its own website, [www.fitbit.com](http://www.fitbit.com), and through a network of authorized  
6 retailers, including, but not limited to, Best Buy, Bed, Bath & Beyond, Walmart, Target, Kohl's,  
7 and Dick's Sporting Goods, all of which sold Trackers and Watches in California and throughout  
8 the United States.

9 15. For consumers residing in the United States who purchased a Tracker or Watch,  
10 Defendant provides a limited product warranty for workmanship and materials: "Fitbit warrants  
11 to the original purchaser that your Fitbit-branded device and Fitbit-branded device accessories  
12 (collectively, the "Product") shall be free from defects in materials and workmanship under  
13 normal use for a period of one year from the date of purchase, ..." Defendant also warrants that  
14 "If such a defect arises and a return authorization request is received by Fitbit within the  
15 applicable Warranty Period, Fitbit will, at its option and to the extent permitted by law, either (1)  
16 repair the Product at no charge, using new or refurbished replacement parts, or (2) replace the  
17 Product with a new or refurbished Product."

18 16. During the same time period that Defendant was manufacturing, producing,  
19 distributing, and/or selling Trackers and Watches, consumers who had purchased such devices  
20 from Defendant, or from Defendant's retailers, were posting complaints about Trackers and  
21 Watches in the product forum sections of Defendant's website at  
22 <https://community.fitbit.com/t5/Community/ct-p/EN>.

23 17. The complaints by Fitbit users concerned two types of "clasping problems" with  
24 the Trackers and Watches.. The first type involved, without the user's awareness, the failure of  
25 the device bands to remain clasped while the Tracker or Watch was being worn, which caused  
26 the device to fall off the wrists of users. The second type involved the device bands failing and  
27 separating from the faces of the Tracker and Watch devices themselves, which also caused the  
28 Tracker or Watch to fall off the wrists of users. Many users report that Trackers and Watches

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1 “popped-off” their wrists as a result of one of these types of “clasping problems.” As a result, the  
 2 Trackers and Watches were no longer wearable and fit for their intended purposes as represented  
 3 by Defendant. Additionally, the flow of personal data was interrupted, not tracked, and not  
 4 stored, and many Trackers and Watches were eventually lost.

5 18. Defendant’s product forum at, [https://community.fitbit.com/t5/Community/ct-](https://community.fitbit.com/t5/Community/ct-p/EN)  
 6 [p/EN](https://community.fitbit.com/t5/Community/ct-p/EN), contains hundreds of complaints and discussions about “clasping issues” and Trackers and  
 7 Watches “falling off” and “popping-off” the wrists of users. These complaints and discussions  
 8 involve almost all of Defendant’s Trackers and Watches, which indicates a systemic-wide design  
 9 flaw involving the clasping of Defendant’s devices. For instance:

10 a. Regarding the FITBIT CHARGE, on June 24, 2015, Sioux\_nw posted “I  
 11 lost my fitbit charge this morning as I was running to catch the bus. When  
 12 I sat down and lifted my wrist to check my steps I realized my fitbit had  
 13 fallen off. Unable to retrace my steps (the bus had already pulled away  
 14 from the curb) I was filled with a mixture of sadness, disappointment, and  
 15 yes, anger. Why oh why wasn't the fitbit charge made with a buckle  
 16 fastener?!?!?!”

17 [https://community.fitbit.com/t5/Charge/Charge-band-clasp-does-not-stay-](https://community.fitbit.com/t5/Charge/Charge-band-clasp-does-not-stay-secured-and-comes-off/m-)  
 18 [secured-and-comes-off/m-](https://community.fitbit.com/t5/Charge/Charge-band-clasp-does-not-stay-secured-and-comes-off/m-)

19 [p/839320?advanced=false&collapse\\_discussion=true&filter=location&loc-](https://community.fitbit.com/t5/Charge/Charge-band-clasp-does-not-stay-secured-and-comes-off/m-p/839320?advanced=false&collapse_discussion=true&filter=location&location=forum-board:charge&q=Charge%20band%20clasp%20does%20n)  
 20 [ation=forum-board:charge&q=Charge%20band%20clasp%20does%20n](https://community.fitbit.com/t5/Charge/Charge-band-clasp-does-not-stay-secured-and-comes-off/m-p/839320?advanced=false&collapse_discussion=true&filter=location&location=forum-board:charge&q=Charge%20band%20clasp%20does%20n)

21 b. Regarding the FITBIT FLEX, on July 10, 2015, Z32kerber posted “This  
 22 has been a chronic problem for me. Having it securely latched is NOT the  
 23 problem. Mine is. It's fallen off MANY times simply by brushing up  
 24 against something. I tried turning the band around on my wrist...same  
 25 result. This is a poor design and what amazes me is that it's designed for  
 26 active people. You would think FitBit could have come up with a better  
 27 design. I have several friends with FitBits and they all experience the same  
 28 problem. The word is out on social media too. Not good advertising for

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FitBit. It's just a matter of time before mine pops off un-noticed and I lose it. Someone will get a free FitBit. Not a happy FitBit customer. Fitbit should redesign this band and offer it free to all Flex users”  
<https://community.fitbit.com/t5/Flex/Flex-band-falls-off/mp/782709#M106537>

c. Regarding the FITBIT SURGE, on November 21, 2016, Dr. Ken posted “I am disappointed as well because I had two Fitbit surges in the past year with one replacement. The band is broken which is a very common problem with this product. Since the band cannot be replaced and my Fitbit was out of warranty, I was given A 25 % discount towards the purchase of a new one. How absurd? I Will be taking my business elsewhere.” <https://community.fitbit.com/t5/Surge/Band-broken/tdp/961870/page/2>

