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10 *Attorneys for Plaintiffs AliphCom d/b/a Jawbone and BodyMedia, Inc.*
11 *(Additional Counsel for Plaintiffs listed below signature line)*

12
13 **UNITED STATES DISTRICT COURT**

14 **NORTHERN DISTRICT OF CALIFORNIA**

15 ALIPHCOM D/B/A JAWBONE and
16 BODYMEDIA, INC.

17 Plaintiffs,

18 v.

19 FITBIT, INC.

20 Defendant.

Case No: 3:15-cv-2579

**COMPLAINT FOR PATENT
INFRINGEMENT**

JURY TRIAL DEMANDED

1 Plaintiffs AliphCom d/b/a Jawbone and BodyMedia, Inc. (collectively, “Plaintiffs” or
2 “Jawbone”), by their undersigned attorneys, for their complaint against Fitbit, Inc. (“Fitbit”),
3 hereby allege the following:

4 1. This is an action for patent infringement arising under the patent laws of the
5 United States, Title 35 of the United States Code.¹ Jawbone seeks damages and injunctive relief
6 for infringement of its patents by Fitbit’s wearable fitness tracker devices.

7 2. AliphCom is a corporation organized and existing under the laws of California
8 with its principal place of business located in San Francisco, California.

9 3. BodyMedia, Inc. is a corporation organized and existing under the laws of
10 Delaware with its principal place of business located in Pittsburgh, Pennsylvania. BodyMedia is
11 a wholly owned subsidiary of AliphCom.

12 4. Plaintiffs are informed and believe, and on that basis allege, that Defendant Fitbit
13 is a corporation organized and existing under the laws of Delaware with its headquarters at 405
14 Howard Street, San Francisco, CA 94105. Fitbit transacts substantial business, either directly or
15 through its agents, on an ongoing basis in this judicial district and elsewhere in the United States.

16 **JURISDICTION AND VENUE**

17 5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and
18 1338(a).

19 6. This Court has personal jurisdiction over Defendant because Defendant is located
20 in this District, has committed acts of infringement in violation of 35 U.S.C. § 271, and has
21 placed infringing products into the stream of commerce, through an established distribution
22 channel, with the knowledge and/or understanding that such products are used and sold in this
23 District. These acts cause injury to Plaintiffs within the District. Defendant derives revenue from
24 the sale of infringing products distributed within the District, expects or should reasonably expect

25 ¹ AliphCom and BodyMedia intend to file a complaint requesting the International Trade
26 Commission (ITC) to commence an investigation pursuant to Section 337 of the Tariff Act of
27 1930, 19 U.S.C. § 1337, of Fitbit’s unlawful importation into the United States, sale for
28 importation into the United States, and sale within the United States after importation of products
that infringe AliphCom and BodyMedia’s patents. The ITC complaint will include some or all of
the patents and accused products asserted in this district court action.

1 transactions to have consequences within the District, and derives substantial revenue from
2 interstate and international commerce.

3 7. Venue is proper in this Federal District pursuant to 28 U.S.C. §§ 1391(b)-(c) and
4 1400(b) in that Defendant has a regular and established place of business in this District, a
5 substantial part of the events giving rise to the claim occurred in this District, and Defendant has
6 committed acts of infringement in this district.

7 **BACKGROUND**

8 8. Jawbone is a world leader in consumer technology and wearable devices with
9 hundreds of patents that have been granted or are pending related to Jawbone's ecosystem and
10 wearable technology manufacturing processes. In the field of wearable technology, Jawbone's
11 UP® system in connection with its UP Move, UP2 and UP3 trackers collect and provide
12 personalized data about how consumers sleep, move and eat. The UP Platform also includes apps
13 and services that integrate with UP devices to offer new, customized experiences.

14 9. In April 2013, AliphCom acquired BodyMedia for over \$100 million and obtained
15 the rights to BodyMedia's expansive patent portfolio in the field of wearable technology.

16 10. BodyMedia helped to pioneer the development of wearable body monitors that
17 collect physiological data for use in improving health, wellness and fitness. Founded in 1999,
18 BodyMedia patented widely in the field of wearable technology.

19 11. Together, BodyMedia and Jawbone have almost three decades worth of
20 technology, science and intellectual property around wearable trackers that allow consumers to
21 measure their activity and set wellness goals.

22 12. Jawbone has invested heavily in its wearable technology business. In just the last
23 two years, Jawbone has spent well over a \$100 million in research and development related to its
24 wearable devices along with the technology and underlying systems that support them.

