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8 Attorneys for Plaintiff
9 FITBIT, INC.

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12

13 FITBIT, INC., a Delaware Corporation,

14 Plaintiff,

15 v.

16 LAGUNA 2, LLC, A New Jersey Limited
Liability Company, JOEL BLANK, an
17 individual; and DOES 1-30, inclusive,

18 Defendants.
19
20
21

Case No. 3:17-cv-00079

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF FOR:**

1. **FEDERAL TRADEMARK
INFRINGEMENT AND
COUNTERFEITING;**
2. **FEDERAL TRADEMARK DILUTION;**
3. **FEDERAL UNFAIR COMPETITION;**
- AND,
4. **CALIFORNIA UNFAIR
COMPETITION.**

DEMAND FOR JURY TRIAL

1 Plaintiff Fitbit, Inc. (“Fitbit”), by and through its undersigned counsel, for its Complaint
 2 against Defendants Laguna 2, LLC (“L2”) and Joel Blank (“Blank”), and Does 1 through 30,
 3 inclusive (collectively, “Defendants”), complains and alleges as follows:

4 INTRODUCTION

5 1. Fitbit recently caught Defendants selling non-genuine “Fitbit” branded products
 6 that were never supposed to be resold to consumers at all. These products were originally
 7 manufactured by Fitbit, but because they did not meet Fitbit’s high quality standards, they were
 8 designated to be scrapped and/or recycled. Rather than being destroyed as part of Fitbit’s standard
 9 quality control processes, these scrap products instead were diverted from Fitbit’s supply chain,
 10 placed into counterfeit packaging, and then resold by Defendants through numerous non-
 11 authorized online retailers, under the guise that they were “refurbished” genuine Fitbit products.

12 2. Just before the holidays, Groupon, one of those online retailers, returned thousands
 13 of these “Fitbit” branded products to Defendants, after consumers purchased them from Groupon,
 14 and quickly returned them. Defendants nevertheless have refused to allow Fitbit to inspect any of
 15 their “Fitbit” branded inventory, including these Groupon returns, which would be necessary to
 16 ensure that Defendants do not sell any further scrap products. Indeed, Defendants have continued
 17 to threaten to resell these products with no regard for the harm to Fitbit, its brand, and the
 18 consuming public.

19 3. Fitbit is a San Francisco-based corporation that specializes in the design,
 20 production, and sale of connected health and fitness wearable products and various associated
 21 mobile applications and online resources. Fitbit is a leader in the sale of connected health and
 22 fitness wearable products with current sales exceeding \$2 billion annually.

23 4. Fitbit sells the majority of its products and services directly to consumers. Fitbit
 24 products and services have a reputation with these consumers for being high quality, innovative,
 25 and reliable. To maintain this strong reputation with the consuming public, among other things,
 26 Fitbit expends substantial resources on quality control in its supply chain. These supply chain
 27 processes, detailed further below, ensure that Fitbit’s quality control is of the highest level, further
 28 increasing Fitbit’s established reputation for high quality and reliable products and services.

1 5. Defendants' unlawful conduct, as alleged in more detail below, has not only caused
2 Fitbit significant monetary damages, but it also seeks to seriously undermine the established
3 reputation for quality and reliable products and services that Fitbit has worked so hard to achieve.
4 Indeed, numerous end customers who have purchased "Fitbit" branded products from Defendants,
5 believing they would receive an authorized Fitbit product that meets Fitbit's high quality
6 standards, have been sorely disappointed and confused, leaving scathing reviews and returning
7 thousands of these products. As such, Fitbit not only lost the opportunity to sell an authorized,
8 high quality product to hundreds of thousands of consumers, but also has taken a significant and
9 ongoing hit to its reputation, brand, and goodwill with members of the consuming public.

10 6. Despite being given notice and an opportunity to change their ways, Defendants
11 have refused to curtail, and indeed, have expanded their unlawful business practices. Defendants
12 have even brazenly requested that Fitbit approve their further resale of the "Fitbit" products
13 currently in their inventory, including the customer-returned products from Groupon, without
14 allowing Fitbit the chance to inspect them to determine whether they also were unlawfully
15 diverted from Fitbit's quality control and supply chain. Fitbit brings this Action to put a stop to
16 Defendants' unlawful and infringing conduct, to enjoin further unlawful and infringing conduct,
17 and to recover full damages for the harm they have caused.

THE PARTIES

19 7. Fitbit is, and was at all relevant times, a Delaware corporation with its principal
20 place of business at 405 Howard Street, Suite 550, San Francisco, California 94105.

21 8. Fitbit is informed and believes, and thereon alleges, that Defendant L2 is a New
22 Jersey limited liability company with its principal place of business at 12 Sullivan Street,
23 Westwood, New Jersey 07675. Fitbit is informed and believes, and thereon alleges, that L2 does
24 business through a variety of online distributors, including but not limited to eBay.com,
25 Groupon.com, Woot.com, and Overstock.com.