d. Regarding the FITBIT BLAZE, on February 5, 2017, Berta1221 posted “I have had my Blaze for about 10 months now. I like the watch but this is the third band that has broken!!!! I am seriously upset that it breaks all the time.”  
[https://community.fitbit.com/t5/forums/searchpage/tab/message?advanced=false&allow\\_punctuation=false&filter=location&location=forum-board:blaze&q=Blaze%20Broken%20Band](https://community.fitbit.com/t5/forums/searchpage/tab/message?advanced=false&allow_punctuation=false&filter=location&location=forum-board:blaze&q=Blaze%20Broken%20Band)

e. Regarding the FITBIT ALTA, on June 5, 2017, SNORLIN posted “I have had my Alta pop off my wrist a few times. It's happened during day to day activities. I had become really careful about checking it. Unfortunately, this time when it popped off during a canoe ride there wasn't anything I could do as it sank to the bottom of the lake. What a horribly designed clasp! Now I read that it is really common and that Fitbit has redesigned the clasp because of a flaw. If there was a flaw and it resulted in me losing this expensive item, it should either be refunded or replaced with one

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without the flaw. I'm not impressed at all and neither were the people I was out canoeing with. It should be expected that a piece of equipment meant to be used during exercise and other activities remain secure during those activities otherwise what's the point?

<https://community.fitbit.com/t5/Alta/Alta-lost-due-to-clasp-coming-apart/m-p/2026809#M40913>

- f. Regarding her FITBIT IONIC, on May 15, 2018, ABORh posted "I too have had recurring problems with the small band on the Ionic. At one point, I had to wear it so loose that it could no longer register my pulse in order to keep the band from popping off my wrist at the junction between the band and the watch face. I have properly attached the band, with that satisfying clicking into place but I now believe that this is a design flaw that Fitbit has failed to adequately address. They actually told me that no one has reported this problem. Good to hear that there are others out there experiencing the exact same issue as me!"

<https://community.fitbit.com/t5/Ionic/Ionic-Band-falling-off/m-p/2285048#M13342>

- g. Regarding the FITBIT VERSA, on July 25, 2018, Kd1699 posted "Hi, Has anyone else had issues with the Versa bands coming undone and falling off? It been happening since day one, sometimes I will wear it for several hours and then suddenly it falls off, sometimes its only minutes, other times not at all. At first, I thought I just must not have clipped it in properly, but now I'm super careful and check and recheck when I do it up to make sure it's all fine and it appears to be. Then next minute it will just come undone. It's only the smaller piece with the metal part that sits at the top of the watch. I'm worried it will fall off one day and I not even notice. Thanks" <https://community.fitbit.com/t5/Versa-Versa-Lite/Versa-bands-falling-off/m-p/2857009#M36852>

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- h. Regarding the FITBIT CHARGE 3, on December 27, 2018, Irish\_Angel posted “I returned my brand-new Charge 3 after 3 days of wearing it because the band kept popping off. I had the special edition and tried all 4 bands and made sure they were fully seated. I returned it because I don't want to find out after the 45-day return policy expired that it is a design flaw that only gets worse with wear.”  
<https://community.fitbit.com/t5/Charge-3/Charge-3-band-keeps-popping-off/m-p/3141381#M23982>
- i. Regarding the FITBIT IONIC, on February 4, 2019, cmthomas posted “I just lost mine, after several times of catching it just as it falls out, and was very unhappy with my inability to find a replacement clasp anywhere online. Good to know that I am not the only person who this has happened to but disappointed to hear that the company's answer is to buy an entire replacement band in order to resolve the issue. (I wouldn't take the clasp off of the other band either.) At least I have another band that I can utilize until FITBIT decides to fix this issue. I always ensure that my clasp is "snapped" in securely but still have lost mine after several other times of it popping out. <https://community.fitbit.com/t5/Ionic/Issues-with-clasp-on-Ionic-band-falling-out/td-p/2573523/page/11>
- j. Regarding the FITBIT CHARGE 3, on March 11, 2019, Irene87 posted “My strap has broken on my Charge 3, it is only 5 months old. Is it possible to get sent a replacement please? The buckle has come off because the little loops have snapped.  
<https://community.fitbit.com/t5/Charge-3/Charge-3-strap-broken/m-p/3334807#M48649>

19. To address the “popping-off” problem, users of Trackers and Watches have had to take extraordinary measures to “MacGyver” their devices to prevent them from falling off their wrists, including, but not limited to, “Gorilla-gluing” the band to the Tracker or Watch, and

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securing the Tracker or Watch to the band with rubber bands, paper clip binders, Velcro, electrical tape, twist ties, zip ties, wrist bands, and #7 O-Rings. Users have shared these extraordinary measures with each other in the Fitbit Community, <https://community.fitbit.com/t5/Community/ct-p/EN>.

20. Defendant has been aware of “clasping problems” involving its Trackers and Watches since at least October 2014. Since that time Defendant has replied to comments posted in its product forums sympathizing with users about their “clasping problems.” Defendant has provided users with customer service contact information to help address their “clasping problems.” And, Defendant has informed users that their complaints about “clasping problems” would be forwarded to engineering for consideration.

21. Rather than simply fixing the design defects of its Trackers, Watches, and bands, Defendant, for those customers inside their warranty periods, merely offered replacements bands that also failed to secure the Trackers and Watches to the wrists of users, or a small discount on a new device and the “clasping problem” was perpetuated. Replacing the original bands with equally defective bands was a short-term solution to a long-term problem. The Defendant’s actions did not address the inherent design flaw of the devices and bands themselves, which made them unwearable, although Defendant represented to consumers that they were wearable. For instance, regarding the replacement bands:

- a. Regarding her FITBIT BLAZE, on January 08, 2017, Nimo posted “I ended up upgrading to the Blaze which believe it or not also fell off. Having sent \$400 including accessories on it, I was done with fitbit but the customer service team agrees to replace it. I really like the fitbit product and the app but one can’t keep flushing money down the drain. The part that clicks when you replace the Blaze band is equally weakly constructed so it is possible for it to fall off. Mine happened when I was just tossing a football around.” <https://community.fitbit.com/t5/Blaze/Blaze-Band-Falls-Off/m-p/1838629#M47938>

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- b. Regarding his FITBIT BLAZE, on February 22, 2017, Tre371 posted that “I’ve tried it loose, I’ve tried it tight. I just have to bend my hand and it pops off. They sent me a replacement strap and that strap is broken right out of the box. As well one of the buttons has fallen off. I haven’t called them about either of those issues yet. I have been off work due to injuries so I haven’t even been doing anything physical. If I was actually training I can imagine that I will have to just keep it in my pocket because it will completely fall apart if I actually used it for what it is supposed to be designed for.”