25 13. Jawbone employs over 400 people, spread across Jawbone's San Francisco,
26 Sunnyvale, Pittsburgh, Seattle, and New York facilities as well as overseas. Jawbone's
27 operations include BodyMedia employees and research operations.

1 14. Fitbit competes directly with Jawbone in the market for wearable fitness and
2 activity trackers through its product line, most notably the Zip, One, Flex, Charge, Charge HR,
3 Surge. These trackers – which make up virtually all of Fitbit’s wearable technology line –
4 infringe one or more of the Jawbone patents.

5 **COUNT 1 – INFRINGEMENT OF U.S. PATENT NO. 8,446,275**

6 15. On May 21, 2013, the United States Patent and Trademark Office issued United
7 States Patent No. 8,446,275 (“the ’275 patent”) for an invention entitled “General Health And
8 Wellness Management Method And Apparatus For A Wellness Application Using Data From A
9 Data-Capable Band.” AliphCom is the assignee and owner of the ’275 patent and holds all rights,
10 title and interests in the ’275 patent, including the right to sue for and recover all past, present and
11 future damages for infringement. A true and correct copy of the ’275 patent is attached as Exhibit
12 A.

13 16. Fitbit has infringed and continues to infringe one or more claims of the ’275 patent
14 by its making, manufacture, use, sale, importation, or offer for sale of its wearable fitness tracker
15 devices, including but not limited to the following: Zip, One, Flex, Charge, Charge HR, Surge,
16 and reasonably similar products.

17 17. Fitbit is liable for its infringement of the ’275 patent pursuant to 35 U.S.C.
18 § 271(a), (b), and (c).

19 18. Fitbit knowingly induces others to perform steps that infringe claims of the ’275
20 patent. Fitbit’s inducement of infringement includes, but is not limited to: (i) knowledge of the
21 ’275 patent; (ii) intent to induce direct infringement of the ’275 patent; (iii) knowingly aiding and
22 abetting infringement at least by providing and encouraging the use of the Fitbit App and/or Fitbit
23 Dashboard, as well as by providing instruction manuals, online websites including tutorials and
24 frequently asked questions, and other directions that instruct the purchaser or user of an accused
25 device to use that device in a manner that infringes certain claims of the ’275 patent; and (iv)
26 actual or constructive knowledge that their actions induce infringement.

27 19. Fitbit is also liable for contributory infringement because it offers to sell or sells
28 within the United States or imports into the United States wearable fitness tracker devices that

1 constitute a component of a patented combination and a material part of the invention claimed by
2 the '275 patent, knowing the same to be especially made or especially adapted for use in an
3 infringement of such patent, which wearable fitness tracker devices are not a staple article or
4 commodity of commerce suitable for substantial noninfringing use.

5 20. Fitbit's acts of infringement have damaged Plaintiffs, and Plaintiffs are entitled to
6 recover from Fitbit the damages they have sustained as a result of Fitbit's wrongful acts in an
7 amount subject to proof at trial. Fitbit's infringement of Plaintiffs' rights under the '275 patent
8 will continue to damage Plaintiffs, causing irreparable harm for which there is no adequate
9 remedy at law, unless enjoined by this Court.

10 **COUNT 2 – INFRINGEMENT OF U.S. PATENT NO. 8,073,707**

11 21. On December 6, 2011, the United States Patent and Trademark Office issued
12 United States Patent No. 8,073,707 ("the '707 patent") for an invention entitled "System For
13 Detecting, Monitoring, And Reporting An Individual's Physiological Or Contextual Status."
14 BodyMedia is the assignee and owner of the '707 patent and holds all rights, title and interests in
15 the '707 patent, including the right to sue for and recover all past, present and future damages for
16 infringement. A true and correct copy of the '707 patent is attached as Exhibit B.

17 22. Fitbit has infringed and continues to infringe one or more claims of the '707 patent
18 by its making, manufacture, use, sale, importation, or offer for sale of its wearable fitness tracker
19 devices, including but not limited to the following: Charge HR, Surge, Aria, and reasonably
20 similar products.

21 23. Fitbit is liable for its infringement of the '707 patent pursuant to 35 U.S.C. §
22 271(a), (b), and (c).

23 24. Fitbit knowingly induces others to perform steps that infringe claims of the '707
24 patent. Fitbit's inducement of infringement includes, but is not limited to: (i) knowledge of the
25 '707 patent; (ii) intent to induce direct infringement of the '707 patent; (iii) knowingly aiding and
26 abetting infringement at least by providing and encouraging the use of the Fitbit App and/or Fitbit
27 Dashboard, as well as by providing instruction manuals, online websites including tutorials and
28 frequently asked questions, and other directions that instruct the purchaser or user of an accused

1 device to use that device in a manner that infringes certain claims of the '707 patent; and (iv)
2 actual or constructive knowledge that their actions induce infringement.