26 9. Fitbit is informed and believes, and thereon alleges, that Defendant Blank is also a
27 New Jersey resident. Fitbit is informed and believes, and thereon alleges, that Defendant Blank
28 acts as Managing Partner of Defendant L2, and therefore, that Defendant Blank participated in,

1 authorized, and directed the activities of Defendant L2, as set forth in detail in this Complaint.

2 10. The true names and capacities, whether individual, corporate, associate, or
3 otherwise, of the Defendants named herein as Does 1 through 30, inclusive, are unknown to Fitbit
4 who, therefore, sues said Defendants by such fictitious names. Fitbit is informed and believes, and
5 thereon alleges, that each of the Defendants designated herein as a Doe directed, conducted,
6 participated in, ratified, endorsed or was otherwise involved in, is legally responsible for, and has
7 liability, in some manner, for the events and acts alleged in this Complaint. Fitbit will amend this
8 Complaint to reflect the true names and capacities of these Doe Defendants when the same shall
9 have been fully and finally ascertained.

10 11. Fitbit is informed and believes, and thereon alleges, that at all times relevant to this
11 action, each Defendant, including those fictitiously named Doe Defendants 1 through 30,
12 inclusive, was the agent, servant, employee, partner, joint venturer, accomplice, conspirator, alter
13 ego or surety of the other Defendants and was acting within the scope of that agency, employment,
14 partnership, venture, or suretyship with the knowledge and consent or ratification of each of the
15 other Defendants in doing the things alleged in this Complaint.

16 JURISDICTION AND VENUE

17 12. This Court has personal jurisdiction over Defendants because the acts complained
18 of arise out of and relate to Defendants' resale of scrap non-genuine Fitbit products in counterfeit
19 packaging into the Northern District of California. Further, Fitbit is informed and believes, and
20 thereon alleges, that the acts complained of arise out of and relate to Defendants' purchase of these
21 scrap, non-genuine Fitbit products from a company located in California. Further, Defendants sell
22 their products, among other websites, through Ebay.com, which is located in the Northern District
23 of California. In addition, Defendants have placed labels on their packaging directing their
24 customers to log onto Fitbit's website to setup these scrap, non-genuine Fitbit products and to
25 download product manuals from Fitbit, knowing that Fitbit is located in San Francisco, California.
26 In addition to the above, venue for this action also properly lies in the Northern District of
27 California pursuant to 28 U.S.C. § 1391(b)(2) because Defendants committed acts in furtherance
28 of their operation, and a substantial part of the property that is the subject of this action is located,

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1 within this District.

2 13. This Court has original subject matter jurisdiction over this action pursuant to 28
 3 U.S.C. §§ 1331 and 1338(a), and 15 U.S.C. § 1121, because Fitbit’s claims arise under Federal
 4 statutes, including the Lanham Act, 15 U.S.C. §§ 1051, *et seq.*

5 14. This Court has supplemental jurisdiction over Fitbit’s state law claim for relief
 6 pursuant to 28 U.S.C. §§ 1338(b) and 1367 because the claim is so related to Fitbit’s claims under
 7 Federal law that they form part of the same case or controversy and derive from a common
 8 nucleus of operative facts.

9 **INTRA-DISTRICT ASSIGNMENT**

10 15. In accordance with N.D. Cal. Civ. L.R. 3-2(c), this Action is properly assigned on a
 11 District-wide basis because it relates to Intellectual Property.

12 **FACTUAL ALLEGATIONS**

13 16. Fitbit is a leader in the sale of connected health and fitness wearable products and
 14 various associated mobile applications and online resources. Fitbit has built up tremendous
 15 goodwill and brand reputation among consumers through significant investment in advertising,
 16 promoting, and delivering products and services of the highest quality under Fitbit’s federally-
 17 registered trademarks. Defendants’ infringement and counterfeiting, as alleged further below, has
 18 not only caused monetary damages to Fitbit, but also undermines, diminishes, and tarnishes
 19 Fitbit’s brand, reputation, and goodwill among consumers and members of the trade.