<https://community.fitbit.com/t5/Blaze/Blaze-Band-Falls-Off/m-p/1838629#M47938>
- c. Regarding her FITBIT CHARGE, on September 9, 2016, karmabear06 posted “I am currently on my 5th defective Fitbit Charge where the band begins to separate from normal wear and tear within 3-4 months of usage.”

<https://community.fitbit.com/t5/Charge-HR/Covered-by-warranty/m-p/1521812#M145652>
- d. Regarding his FITBIT CHARGE HR, on May 5, 2017, gateswood posted “My replacement fitbit delaminated (sic) in the same way as the original. Less than 9 months in service for both of them. This is a very poor product.”

<https://community.fitbit.com/t5/Charge-HR/Covered-by-warranty/td-p/1521812/page/2>
- e. Regarding his FITBIT BLAZE, on March 10, 2017, 6267whs posted “Glad to hear that. I have had my black band replaced twice and figure it will continue breaking after the warranty is up.”

<https://community.fitbit.com/t5/Blaze/Blaze-Broken-Band/m-p/1506250>
- f. Regarding his FITBIT BLAZE, on February 17, 2018, Slightlyintrigu posted “I had my original Fitbit band rate and Fitbit replaced it no problem but now the replacement one that they sent me is starting to break and it's kind of unsettling knowing that I'm on my second band already. I do hope I have

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warranty on the band that they sent me because it ain't fair to send me a product that this defective." <https://community.fitbit.com/t5/Blaze/Blaze-Broken-Band/td-p/1506250/page/3>

22. Defendant has failed to fix the design defects of its Trackers, Watches, and bands, despite being aware of consumer complaints involving them for years. Such complaints are posted on Fitbit's own forum. Instead, those customers outside of their warranty period - or those who lost their devices when the bands broke - were offered "discounts" on other Fitbit devices with similar design defects, all of which made the replacement devices unwearable and unfit for their intended purpose. Despite knowledge of the defect, Defendant represented to consumers that they were wearable and fit for their intended purpose. For instance:

a. Plaintiff was advised by Defendant's customer service personnel that the "falling off" problem was not covered by his product "warranty." Instead, he was offered a 25% discount on *selected* Fitbit devices or a 40% discount on the Fitbit Ionic.

b. Regarding his FITBIT CHARGE 2, on May 12, 2019, Inguyen 14 posted "So....I bought the fitbit a year ago and really love it. After a few months though, the band broke while I was at home and I had to get in touch with the company for a replacement. They were very accommodating and sent me a replacement band straight away! Fast forward to 2 days ago, I was out with my friends and the band broke again. However, this time, I had no idea where I lost my fitbit because this happened in a crowded downtown area. Do you know if the company can do anything to help me in this case?"

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May 13, 2019: "Update: They told me that the limited warranty for my tracker has already expired so the only thing they could do was giving me a 25% discount on a new fitbit. Alas, it wasn't the "watch" itself that broke per se. It was the replacement band they gave me late last year that broke. \*sigh\* I don't know if I want to invest in a new fitbit just to have it suddenly break and

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1 having to purchase a new one every time.”

2 [https://community.fitbit.com/t5/Charge-2/Band-broke-and-I-lost-my-fitbit/m-](https://community.fitbit.com/t5/Charge-2/Band-broke-and-I-lost-my-fitbit/m-p/3468358)  
3 [p/3468358](https://community.fitbit.com/t5/Charge-2/Band-broke-and-I-lost-my-fitbit/m-p/3468358)

4 23. On or around May 13, 2015, Plaintiff purchased a Fitbit Flex from the Bed Bath  
5 & Beyond store in Santee, California. Plaintiff wore his Fitbit Flex for its intended purpose and  
6 in a manner consistent with its intended use; however, on multiple occasions, the band separated  
7 from the device, resulting in it falling off his wrist, multiple times. On or about May 23, 2015,  
8 Plaintiff returned his Fitbit Flex to the Santee Bed Bath & Beyond and it was replaced with a  
9 Fitbit Charge.

10 24. Plaintiff wore his Fitbit Charge for its intended purpose and in a manner  
11 consistent with its intended use; however, on multiple occasions, the band also separated from  
12 the device, resulting in it falling off his wrist, multiple times. On or about June 25, 2016, Plaintiff  
13 returned his Fitbit Charge to the Santee Bed Bath & Beyond and it was replaced with a Fitbit  
14 Charge HR.

15 25. Plaintiff wore his Fitbit Charge HR for its intended purpose and in a manner  
16 consistent with its intended use; however, on multiple occasions, the band also separated from  
17 the device, resulting in it falling off his wrist, multiple times. On or about December 25, 2016,  
18 Plaintiff returned his Fitbit Charge HR to the Santee Bed Bath & Beyond and, for a fee, the  
19 device was replaced and upgraded to a Fitbit Blaze.

