

# **If You Purchased Certain Fitbit Branded Wearables with a Sleep Tracking Function from September 1, 2009 – October 27, 2014, a Class Action Lawsuit Settlement May Affect Your Rights.**

*The United States District Court (N.D. Cal.) ordered this Notice. This is not a solicitation.*

ISSUE DATE: March 1, 2019

**YOU MAY BE ELIGIBLE FOR BENEFITS FROM A  
PROPOSED CLASS ACTION SETTLEMENT.  
YOUR RIGHTS MAY BE AFFECTED BY THIS SETTLEMENT.**

**YOU MUST RESPOND TO THIS NOTICE BY FILING A CLAIM FORM  
TO RECEIVE COMPENSATION. IF YOU DO NOT WANT TO BE  
PART OF THE SETTLEMENT, YOU MUST TAKE THE STEPS  
DESCRIBED IN THIS NOTICE BY MAY 30, 2019.**

This is a proposed settlement of a class action lawsuit brought in the United States District Court, Northern District of California (the “Court”), against Fitbit, Inc., *Brickman, et al v. Fitbit, Inc.*, Case No. 3:15-cv-2077, N.D. of California. A class action is where one or more persons sue on behalf of others who have similar claims. The members of this group are called the Class.

## **What this case is about:**

The parties who brought the lawsuit against Defendant, Fitbit, Inc., are called the “Plaintiffs.” The Plaintiffs claim that the Defendant was the manufacturer of certain Fitbit branded wearable devices that Defendant claimed could track steps, sleep, and other activity: the Fitbit Flex, Fitbit One, and Fitbit Ultra. The Plaintiffs claim that these devices are not able to track sleep as represented to consumers on the product’s packaging. Defendant denies this claim and maintains that the products worked as promised and that it has done nothing wrong. The Court has not decided who is right. Your legal rights may be affected by a settlement of this lawsuit, however, and you must make a choice.

## **Who is in the class? Am I covered by this settlement as a Class Member?**

The current lawsuit settlement affects your legal rights and you are a “Class Member” if you purchased, and registered online, a Fitbit Flex, Fitbit One, or Fitbit Ultra: **in California or Florida from September 1, 2009 to October 27, 2014; in New York, Michigan, New Jersey, Pennsylvania, or Ohio from March 26, 2012 to October 27, 2014; in Missouri or Illinois from March 26, 2013 to October 27, 2014; or in Texas, Georgia, North Carolina, or Washington state from March 26, 2014 to October 27, 2014.**

- **If you bought a Fitbit branded wearable device with a sleep tracking feature i.e., a Fitbit Flex, Fitbit One, or Fitbit Ultra, in any of those states during those times, you are a Class Member and your legal rights will be affected by the settlement and you must make a choice.**
- If you are still not sure whether you are included in the Class, you can visit the website [www.SleepDeviceSettlement.com](http://www.SleepDeviceSettlement.com), call toll-free 1-855-336-4163, or write to *Brickman v. Fitbit, Inc.* Settlement Administrator, P.O. Box 404104, Louisville, KY 40233-4104 for more information.

## **Why is there a settlement and what happens next?**

Plaintiffs and Fitbit have concluded that settlement is in their best interests because of the uncertainty, expenses, risks, and delays of litigation. No judge or jury has concluded that Fitbit did anything wrong, and, instead, the parties have settled. The parties have reached a proposed settlement that upon filing a timely Claim Form and final Court approval of the settlement will provide a cash benefit. The Court has preliminarily approved the settlement as fair, reasonable, and adequate. On July 11, 2019, at 10:00 a.m., at the United States District Court, Northern District of California, 450 Golden Gate Avenue, San Francisco, California, 94102, the Court will hold a Final Approval Hearing to decide whether to issue final approval of the settlement. The date of the Final Approval Hearing may change without further notice to the Class. Please check the settlement website ([www.SleepDeviceSettlement.com](http://www.SleepDeviceSettlement.com)) or the Court's PACER site to confirm that the date has not been changed. Instructions for accessing the Court's PACER site are provided below.

## **What benefits can I get in the settlement?**

If you are a Class Member and the settlement is approved, and you timely file a Claim Form, you are entitled to a cash payment of \$12.50.

The settlement is structured so you do not have to pay anything out of pocket for attorney fees, costs, administration or anything else. In other words, any of those things awarded by the Court will be paid separately by Fitbit and will not decrease your settlement payment.

More information, as well as the Settlement Agreement and other filings, is available at [www.SleepDeviceSettlement.com](http://www.SleepDeviceSettlement.com). You may review all filings at the Clerk of Court, United States District Court, Northern District of California, 450 Golden Gate Avenue, San Francisco, California, 94102, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays. You can also access the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>.