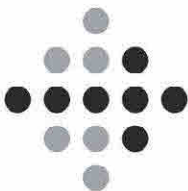
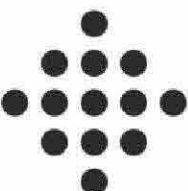
20 **A. THE FITBIT MARKS**

21 17. Fitbit is the owner of numerous federally registered trademarks related to the Fitbit
 22 brand of products and services, including but not limited to the following:

TRADEMARK	REGISTRATION NUMBER	GOODS/SERVICES
FITBIT	3,732,334	Among other goods and services: Multifunctional electronic devices for displaying, measuring, and uploading to the Internet information including time, date, body and heart rates, global positioning, direction, distance, altitude, speed, steps taken, calories burned, navigational information, weather information, the temperature, wind speed, and the declination of body and

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		heart rates, altitude and speed.
FITBIT	4,851,801	Among other goods and services: Pedometers; altimeters; scales and personal weighing scales; multifunctional electronic devices for displaying, measuring, and uploading to the Internet information including time, date, heart rate, global positioning, direction, distance, altitude, speed, steps taken, calories burned, navigational information, weather information, temperature, wind speed, changes in heart rate, activity level, hours slept, quality of sleep, and silent wake alarm; computer software for wireless data communication for receiving, processing, transmitting and displaying information relating to fitness, body fat, body mass index; computer software for managing information regarding tracking, compliance and motivation with a health and fitness program.
FITBIT FLEX	4,507,210	Multifunctional electronic devices for displaying, measuring, and uploading to the Internet information including time, distance, steps taken, activity level, calories burned, hours slept, quality of sleep, and silent wake alarm; pedometers.
	4,851,802	Among other goods and services: Pedometers; altimeters; scales and personal weighing scales; multifunctional electronic devices for displaying, measuring, and uploading to the Internet information including time, date, heart rate, global positioning, direction, distance, altitude, speed, steps taken, calories burned, navigational information, weather information, temperature, wind speed, changes in heart rate, activity level, hours slept, quality of sleep, and silent wake alarm; computer software for wireless data communication for receiving, processing, transmitting and displaying information relating to fitness, body fat, body mass index; computer software for managing information regarding tracking, compliance and motivation with a health and fitness program.
	4,851,803	Among other goods and services: Pedometers; altimeters; scales and personal weighing scales; multifunctional electronic devices for displaying, measuring, and uploading to the Internet information including time, date, heart rate, global positioning, direction, distance, altitude, speed, steps taken, calories burned, navigational information, changes in heart rate, activity level, hours slept, quality of sleep, and silent wake alarm; computer software for wireless data communication for receiving, processing, transmitting and displaying information relating to fitness, body fat, body mass index; computer

		software for managing information regarding tracking, compliance and motivation with a health and fitness program.
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(Collectively, the “Fitbit Marks”). The Fitbit Marks were registered to Fitbit at its principal place of business at the time of each registration in San Francisco, California.

18. The Fitbit Marks have been used in interstate commerce to identify and distinguish Fitbit’s high quality products and services since approximately 2009.

19. The Fitbit Marks have never been assigned or licensed to the Defendants in this matter.

20. Fitbit has expended substantial time, money, and other resources developing, advertising, and otherwise promoting the Fitbit Marks. The Fitbit Marks qualify as famous marks as the term is used in 15 U.S.C. Section 1125(c)(1).

21. Fitbit has extensively used, advertised, and promoted the Fitbit Marks in the United States in association with the sale of connected health and fitness wearable products and various associated mobile applications and online resources, and has carefully monitored and policed the use of the Fitbit Marks.

22. The Fitbit Marks are symbols of Fitbit’s quality, reputation, and goodwill and have never been abandoned.

23. As a result of Fitbit’s efforts, members of the consuming public readily identify merchandise bearing the Fitbit Marks as being high quality merchandise manufactured and sold by Fitbit.

24. The Fitbit Marks are inherently distinctive and have attained secondary meaning as an identifier of high quality connected health and fitness wearable products and various associated mobile applications and online resources.

25. Fitbit is informed and believes, and thereon alleges, that at all times relevant to this action Defendants had full knowledge of Fitbit’s ownership of the Fitbit Marks, including Fitbit’s exclusive right to use and license such intellectual property and the goodwill associated with it.

1 **B. FITBIT'S QUALITY CONTROL AND REVERSE LOGISTICS SUPPLY**
2 **CHAIN PROCESS**

3 26. To maintain its reputation for high quality products and services, Fitbit has
4 established substantial, legitimate, and non-pretextual quality control procedures that it abides by
5 and uses to ensure that non-conforming units do not diminish or tarnish Fitbit's brand and
6 goodwill. One of the ways that Fitbit does so is through a robust warranty and return program, as
7 well as an established supply chain quality control process for any returns or exchanges from
8 consumers, distributors, or anyone else.

9 27. Because of the technical complexity of Fitbit products, Fitbit does not authorize
10 any third party not associated with Fitbit to conduct refurbishment of Fitbit products for the intent
11 of resale. Instead, Fitbit has a reverse logistics supply chain process, whereby Fitbit products that
12 do not meet its high quality standards or that have been returned for any reason are evaluated and
13 either refurbished by authorized third parties or designated to be scrapped and/or recycled.