20 26. Plaintiff wore his Fitbit Blaze for its intended purpose and in a manner consistent  
21 with its intended use; however, on multiple occasions, the band also separated from the device,  
22 resulting in it falling off his wrist, multiple times. On or about December 29, 2017, Plaintiff  
23 returned his Fitbit Blaze to the Santee Bed Bath & Beyond and, for a fee, the device was  
24 replaced and upgraded to the latest edition of the Fitbit Blaze.

25 27. Plaintiff wore his second Fitbit Blaze for its intended purpose and in a manner  
26 consistent with its intended use; however, on multiple occasions, the band also separated from  
27 the device, resulting in it falling off his wrist, multiple times, and eventually being lost.

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28. Plaintiff purchased and replaced his Fitbit devices because of representations Defendant made about the devices being wearable and capable of tracking, monitoring, and storing his personal data. Defendant also represented that its devices utilized “superior,” “leading,” and the “latest” technology, which Defendant believed included the bands that secured the devices to users’ wrists.

29. Despite Defendant’s representations concerning its products, each of the devices that Plaintiff possessed fell off his wrist multiple times. Four of his devices were able to be located and replaced or upgraded, but one of them, after falling off his wrist, was eventually lost. While the Fitbit devices were off Plaintiff’s wrist, they would stop tracking his steps, calories burned, and heartrate and would be unable to provide him with the personal health information he sought by purchasing the devices. Additionally, the “popping-off” problem caused Plaintiff to expend valuable amounts of time searching for devices that had fallen off his wrist.

30. However, when Plaintiff reported to Defendant that his device had fallen off his wrist and was lost, he was told by Defendant “that these types of situations are not covered by our warranty.” Instead, Plaintiff was offered a discount on other “selected” Fitbit devices.

### **CLASS ALLEGATIONS**

31. Plaintiff brings this action on behalf of himself and all others similarly situated as a class action pursuant to Section 382 of the Code of Civil Procedure.

32. Plaintiff seeks to represent the following classes:

- a. All persons in California who purchased Fitbit Trackers for personal use and had to replace them or lost them because of defective bands or clasps (California Tracker Class).
- b. All persons in California who purchased Fitbit Fitness Watches for personal use and had to replace them or lost them because of defective bands or clasps (California Watch Class).
- c. All persons in the United States who purchased Fitbit Trackers for personal use and had to replace them, or lost them because of defective bands or clasps (Nationwide Tracker Class).

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d. All persons in the United States who purchased Fitbit Fitness Watches for personal use and had to replace them or lost them because of defective bands or clasps (Nationwide Watch Class).

33. The California Tracker Class, the California Watch Class, the Nationwide Tracker Class, and the Nationwide Watch Class are collectively referred to as the "Classes."

34. The California Tracker Class and the California Watch Class are collectively referred to as the "California Classes."

35. Excluded from the Classes are Defendant, any entity in which Defendant has a controlling interest, and any of the Defendant's subsidiaries, affiliates, and officers, directors or employees and any legal representative, heir, successor, or assigns of Defendant.

36. The members of the Classes are so numerous that joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the court. While the exact number of members of the Classes are unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is informed and believes, and on that basis alleges, that thousands of persons are members of the Classes.

37. There is a well-defined community of interest in questions of fact involving and affecting Plaintiff and the Classes that includes, without limitation:

- a. Whether Defendant made material omissions regarding the extraordinary measures that consumers would need to take to keep the Trackers and Watches on their wrists to make them fit for the ordinary purpose for which they were intended and used;
- b. Whether Defendant knew and/or recklessly disregarded the fact that extraordinary measures were required by consumers to keep the Trackers and Watches affixed on their wrists;
- c. Whether Defendant engaged in unfair competition, unconscionable acts or practices, and unfair or deceptive acts or practices in connection with the sale of its Trackers and Watches;

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CLASS ACTION COMPLAINT

- d. Whether Defendant violated the consumer protection statutes in California;
- e. Whether Defendant breached its implied warranties;
- f. Whether Defendant breached express written and/or representative warranties;
- g. Whether Defendant has been unjustly enriched;
- h. Whether Plaintiff and the Classes have suffered damages because of Defendant's conduct, and, if so, the appropriate amount thereof; and
- i. Whether, because of Defendant's conduct, Plaintiff and the Classes are entitled to damages, equitable relief or other relief, and, if so, the nature of such relief.

38. The claims of Plaintiff alleged herein are typical of those claims by members of the Classes and the relief sought is typical of the relief that would be sought by members of the Classes.

39. Plaintiff and his counsel will fairly and adequately represent and protect the interests of all members of the Classes, since Plaintiff is interested in ensuring that all Class Members obtain relief and Plaintiff's counsel is well-versed in prosecuting class actions on behalf of consumers.

40. The prosecution of separate actions by individual members of the Classes would create a risk of inconsistent and/or varying adjudications with respect to the individual members of the Classes, establishing incompatible standards of conduct for Defendant and resulting in the impairment of rights of members of the Classes and the disposition of their interest through actions to which they were not parties.

41. A single class action is superior to numerous individual actions as a means of adjudicating those claims.

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**FIRST CAUSE OF ACTION**

**(By Plaintiff, individually and on behalf of the California Classes against Defendant)**

**Violations of the California Consumer Legal Remedies Act**

42. Plaintiff hereby restates, re-alleges, and incorporates by reference herein the paragraphs stated above in this Complaint as though fully set forth herein.

43. Plaintiff, individually, and on behalf of all similarly situated California Class members, and the public, seek injunctive relief for Defendant's violation of the California Consumer Legal Remedies Act ("CLRA"), California Civil Code §§1750, et seq.

44. The CLRA applies to Defendant's actions and conduct described herein because it extends to transactions that are intended to result, or which have resulted, in the sale of goods to consumers for personal, family, or household use.

45. Fitness and health products, such as Trackers and Watches, constitute "goods" within the meaning of Civil Code §1761(a).