3 25. Fitbit is also liable for contributory infringement because it offers to sell or sells
4 within the United States or imports into the United States fitness tracker devices that constitute a
5 component of a patented combination and a material part of the invention claimed by the '707
6 patent, knowing the same to be especially made or especially adapted for use in an infringement
7 of such patent, which fitness tracker devices are not a staple article or commodity of commerce
8 suitable for substantial noninfringing use.

9 26. Fitbit's acts of infringement have damaged Plaintiffs, and Plaintiffs are entitled to
10 recover from Fitbit the damages they have sustained as a result of Fitbit's wrongful acts in an
11 amount subject to proof at trial. Fitbit's infringement of Plaintiffs' rights under the '707 patent
12 will continue to damage Plaintiffs, causing irreparable harm for which there is no adequate
13 remedy at law, unless enjoined by this Court.

14 **COUNT 3 – INFRINGEMENT OF U.S. PATENT NO. 8,398,546**

15 27. On March 19, 2013, the United States Patent and Trademark Office issued United
16 States Patent No. 8,398,546 ("the '546 patent") for an invention entitled "System For Monitoring
17 And Managing Body Weight And Other Physiological Conditions Including Iterative And
18 Personalized Planning, Intervention And Reporting Capability." BodyMedia is the assignee and
19 owner of the '546 patent and holds all rights, title and interests in the '546 patent, including the
20 right to sue for and recover all past, present and future damages for infringement. A true and
21 correct copy of the '546 patent is attached as Exhibit C.

22 28. Fitbit has infringed and continues to infringe one or more claims of the '546 patent
23 by its making, manufacture, use, sale, importation, or offer for sale of its wearable fitness tracker
24 devices, including but not limited to the following: One, Charge, Charge HR, Surge, and
25 reasonably similar products.

26 29. Fitbit is liable for its infringement of the '546 patent pursuant to 35 U.S.C. §
27 271(a), (b), and (c).

1 30. Fitbit knowingly induces others to perform steps that infringe claims of the '546
2 patent. Fitbit's inducement of infringement includes, but is not limited to: (i) knowledge of the
3 '546 patent; (ii) intent to induce direct infringement of the '546 patent; (iii) knowingly aiding and
4 abetting infringement at least by providing and encouraging the use of the Fitbit App and/or Fitbit
5 Dashboard, as well as by providing instruction manuals, online websites including tutorials and
6 frequently asked questions, and other directions that instruct the purchaser or user of an accused
7 device to use that device in a manner that infringes certain claims of the '546 patent; and (iv)
8 actual or constructive knowledge that their actions induce infringement.

9 31. Fitbit is also liable for contributory infringement because it offers to sell or sells
10 within the United States or imports into the United States wearable fitness tracker devices that
11 constitute a component of a patented combination and a material part of the invention claimed by
12 the '546 patent, knowing the same to be especially made or especially adapted for use in an
13 infringement of such patent, which wearable fitness tracker devices are not a staple article or
14 commodity of commerce suitable for substantial noninfringing use.

15 32. Fitbit's acts of infringement have damaged Plaintiffs, and Plaintiffs are entitled to
16 recover from Fitbit the damages they have sustained as a result of Fitbit's wrongful acts in an
17 amount subject to proof at trial. Fitbit's infringement of Plaintiffs' rights under the '546 patent
18 will continue to damage Plaintiffs, causing irreparable harm for which there is no adequate
19 remedy at law, unless enjoined by this Court.

20 **JURY DEMAND**

21 33. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs
22 respectfully requests a trial by jury on all issues.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiffs request entry of judgment in their favor and against Fitbit as
25 follows:

- 26 a. Declaring that Defendant has infringed the '275,'707 and '546 patents;
- 27
- 28

- 1 b. Awarding compensatory damages arising out of Defendant's infringement of the
2 '275,'707 and '546 patents to Plaintiffs together with prejudgment and post-judgment
3 interest, in an amount according to proof;
- 4 c. Permanently enjoining Defendant and its respective officers, agents, employees, and
5 those acting in privity with them from the make, manufacture, use, sale, importation,
6 or offer for sale of products that infringe, including by contributory infringement or
7 induced infringement, the '275,'707 and '546 patents;
- 8 d. Awarding attorney's fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by
9 law; and
- 10 e. Awarding such other costs and further relief as the Court may deem just and proper.

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12 Dated: June 10, 2015

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