14 28. Thus, Fitbit products that do not meet Fitbit's stringent quality standards for
15 refurbishment are designated instead to be scrapped and/or recycled as part of Fitbit's standard
16 supply chain processes. The determination that such products cannot be refurbished and must be
17 scrapped and/or recycled occurs for many reasons, including due to physical defects in the
18 product. Regardless of the reason, products that do not meet Fitbit's quality control standards and
19 are designated to be scrapped and recycled are materially different from genuine Fitbit products.
20 Indeed, products that are removed from Fitbit's quality control processes without authorization
21 themselves become counterfeit within the definition of the Lanham Act.

22 **C. FITBIT PUT DEFENDANTS ON NOTICE OF THE FITBIT MARKS AND**
23 **WARRANTY IN 2015**

24 29. Defendants claim that their business model is to sell end of life, discontinued, and
25 refurbished consumer electronics products. Since at least sometime in 2015, Defendants' product
26 offerings have included certain "Fitbit" branded products.

27 30. In 2015, Fitbit discovered that Defendants were using the name "Fitbit" as their
28 vendor name on a consumer electronics website, called www.thenextweb.com, and had

1 misappropriated Fitbit's trademarks and other intellectual property rights in the process.
 2 Defendants were also not disclosing that their sales were not covered by Fitbit's warranty. Fitbit
 3 sent Defendants a cease and desist letter on November 19, 2015, demanding that Defendants halt
 4 their infringement of Fitbit's intellectual property rights and not mislead consumers about any
 5 warranty. As such, no later than 2015, Defendants were on notice of Fitbit's federally-registered
 6 trademarks and that further infringement would necessarily be a willful violation of Fitbit's
 7 intellectual property rights. Defendants appeared to comply with Fitbit's cease and desist letter,
 8 and Fitbit believed that would be the end of the matter.

9
 10 **D. DEFENDANTS EXPAND THEIR INFRINGEMENT AND BEGIN SELLING
 PRODUCTS IN COUNTERFEIT PACKAGING**

11 31. Rather than ceasing their violations of Fitbit's intellectual property rights,
 12 Defendants instead have expanded their infringement, selling non-genuine "Fitbit" products
 13 placed in counterfeit packaging, through much more established distribution channels, such as
 14 eBay.com, Groupon.com, Woot.com, and Overstock.com (Defendants' "Established Distribution
 15 Channels"). Indeed, Fitbit is informed and believes that, beginning in approximately 2015,
 16 Defendants began selling a large volume of non-genuine "Fitbit" products online through their
 17 Established Distribution Channels, under the guise that these products had merely been
 18 "refurbished."

19 32. Through the Groupon platform alone, Fitbit is informed and believes, and thereon
 20 alleges, that Defendants have sold over 200,000 "Fitbit" branded products over the past two years,
 21 with an MSRP value for new genuine Fitbit products of over \$20 million. Fitbit is informed and
 22 believes, and thereon alleges, that Defendants have sold many more through its other Established
 23 Distribution Channels, including over \$80,000 of "Fitbit" branded products on eBay.com in the
 24 last two years according to publicly available data.

25 33. Fitbit has now confirmed through numerous purchases of Defendants' purportedly
 26 "refurbished" Fitbit products through Defendants' Established Distribution Channels that
 27 Defendants have been selling non-genuine and otherwise infringing "Fitbit" products, including in
 28 counterfeit packaging mocked up to resemble genuine Fitbit return replacement packaging. While

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1 Defendants claimed the products were merely “refurbished,” Fitbit has confirmed that most of the
 2 products purchased from Defendants had actually been designated to be scrapped and/or recycled
 3 as part of Fitbit’s standard quality control processes.

4 34. In other words, as part of Fitbit’s standard quality control procedures, Fitbit and/or
 5 members of its authorized supply chain had designated these products to be scrapped and/or
 6 recycled due to some defect or other quality control issue, but at some point before that occurred,
 7 the product was diverted and ended up with Defendants reselling them to end customers.

8 35. To further deceive consumers, Defendants sold these scrap products in counterfeit
 9 packaging that attempts to mimic Fitbit’s genuine return replacement packaging.

10 Example of Genuine Fitbit Return
 11 Replacement Packaging:



12 Counterfeit “Fitbit” Packaging Used
 13 By Defendants:



14 36. The counterfeit packaging used by Defendants reproduced, counterfeited, copied,
 15 and/or colorably imitated the Fitbit Marks and displayed spurious designations that are identical
 16 with, or substantially indistinguishable from, the Fitbit Marks. Defendants have applied their
 17 reproductions, counterfeits, copies, and/or colorable imitations of the Fitbit Marks to labels and/or
 18 packaging intended to be used in commerce upon or in connection with the sale, offering for sale,
 19 distribution, or advertising of Fitbit products that are themselves not genuine within the meaning
 20 of the Lanham Act. Instead, these products were designated to be scrapped and/or recycled and
 21 were never intended to be resold to consumers. Defendants’ counterfeit packaging also referred
 22 the consumer to Fitbit.com to setup the product to further confuse and deceive the consumer into
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1 believing that Fitbit authorized, was affiliated with, and/or approved the sale of this non-genuine
2 product to consumers.