46. Defendant constitutes a "person" within the meaning of Civil Code §1761(c).

47. Plaintiff and the California Class are "consumers" within the meaning of the Civil Code §1761(d).

48. Defendant's conduct as alleged herein constitutes a "transaction" within the meaning of Civil Code §1761(e).

49. The CLRA provides in relevant part that "[t]he following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction and intended to result or which results in the sale or lease of goods...to any consumer are unlawful: (5) Representing that goods... have...characteristics, uses, benefits...which they do not have; .... (7) Representing that goods...are of a particular standard, quality or grade...if they are of another;... and (9) Advertising goods... with intent not to sell them as advertised." Civil Code §§1770(a)(5), (7), and (9).

50. Civil Code §1780(a)(2) permits any court of competent jurisdiction to enjoin practices that violate Civil Code §1770.

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CLASS ACTION COMPLAINT

**Allegations for the California Tracker and Watch Classes**

51. Although Defendant represents that its Trackers and Watches are wearable, in fact, Defendant's Trackers and Watches have design flaws that cause them to "pop-off" the wrists of users, making the devices unwearable and unusable for their intended purpose. When this happens, the Trackers and Watches stop tracking users' steps, calories burned, heartrate, and sleep, etc. Additionally, Trackers and Watches have become lost.

52. To prevent Trackers and Watches from "popping-off" their wrists, Defendant's customers have had to take extraordinary measures to "MacGyver" their devices to prevent them from doing so, including, but not limited to, "Gorilla-gluing" the band to the device, and securing the device to the band with rubber bands, paper clip binders, Velcro, electrical tape, twist ties, zip ties, wrist bands, and #7 O-Rings. Users have shared these measures with each other at the Fitbit Community, <https://community.fitbit.com/t5/Community/ct-p/EN>.

53. At no time prior to the purchase of his Fitbit devices was Plaintiff told that, in order to keep the devices on his wrist, he would have to take extraordinary measures to do so. Omission of this critical information was misleading and was done for the purpose of inducing Plaintiff and the rest of the California Tracker and Watch Classes into purchasing the Defendant's Trackers and Watches.

54. Had Plaintiff known that he would have to take extraordinary measures to keep his Fitbit devices on his wrist, he would not have purchased such devices.

55. A reasonable consumer would want to know that the bands of the devices were known to Defendant to have a "clasping problem" and to pop off user's wrists without extraordinary measures being taken by the wearer. This is especially true because Trackers and Watches are advertised as being wearable and intended to be used during physical activity.

56. Defendant had multiple opportunities to disclose to users that extraordinary measures would be necessary to keep their Trackers and Watches on their wrists, including, but not limited to, making the disclosure at retail displays of Trackers and Watches; making the disclosure on its website; and/or, making the disclosure at points of purchase. Defendant was on notice of the design defect for years, yet failed to correct it and continued to sell Trackers and

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1 Watches to consumers, without providing them with notice of the defect.

2 57. Plaintiff and the California Tracker and Watch Classes, when deciding to  
3 purchase Defendant's Trackers and Watches, reasonably relied on representations Defendant  
4 made about the devices being wearable and usable for their intended use.

5 58. Defendant knew, however, that its Trackers and Watches were not wearable and  
6 usable for their intended purpose, as represented, because of the numerous complaints it  
7 received from purchasers about the devices "popping-off" their wrists, which are documented at  
8 [www.fitbit.com](http://www.fitbit.com) as early as October 2014.

9 59. Plaintiff is informed and believes that Defendant also has a phone number for  
10 customers to call to report problems with Trackers and Watches. On information and belief,  
11 Defendant's customers have contacted Defendant through its phone number to report the  
12 "popping-off" or "falling-off" problem of its Trackers and Watches. In fact, Defendant admitted  
13 to customers in its product forums that it was looking for a solution to the problem. Defendant  
14 also monitored and responded to consumer complaints posted on Defendant's own website about  
15 the problem of Trackers and Watches "popping-off" the wrists of users – yet continued to sell the  
16 devices without disclosing the design defect to consumers.

17 60. Defendant also knew of the "popping-off" problem of its Trackers and Watches  
18 because it monitors warranty issues with its products. When a customer calls Defendant to  
19 report a problem about a Tracker or Watch, a claim number regarding that complaint is  
20 generated. Consequently, Defendant can and does track the ultimate disposition of each  
21 complaint.

22 61. Plaintiff is also informed and believes that Defendant knew its Trackers and  
23 Watches were not wearable and usable for their intended purpose as represented, because its  
24 consumers called Defendant's customer service line to report "popping-off" complaints, and  
25 because they posted complaints online in the product forum sections of Defendant's website  
26 about the devices "popping-off" their wrists.

27 62. Defendant intended Plaintiff and the California Tracker and Watch Classes to rely  
28 on representations made about its Trackers and Watches being wearable to induce Plaintiff and



1 the California Classes to purchase the devices so that their personal health information could be  
2 monitored and tracked.

3 63. Defendant represents that its Trackers and Watches are wearable and usable for  
4 their intended purpose and based on “leading technology.” Defendant’s advertising indicates  
5 that it is attempting to distinguish itself from other Trackers and Watches on the market and  
6 hoping to induce consumers to purchase its products by offering a new technology that other  
7 Trackers and Watches do not have.

8 64. Plaintiff and the California Watch and Tracker Classes have suffered and continue  
9 to suffer injury in fact and have lost money and devices as a result of Defendant’s omission in  
10 that they have overpaid for devices, incurred additional expenses, lost the devices and would not  
11 have bought the devices had Defendant disclosed to them that the Trackers and Watches were  
12 not wearable and usable for their intended purpose and required extraordinary measures to  
13 remain securely on the wrists of consumers.