3 37. Defendants have infringed, and are threatening to continue to infringe, Fitbit's
4 trademark rights by selling non-genuine "Fitbit" products, that are materially different from
5 genuine Fitbit products. Moreover, Defendants have sold those products in counterfeit "Fitbit"
6 packaging that mimics Fitbit's federally registered trademarks to mislead consumers into believing
7 that the products are authorized and genuine. Reselling products that had been designated for
8 scrap and/or recycling has undermined, and continues to undermine, Fitbit's quality control
9 processes and usurped Fitbit's right to control the quality of products destined for members of the
10 consuming public. Because these products were determined not to meet up to Fitbit's quality
11 standards, and as a result were designated to be scrapped and/or recycled, there can be no doubt
12 that the products are materially different from genuine products. Indeed, such products that were
13 removed from Fitbit's quality control processes without authorization themselves are counterfeit
14 within the definition of the Lanham Act.

15 **E. DEFENDANTS' MISLEADING AND INFERIOR WARRANTY**

16 38. In addition, Defendants included a "Warranty Card" in their product shipments that
17 referred the customer to the Fitbit website to download a product manual, and further misled the
18 consumer into believing that Fitbit authorized, was affiliated with, and/or approved the sale of this
19 non-genuine product to consumers by failing to state that there is no warranty provided by Fitbit
20 for these products:



1 39. Thus, Defendants sold these scrap products without even providing a disclaimer,
2 advising consumers that they are not Fitbit authorized retailers, and that the products are not
3 eligible for Fitbit warranty support, as required for example by Cal. Civ. Code Section 1797.81.
4 This failure dramatically increased the likelihood, confirmed in the consumer reviews of
5 Defendants' product sales, that their customers would be confused about Fitbit's support of the
6 warranty, further damaging the consumer experience and increasing the damage to Fitbit's brand.

7 40. As such, Defendant's inferior warranty coverage is another material difference
8 sufficient by itself to render the product not genuine under the Lanham Act. Defendants' warranty
9 is for 60 days but only covers replacement of broken units. On the other hand, Fitbit has a 45 day
10 Satisfaction Guaranteed Return Policy that allows the consumer to return a product for any reason
11 for 45 days and allows the return of defective products for a year in the United States. *See* Fitbit's
12 Warranty and Return Policy, available at <https://www.fitbit.com/legal/returns-and-warranty>.

13 **F. CONSUMER CONFUSION CAUSED BY DEFENDANTS**

14 41. Despite being put on notice by Fitbit in 2015, Defendants continued to
15 conspicuously use and/or counterfeit the Fitbit Marks and trade name throughout their advertising
16 through their Established Distribution Channels, and on the packaging and warranty card for the
17 non-genuine "Fitbit" products they sell. Fitbit is informed and believes, and thereon alleges, that
18 Defendants did so intentionally and willfully to increase their sales by causing consumers to
19 believe that their product sales and warranty are somehow associated with, affiliated with, and
20 authorized by, Fitbit, when they are not and when the products themselves are non-genuine and/or
21 are counterfeit within the meaning of the Lanham Act.

22 42. Not only are consumers *likely* to be confused by Defendants' use of the Fitbit
23 Marks, but Fitbit has found significant evidence of *actual* consumer confusion and
24 brand/reputational harm to Fitbit from consumers who have recently complained about the
25 products sold by Defendants.

26 43. The harm to Fitbit's brand and goodwill caused by Defendants' conduct is ongoing,
27 as the negative reviews continue to mount, and confirm the confusion and disappointment caused
28 to consumers due to the inferior quality of the product and warranty sold by Defendants:

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1 Customer Reviews



6 ★★★★★ Bliss A. Dec 30th, 2016
 7 If I could give this product zero stars I would. I've had the fit bit flex for less than six months and it no longer tracks any steps. It is fully charged although charging it is a hassle as I have to put a rubber band around the charger and the battery in order for the connectors to connect.

8 Was this helpful?

9 ★★★★★ Scott N. Dec 28th, 2016
 10 Bought 1 Flex and it will not sync to phone or laptop. Now the warranty is invalid since it was purchased over 60 days before Christmas. DO NOT BUY. AVOID SELLER!