14 65. When the Trackers and Watches would “pop-off” users’ wrists, the flow of their  
15 personal data would be interrupted, not tracked, not stored, and the devices themselves would  
16 sometimes become lost. Consequently, Plaintiff, and the members of the California Tracker and  
17 Watch classes, would lose valuable personal data and would be required to devote significant  
18 time trying to locate missing devices. Plaintiff, and the members of the California Tracker and  
19 Watch classes, would lose the benefit of their bargain for extended periods of time, since the  
20 purpose of purchasing the Trackers and Watches was to track data. Plaintiff is informed and  
21 believes that the other members of the California Tracker and Watch Classes have suffered  
22 similar losses.

23 66. Defendant’s actions were intended to harm Plaintiff and the California Tracker  
24 and Watch Classes and was done with malice and conscious disregard of the rights of Plaintiff  
25 and the California Tracker and Watch Classes as stated herein.

26 67. On behalf of himself and the California Tracker and Watch Classes, Plaintiff  
27 requests an order enjoining Defendant’s methods, acts, or practices and attorneys’ fees.

28 ///

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CLASS ACTION COMPLAINT

**SECOND CAUSE OF ACTION**

**(By Plaintiff, individually and on behalf of the California Classes)**

**Violations of Cal. Bus. & Prof. Code §17200, *et seq.***

68. Plaintiff hereby restates, re-alleges, and incorporates by reference herein the paragraphs stated above in this Complaint as though fully set forth herein.

69. Plaintiff, individually and on behalf of all similarly situated California Class members, and the public, brings this cause of action pursuant to California Business and Professions Code §17200, *et seq.*

70. The Unfair Business Practices Act defines unfair business competition to include any “unfair,” “unlawful,” or “fraudulent” business act or practice. California Bus. & Prof. Code §§17200 and 17500, *et seq.* The Act also provides for injunctive relief and restitution for violations.

71. Defendant has engaged in unlawful, unfair, and/or fraudulent business acts and practices as set forth above.

72. Defendant’s conduct constitutes unfair business acts and practices because Defendant’s practices as described herein have deceived and/or were likely to deceive Plaintiff and the California Classes, and other members of the consuming public. At no time prior to the purchase of Trackers and Watches was Plaintiff or the California Classes told that the devices were not wearable and usable for their intended purpose and that extraordinary measures were required to keep the products securely on their wrists. Failure to disclose this information constitutes material omissions of facts that a reasonable consumer would want to know prior to the purchase of the products.

73. Further, Defendant’s acts and practices are unlawful because they violate or violated one or more of the following: California Civil Code §§1790, *et seq.*; Civil Code §1750, *et seq.*; California Uniform Commercial Code §2313; and California Bus. & Prof. Code §§17200 and 17500, *et seq.*

74. Defendant’s acts and practices are fraudulent in that Defendant has known, since at least October 2014 that its Trackers and Watches had a design defect which caused the band to

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CLASS ACTION COMPLAINT



regularly pop off the consumer's wrist. Defendant knowingly failed to disclose material facts that a reasonable consumer would want to know prior to the purchase of a Fitness Tracker or Watch.

75. Plaintiff and the California Classes have suffered an injury in fact. The injury to Plaintiff and the California Classes greatly outweighs any alleged countervailing benefit to consumers or competition under the circumstances. The injury clearly constitutes substantial injury as the products are rendered unusable and sometimes become lost, which requires costly repairs and replacements and requires extraordinary measures to keep the devices operational. There is no benefit to consumers by allowing Defendant to knowingly market and sell Trackers and Watches without disclosing material facts that a reasonable consumer would want to know.

76. Plaintiff and the California Classes seek an order of this Court awarding restitution, injunctive relief, and all other relief allowed under Section 17200, *et seq.*, plus interest.

### **THIRD CAUSE OF ACTION**

**(By Plaintiff, individually and on behalf of the California Classes)**

#### **Violations of Cal. Bus. & Prof. Code §17500, *et seq.***

77. Plaintiff hereby restates, re-alleges, and incorporates by reference herein the paragraphs stated above in this Complaint as though fully set forth herein.

78. Plaintiff, individually and on behalf of all similarly situated members of the California Classes, and the public, brings this cause of action pursuant to the California Business and Professions Code §17500 *et seq.*

79. The misrepresentations by omission by Defendant of the material facts detailed above constitute false and misleading advertising by omission and therefore constitute a violation of California Bus. & Prof. Code §17500, *et seq.*

80. At all times relevant, Defendant's material omissions were likely to deceive consumers into purchasing Trackers and Watches.

81. Plaintiff and the California Classes have suffered an injury in fact and have lost money or property because of Defendant's unfair advertising of its Trackers and Watches, as more fully set forth herein. These injuries are ongoing in that Plaintiff and the California Classes

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1 continue to have problems with Trackers and Watches “popping-off” their wrists.

2 82. Unless Defendant is enjoined from continuing to engage in such wrongful actions  
3 and conduct, members of the California Classes will continue to be damaged by Defendant’s  
4 false and/or misleading advertising by omission.

5 83. Plaintiff and the California Classes seek an order requiring Defendant to make full  
6 restitution of all monies wrongfully obtained and disgorge all ill-gotten revenues and/or profits,  
7 together with interest thereon.

#### 8 **FOURTH CAUSE OF ACTION**

9 **(By Plaintiff, individually and on behalf of the California Classes)**

10 **Breach of Express Warranty under the Song Beverly Act, Cal. Civ. Code §1790, *et seq.*,**

11 **Cal. Comm. Code §2313, and California Common Law**

12 84. Plaintiff hereby restates, re-alleges, and incorporates by reference herein the  
13 paragraphs stated above in this Complaint as though fully set forth herein.

14 85. Plaintiff, individually and on behalf of all similarly situated California Class  
15 members, and the public seeks recovery for Defendant’s breach of express warranties under the  
16 laws of the State of California.