11 Was this helpful?

12 44. Another recent consumer review for Defendants' "Fitbit" sales further exemplifies
 13 the actual customer confusion, as she relays her and her daughter's disappointment after calling
 14 Fitbit for customer service and warranty support:

15 ★★★★★ Stephanie E. Dec 23rd, 2016
 16 I bought this as a Christmas gift for my daughter, when she opened it she was very excited only to try to start it and find that it is broken, she called fitbit and they explained that it already had an account associated to it and there was nothing they could do for her and the warranty was NO GOOD, because of the account on it from over a year ago. Don't waste your money.

17 45. The scathing reviews and resulting harm to Fitbit's brand and reputation go on and
 18 on, as Defendants surely knew would occur when they decided to sell scrap products that were
 19 never intended to be resold to consumers in the first place:

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- 1 ★★★★★ Kristdel C. Dec 20th, 2016
 Bought two Fitbit flex bracelets, only one would work/connect to app. Very poor product.
- 2 Was this helpful? Yes No
- 3
- 4 ★★★★★ Kimberley R. Dec 3rd, 2016
 I bought two Fitbit's and the one I use stopped working after vibrating non-stop on my wrist for 5 minutes. The one my daughter uses needs charging every day. Note to self.... never buy a refurbished Fitbit again!
- 5 Was this helpful? Yes No
- 6 1 person found this review helpful
- 7
- 8 ★★★★★ angela s. Nov 25th, 2016
 The Fitbit flex came with no directions. It does not work properly and is a piece of junk. I would like to return it but don't know how
- 9 Was this helpful? Yes No
- 10
- 11 ★★★★★ Frangca P. Nov 22nd, 2016
 This fitbit worked fine for the first two months, but I started to get issues. It was fully charged, but was unresponsive. I reset this fitbit several times and wasn't able to address this issue. Because I was outside of the time frame for returns, there was nothing Groupon could do to help me. I just ended up wasting my money on this product.
- 12 Was this helpful? Yes No
- 13 2 people found this review helpful
- 14
- 15 ★★★★★ Karen F. Nov 21st, 2016
 would not hold a charge for even a 12 hour period. was a waste of my time and money
- 16 Was this helpful? Yes No
- 17
- 18 ★★★★★ Rasheda T. Nov 20th, 2016
 I will be returning item. FITBIT say's I've walked my 10,000 steps even though I've been sleeping
- 19 Was this helpful? Yes No

18 46. Accordingly, Defendants’ use of the Fitbit Marks has caused actual confusion or
 19 mistake, and deceived consumers into believing there is an affiliation, connection, or association
 20 between Fitbit and Defendants, and has confused members of the public as to the origin,
 21 sponsorship, authorization, and/or approval by Fitbit of Defendants’ “Fitbit” branded product
 22 sales. In addition to monetary damages to Fitbit, Defendants’ unlawful actions have caused
 23 irreparable harm to Fitbit’s brand and reputation, as to which there is no adequate remedy at law.

24 47. Fitbit requested that Defendants allow Fitbit to inspect their inventory to ensure
 25 that Defendants do not resell any more scrap products, but Defendants rejected that request. They
 26 also have impeded Fitbit’s attempts to ensure that Defendants’ product returns from their
 27 Established Distribution Channels do not go out to members of the consuming public yet again.

28 48. Indeed, Fitbit is informed and believes, and thereon alleges, that thousands of

1 consumers who purchased these scrap products through the Groupon platform have already
 2 returned them to Groupon. Though Fitbit requested to receive and inspect those rejected products,
 3 Groupon recently returned them back to Defendants. Accordingly, in addition to all other relief
 4 requested, good cause and exigent circumstances exist here to order temporary and preliminary
 5 injunctive relief to stop Defendants from reselling any “Fitbit” branded products in their
 6 inventory, including the thousands of recently returned products from Groupon, without prior
 7 inspection and approval by Fitbit to ensure Defendants sell no more scrap products to members of
 8 the consuming public.

9 **FITBIT’S CLAIMS FOR RELIEF**

10 **FIRST CLAIM FOR RELIEF**

11 **(Federal Trademark Counterfeiting and Infringement; 15 U.S.C. § 1114)**

12 49. Fitbit incorporates the preceding paragraphs of this Complaint as if fully set forth
 13 herein.

14 50. The Fitbit Marks are valid, protectable trademarks that have been registered as
 15 marks on the principal register in the United States Patent and Trademark Office.

16 51. Fitbit is the owner and registrant of the Fitbit Marks.

17 52. As described in more detail above, Defendants have used and counterfeited the
 18 Fitbit Marks in connection with the marketing, promotion, and sale of their goods and services
 19 without Fitbit’s consent, in a manner that is likely to cause, and has actually caused, confusion
 20 and/or mistake, or that has deceived members of the consuming public and/or the trade. Indeed,
 21 Defendants counterfeiting and infringing activities are likely to cause and are actually causing
 22 confusion, mistake, and deception among members of the trade and the general consuming public
 23 as to the origin, sponsorship, and quality of Defendants’ infringing products, counterfeit
 24 packaging, inferior warranty, and other related commercial activities. As of the filing of this
 25 Complaint, Defendants are continuing to infringe the Fitbit Marks unabated as alleged further
 26 above.