17 86. In images of its Trackers and Watches, Defendant represents to consumers,  
18 including Plaintiff and the California Classes, that its Trackers and Watches are wearable while  
19 they are using such devices for their intended purpose, including running, swimming, and  
20 weightlifting, and not just sitting or sleeping. Such quality or characteristic is important to  
21 consumers and forms part of the basis of their bargain because it enables them to monitor and  
22 track personal information that is essential to their health and well-being.

23 87. Moreover, since Defendant uses actual Trackers and Watches in its  
24 representations, such devices serve as samples or models of Defendant’s products. By  
25 representing to consumers that the Trackers and Watches will remain on their wrists while  
26 engaging in physical activities, Defendant expressly warrants to consumers that its Trackers and  
27 Watches will also remain on their wrists while engaging in physical activity. Defendant breached  
28 this express warranty by knowingly selling Trackers and Watches that are not wearable without

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1 having to take extraordinary measures to keep them on the wrists of users.

2 88. Defendant failed to honor its express warranty to repair or replace the product  
3 because any purported repair or replacement of a product that Defendant made was itself  
4 defective because the “popping-off” problem affects nearly all of Defendant’s Trackers and  
5 Watches and its replacement bands. In so doing, Defendant has failed to comply with the Song-  
6 Beverly Act, Civil Code §1793.2(b) and (d); Cal. Uniform Commercial Code § 2313; and,  
7 California Common Law. For instance:

8 89. Plaintiff and the California Classes relied on the express warranties and  
9 Defendant has failed to satisfy its obligations under the express warranties by not adequately  
10 repairing and/or replacing its Trackers and Watches.

11 90. Defendant was not motivated to fix the “popping-off” problem because it  
12 involved almost all of Defendant’s Trackers and Watches, because the problem has persisted for  
13 years, and because Defendant increased its revenue by selling consumers additional Trackers and  
14 Watches. Defendant’s behavior shows a conscious disregard for the rights of Plaintiff and the  
15 California Classes.

16 91. Defendant breached its express warranties, as set forth above, by selling and  
17 supplying the Trackers and Watches in conditions that did not meet the warranty obligations  
18 undertaken by Defendant and by failing to adequately repair or replace the products.

19 92. Defendant has received numerous complaints and other notices from its customers  
20 advising Defendant of the same problems that Plaintiff experienced with his Watch since at least  
21 October of 2014. Despite the notice and Defendant’s knowledge, Defendant refused to honor its  
22 warranties.

23 93. Even if notice was not given, or is somehow deemed defective, notice should be  
24 excused because of Defendant’s knowledge of the problems with the products as alleged herein  
25 and because notice would have been and is futile as evidenced by Defendant’s policy and  
26 practice of not adequately repairing or replacing the products.

27 94. Plaintiff and the California Classes were intended third-party beneficiaries of the  
28 express warranty made by Defendant. Defendant, who is the manufacturer of the Trackers and

1 Watches, knew that the retailers to whom it sold these products were not going to own the  
 2 products any longer than it took to sell them to Plaintiff and the California Classes. Further,  
 3 Defendant intended the express warranty to be for the benefit of Plaintiff and the California  
 4 Classes, *e.g.* the consumers of the products.

5 95. As a proximate result of Defendant's breach of express warranty, Plaintiff and the  
 6 California Classes have sustained damages and other losses in an amount to be determined at  
 7 trial. Plaintiff and the California Class are entitled to rescission of their contracts for sale with  
 8 Defendant, to attorneys' fees, and other relief as is deemed appropriate by the court.

9 **FIFTH CAUSE OF ACTION**

10 **(By Plaintiff, individually and on behalf of the California Classes)**

11 **Breach of Implied Warranty under the Song Beverly Act Cal. Civ. Code §1790, *et seq.*, Cal.**

12 **Uniform Comm. Code §2314, and California Common Law**

13 96. Plaintiff hereby restates, re-alleges, and incorporates by reference herein the  
 14 paragraphs stated above in this Complaint as though fully set forth herein.

15 97. Plaintiff, individually and on behalf of all persons similarly situated and the  
 16 public seeks recovery for Defendant's breach of the implied warranty.

17 98. Under California's Song-Beverly Consumer Warranty Act, Cal. Civ. Code §1792  
 18 *et seq.*, every sale of consumer goods is accompanied by both a "manufacturer's and retailer's"  
 19 implied warranty that the goods are merchantable.

20 99. The Trackers, Watches, and the parts contained therein and thereon are  
 21 "consumer goods" within the meaning of Cal. Civ. Code §1791(a).

22 100. Defendant is a "manufacturer" within the meaning of Cal. Civ. Code §1791(j).

23 101. Plaintiff and the California Classes bought Trackers and Watches from Defendant  
 24 itself and from retail stores in the State of California.

25 102. At the time of sale, and currently, Defendant is in the business of manufacturing  
 26 and selling Trackers and Watches.

27 103. There is privity between Defendant, Plaintiff, and the California Classes by  
 28 Defendant's direct warranties and/or because Plaintiff and the California Classes were intended

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1 third-party beneficiaries of the implied warranty made by Defendant. Defendant knew that the  
2 retailers to whom it sold the Trackers and Watches were not going to own such products any  
3 longer than it took to sell them to Plaintiff and the California Classes. Further, Defendant  
4 intended that the implied warranty that applied to the Trackers and Watches was for the benefit  
5 of Plaintiff and the California Classes.

6 104. By operation of law, Defendant impliedly warranted to Plaintiff and the California  
7 Classes that its Trackers and Watches were of merchantable quality and fit for the ordinary  
8 purposes for which they are intended and used. Defendant breached the implied warranty at the  
9 time of sale.

10 105. Defendant knowingly and/or recklessly sold Trackers and Watches that were not  
11 fit for the ordinary purposes for which they were intended and used. As alleged herein,  
12 Defendant possessed actual superior knowledge that the Trackers and Watches did not work as  
13 intended. Consequently, Defendant's attempts to waive and/or limit its implied warranties are  
14 unconscionable, illegal, and unenforceable, since Plaintiff and the California Classes had no  
15 meaningful choice in determining those time limitations.

16 106. To the extent that Defendant may claim that it disclaimed the implied warranties  
17 under the Song Beverly Act, such disclaimer is invalid under California Civil Code §§ 1790.1,  
18 1791.3, 1792.3 because there was no disclaimer provided that the Trackers and Watches were  
19 being sold "as is" or "with all faults."

20 107. To the extent that Defendant may now claim that it excluded or modified the  
21 implied warranties under the California Uniform Commercial Code, such waiver is invalid  
22 because it was not conspicuous as required by California Uniform Commercial Code § 2316(2).  
23 Plaintiff was not made aware of any waiver of implied warranties at the time of his purchase of  
24 the Watch. The manual for the Watch was packed inside the box and was not provided to him  
25 until after his purchase of the Watch. There was no posting of any warranty disclaimer on the  
26 Watch and no one mentioned any warranty disclaimer at the time of the purchase.

27 108. Plaintiff was not provided the option to purchase additional warranty coverage  
28 from Defendant at the time of purchase. Plaintiff is informed and believes that Defendant does

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1 not provide the option to obtain additional warranty coverage outside of the one-year limited  
 2 warranty already provided by Defendant. Plaintiff and the California Classes had no way to  
 3 obtain additional coverage for the warranties of merchantability or fitness of the Trackers and  
 4 Watches for a particular purpose from Defendant. Further, Defendant refused to honor its  
 5 express warranty because it refused to adequately repair or replace the Trackers and Watches. Its  
 6 actions merely perpetuated the design defects of the Trackers, Watches, and their respective  
 7 bands.

8 109. Plaintiff did not have the option of purchasing another Watch with the same  
 9 design and features or looks as the one available from Defendant. Plaintiff is informed and  
 10 believes that Defendant patents its products so that others cannot copy them.

11 110. As a proximate result of Defendant's breach of implied warranty, Plaintiff and the  
 12 California Classes have sustained losses in an amount to be determined at trial. Plaintiff and the  
 13 California Classes are entitled to recover attorneys' fees as provided by statute, as well as costs,  
 14 rescission, and other relief as is deemed appropriate by the court.

### 15 SIXTH CAUSE OF ACTION

16 (By Plaintiff, individually and on behalf of All Classes against Defendant)

### 17 **Violations of the Magnuson-Moss Warranty Act (15 U.S.C. §§2301, *et seq.*) – Breach of** 18 **Written Warranty**

19 111. Plaintiff hereby restates, re-alleges, and incorporates by reference herein the  
 20 paragraphs stated above in this Complaint as though fully set forth herein.

21 112. Plaintiff, individually and on behalf of all similarly situated members of the  
 22 Classes, and the public seeks recovery for Defendant's breach of written warranty under the laws  
 23 of the Magnuson-Moss Warranty Act.

24 113. The Trackers and Watches are "consumer products" as that term is defined under  
 25 15 U.S.C. §2301(1).

26 114. Plaintiff and the members of the Classes are "consumers" as that term is defined  
 27 by 15 U.S.C. §2301(3) and utilized the Trackers and Watches for personal use and not for resale  
 28 or commercial purposes.

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115. Defendant is a “warrantor” and “supplier” as those terms are defined by 15 U.S.C. §2301(4) and (5).

116. Defendant provided Plaintiff and the Classes with “written warranties” as that term is defined by 15 U.S.C. §2301(6).Magnuson-Moss Warranty Act

117. The term “implied warranty” means an implied warranty arising under State law (as modified by 15 USC §§ 2308 and 2304(a)) in connection with the sale by a supplier of a consumer product.

118. In its capacity as warrantor, and by the conduct described herein, any attempt by Defendant to limit the warranties in a manner that is not permitted by law, is deceptive and unlawful.

119. By Defendant’s conduct as described herein, Defendant has failed to comply with its obligations under its written and implied promises, warranties, and representations.

120. Plaintiff and the California Classes fulfilled their obligations under the Warranties.

121. As a result of Defendant’s breach of warranties, Plaintiff and the California Classes are entitled to revoke their acceptance of the Trackers and Watches, to equitable relief, and to damages, including attorneys’ fees pursuant to 15 U.S.C. §2310(d).

#### **PRAYER FOR RELIEF**

**WHEREFORE** Plaintiff and the Classes pray for judgment against Defendant as follows:

1. An order certifying that the action may be maintained as a class action as defined herein;
2. An order requiring restitution of all amounts obtained by Defendant as a result of its misconduct, together with interest thereon from the date of payment, to the victims of such violations;
3. For an order enjoining Defendant’s wrongful, unlawful, fraudulent, deceptive, and unfair conduct as set forth above and to require Defendant to engage in a corrective notice campaign;



4. For payment of reasonable attorneys' fees pursuant to, inter alia, California Code of Civil Procedure §1021.5; California Civil Code §1780(e); California Civil Code §1794(d); and, 15 USCA §2310(d)(2)
5. For punitive damages;
6. For costs of suit; and,
7. For such other and further relief as the Court deems just and proper.

**JURY TRIAL DEMAND**

Plaintiff hereby demands a jury trial on all issues so triable.

DATED: June 18, 2019

**CALLAHAN, THOMPSON, SHERMAN  
& CAUDILL, LLP**

By: \_\_\_\_\_

*David G. Jensen*  
ROBERT W. THOMPSON  
DAVID G. JENSEN  
Attorneys for Plaintiff

**BARON WILLIS, individually and on  
behalf of the Classes**



# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims Defect in Fitbit Trackers, Watches Causes 'Clasping Problems'](#)

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