27 53. Defendants’ infringement of the Fitbit Marks is willful.

28 54. Fitbit has been, and continues to be, damaged by Defendants’ infringement,

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1 including by suffering irreparable harm through the diminution of trust and goodwill among Fitbit
2 consumers and members of the general consuming public and the trade.

3 55. As a result of Defendants' infringement of the Fitbit Marks, Fitbit is entitled to an
4 injunction, as set forth below, and an order of destruction of all of Defendants' infringing
5 materials.

6 56. Fitbit is entitled to an injunction against Defendants, as well as all monetary relief
7 and other remedies available under the Lanham Act, including but not limited to trebled damages
8 and/or actual profits, reasonable attorney's fees, costs and prejudgment interest, and/or statutory
9 damages.

10 **SECOND CLAIM FOR RELIEF**

11 **(Federal Trademark Dilution; 15 U.S.C. § 1125)**

12 57. Fitbit incorporates the preceding paragraphs of this Complaint as if fully set forth
13 herein.

14 58. The Fitbit Marks are famous trademarks within the meaning of the Anti-Dilution
15 Act, 15 U.S.C. § 1125(c).

16 59. As a result of Defendants' use and counterfeiting of the Fitbit Marks to identify
17 inferior products and warranties with the Fitbit Marks, as alleged further above, causes significant
18 harm to Fitbit's brand and reputation.

19 60. Defendants' acts have diluted and will continue to dilute the distinctive nature of
20 the Fitbit Marks through blurring and tarnishment, in violation of 15 U.S.C. § 1125(c).

21 61. The distinctive nature and reputation of the Fitbit Marks is extremely valuable, and
22 Fitbit is suffering and will continue to suffer irreparable harm, blurring, and tarnishment of the
23 Fitbit Marks if Defendants' wrongful conduct is allowed to continue.

24 62. The dilution of the Fitbit Marks will likely continue unless the Court orders
25 injunctive relief against Defendants.

26 63. Fitbit is entitled to an injunction against Defendants, as well as all monetary relief
27 and other remedies available under the Lanham Act, including but not limited to trebled damages
28 and/or actual profits, reasonable attorney's fees, costs and prejudgment interest, and/or statutory

1 damages.

2 **THIRD CLAIM FOR RELIEF**

3 **(Federal Unfair Competition; 15 U.S.C. § 1125)**

4 64. Fitbit incorporates the preceding paragraphs of this Complaint as if fully set forth
5 herein.

6 65. The Fitbit Marks are valid, protectable trademarks that have been registered as
7 marks on the principal register in the United States Patent and Trademark Office.

8 66. Fitbit is the owner and registrant of the Fitbit Marks.

9 67. Fitbit operates under and uses the trade name “Fitbit” in connection with its
10 products and services.

11 68. Defendants have made commercial use of and counterfeited the Fitbit Marks and
12 Fitbit’s trade name.

13 69. Defendants’ counterfeiting and infringing activities, and related false descriptions
14 and representations as to origin and quality of their product sales, are likely to cause, and are
15 actually causing, confusion, mistake, and/or deception among members of the consuming public
16 and members of the trade. These members of the consuming public and members of the trade
17 have been, and will continue to be, misled into believing that there is an affiliation, connection, or
18 association between Fitbit and Defendants, and/or that they have been, or will be, misled as to the
19 origin, sponsorship, or approval of Defendants’ sale of inferior scrap products, inferior warranty,
20 and other related commercial activities.

21 70. Fitbit has not consented to Defendants’ use of the Fitbit Marks or Fitbit trade name.

22 71. Defendants’ unauthorized use of the Fitbit Marks and Fitbit trade name was willful.

23 72. Defendants’ acts constitute false statements in connection with products and/or
24 services distributed in interstate commerce, in violation of Section 43(a) of the Lanham Act, 15
25 U.S.C. § 1125(a).

26 73. Defendants’ acts have caused and are continuing to cause irreparable injury to
27 Fitbit’s brand, goodwill, and reputation.

28 74. An award of monetary damages alone cannot fully compensate Fitbit for its injuries

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1 and Fitbit lacks an adequate remedy at law.

2 75. Fitbit is entitled to an injunction against Defendants, as well as all monetary relief
3 and other remedies available under the Lanham Act, including but not limited to trebled damages
4 and/or actual profits, reasonable attorney's fees, costs and prejudgment interest, and/or statutory
5 damages.

6 **FOURTH CLAIM FOR RELIEF**

7 **(California Unfair Competition; Cal. Bus. Prof. Code §§ 17200, *et seq.*)**

8 76. Fitbit incorporates the preceding paragraphs of this Complaint as if fully set forth
9 herein.

10 77. Defendants have engaged in unlawful and unfair business acts or practices, as
11 defined by Cal. Bus. Prof. Code §§ 17200, *et seq.*, by committing the illegal acts and practices as
12 alleged herein, all in an effort to gain an unfair competitive advantage over Fitbit.

13 78. Defendants' misconduct was unlawful because, as described herein, their
14 misconduct constitutes violations of numerous state and federal statutes, including but not limited
15 to Cal. Civ. Code Section 1797.81, state false advertising laws such as Cal. Bus. Prof. Code §
16 17500, as well as the Lanham Act, 15 U.S.C. §§ 1114 and 1125, and the Federal Trade
17 Commission Act, 15 U.S.C. § 45. Further, their misconduct was unfair in that Defendants'
18 actions, as described herein, significantly threatened and/or harmed competition by selling scrap
19 products diverted from Fitbit's supply chain to undercut the legal market for genuine Fitbit
20 products.

21 79. These unlawful and unfair business acts and/or practices were committed pursuant
22 to Defendants' business marketing, promotional, and sales efforts in relation to the Fitbit Marks
23 and the Fitbit website.

24 80. As a direct and proximate result of Defendants' unlawful and unfair business
25 practices, Fitbit has lost money, and has suffered irreparable injury to its brand, business
26 reputation, and goodwill. As such, Fitbit's remedy at law is not adequate to compensate for the
27 injuries inflicted by Defendants. Accordingly, Fitbit is entitled to temporary, preliminary, and
28 permanent injunctive relief against Defendants, in addition to restitution in an amount to be proven

1 at trial.

2 **PRAYER FOR RELIEF**

3 **WHEREFORE**, Fitbit respectfully prays that the Court enter judgment as follows:

4 1. That Defendants infringed the Fitbit Marks, engaged in trademark infringement and
5 counterfeiting, engaged in trademark dilution, and engaged in unfair competition through their use
6 and counterfeiting of the Fitbit Marks and related product sales;

7 2. That Defendants’ trademark infringement was knowing and willful and committed
8 with bad faith and intent to deceive and that this case is exceptional under 15 U.S.C. § 1117(a);

9 3. That the Court enter an order enjoining and restraining Defendants and all persons
10 or entities acting as agents of or in concert with Defendants, during the pendency of this action and
11 thereafter perpetually, from infringing, counterfeiting, or diluting the Fitbit Marks in any way,
12 including but not limited to the resale of any scrap products in Defendants’ inventory;

13 4. That the Court enter an order impounding and delivering to Fitbit for ultimate
14 destruction any infringing and/or counterfeit “Fitbit” branded products, packaging, or other
15 collateral in Defendants’ possession, custody, or control;

16 5. That the Court enter an order directing Defendants to send a Plaintiff-approved
17 notice to any customer who purchased any infringing or counterfeit “Fitbit” branded product from
18 Defendants, informing the customer that the sale of the product violated Federal trademark and
19 counterfeiting laws, and that Defendants will refund the money paid by the consumer immediately
20 upon request and return of the product, with any such product returns going directly to Fitbit or its
21 counsel for ultimate destruction;

22 6. That the Court enter an order requiring Defendants to account to and pay Fitbit for
23 all profits and damages resulting from Defendants’ infringement, counterfeiting activities and
24 Federal unfair competition;

25 7. That Plaintiff be awarded treble damages to the fullest extent available under the
26 law;

27 8. That Plaintiff be awarded statutory damages to the extent elected and to the fullest
28 extent available under the law;

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1 9. That Plaintiff be awarded restitution from Defendants to the fullest extent available
2 under the law;

3 10. That Plaintiff be awarded costs, reasonable attorney’s fees, and pre-judgment
4 interest on its judgment amount to the fullest extent available under the law; and,

5 11. That Plaintiff be granted such other and further relief as the Court deems just and
6 proper.

7 DATED: January 6, 2017

SIDEMAN & BANCROFT LLP

8
9 By: /s/ Zachary J. Alinder

Zachary J. Alinder

Attorneys for Plaintiff

FITBIT, INC.

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JURY DEMAND

Pursuant to Civ. L.R. 3-6 and Fed. R. Civ. Proc. 38, Plaintiff FITBIT, INC. hereby demands trial by a jury on all issues herein so triable.

DATED: January 6, 2017

SIDEMAN & BANCROFT LLP

By: /s/ Zachary J. Alinder

Zachary J. Alinder

Attorneys for Plaintiff

FITBIT, INC.

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