## **What must I do next: MAKE A CLAIM FOR PAYMENT; OBJECT; OPT OUT?**

### **1. To make a claim for payment:**

To receive your payment, you must complete, sign, and submit a Claim Form no later than May 30, 2019. Class Members may **CLICK [HERE](#)** to download and print a Claim Form which must be mailed to *Brickman v. Fitbit, Inc.* Settlement Administrator, P.O. Box 404104, Louisville, KY 40233-4104, postmarked no later than May 30, 2019. Class Members may also **CLICK [HERE](#)** to submit the Claim Form online no later than May 30, 2019. **If your Claim Form is not timely postmarked or timely submitted online, you will not receive a payment.** If you remain in the Class, your interests will be represented by class counsel without additional cost, and you will be bound by the Court's decisions, whether favorable or unfavorable. If the Court approves the proposed settlement and you do not timely request to be excluded from the Class, you will give up all claims against Fitbit relating to this lawsuit, except your right to receive your settlement payment, if eligible. **BY REMAINING IN THE SETTLEMENT AND MAKING A CLAIM, YOU DO NOT OWE ANY MONEY AND WILL NOT HAVE TO PAY ANYTHING.**

Payment will be made to every Class Member who timely submits their valid Claim Form saying they bought a Fitbit Flex, Ultra, or One in any of the listed states at any time during the listed dates, with their name, address, and e-mail.

### **2. To opt out:**

If you do not want to be in the Class, you must complete and submit, by mail or electronically, the Exclusion Request Form, providing notice of your request to exclude yourself from the Class. Class Members may **CLICK [HERE](#)** to download and print an Exclusion Request Form which must be mailed to *Brickman v. Fitbit, Inc.* Settlement Administrator, P.O. Box 404104, Louisville, KY 40233-4104, postmarked no later than May 30, 2019. Class Members may also **CLICK [HERE](#)** to submit the Exclusion Request Form online no later than May 30, 2019. **If your Exclusion Request Form is not timely postmarked or timely submitted online,**

**your opt-out request will not be valid.** If you timely exclude yourself, you will not receive any benefit under the proposed settlement, you will not be bound by the Court’s decisions, and you can bring your own lawsuit against Fitbit if you choose, but would have to hire and pay your own lawyer if you choose. The Exclusion Request Form states, “I request to be excluded from the settlement class in *Brickman v. Fitbit, Inc.*, Case No. 3:15-cv-2077.” The Exclusion Request Form requires you to provide your name and address, and it must be signed and dated by you. The Form must be signed by the Class Member, and not by anyone else as a representative of a Class Member (unless the Class Member is deceased or incapacitated). Failure to comply with these requirements may result in your opt-out request being invalid.

### **3. To object to the settlement:**

Unless you request to be excluded from the Class, if you establish that you are a Class Member, you may file an objection to any aspect of the proposed settlement or the application by Plaintiffs’ counsel for attorney’s fees, but you will be bound by the Court’s decisions, even if the Court does not agree with your objections. Please note that you can ask the Court to deny approval by filing an objection, but you cannot ask the Court to order a larger settlement. The Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

In order to object, you must send a written Notice of Intent to Object that includes: (i) your name, address, telephone number, and signature; (ii) the specific reasons for your objections as well as a detailed statement of all factual and legal bases for your objections; (iii) copies of any and all documents or other materials allegedly supporting your objection; (iv) any evidence you may present at the Final Approval Hearing in support of your objection(s), including the identity of all witnesses you may call to testify at the Final Approval Hearing, by name, address, and a full summary of their proposed testimony; and (v) a statement whether you will attend the Final Approval Hearing, and whether you will testify there.

Additionally, if the objecting Class Member, their counsel, or any person with whom they are working on the objection has objected to any class action settlement on more than 3 occasions, the Class Member must, in the objection: (i) list all cases in which those objections were filed and by whom, (ii) state the outcome of those objections, and (iii) state the amount of money, if any, paid in connection with the objections to the objector, to their counsel, or to anyone else, including by whom such payment was made; to whom it was made; to whom that money was then given, distributed or divided; and whether and how it was disclosed to the court overseeing the respective proposed settlement.

In order to be effective, Notice of Intent to Object must be filed with the Court by June 17, 2019, and copies sent to the following addresses, postmarked by June 17, 2019:

Clerk of Courts	DWORKEN & BERNSTEIN CO., L.P.A.	MORRISON & FOERSTER LLP
United States District Court	Attn.: Patrick J. Perotti	Attn.: Erin Bosman
Northern District of California	60 South Park Place	12531 High Bluff Drive
450 Golden Gate Avenue	Painesville, OH 44077	Suite 100
San Francisco, CA 94102		San Diego, CA 92130-2040

Notices of Intent to Object cannot be submitted online. The Court will not entertain objections, nor allow appearances at the Final Approval Hearing, unless you comply with all the requirements set forth above. Late objections and those not submitted in compliance with all the above requirements will be deemed to have been waived. Any judgment entered will be binding on all Class Members who have not timely requested exclusion from the Class. If you object to the proposed settlement, you may still receive benefits if the Court approves the proposed settlement and you are eligible for a distribution.

### **What if I do nothing?**

If you do nothing and do not opt out of the Class, then you remain in the Class, even if you do not file a Claim Form. You will not receive your benefit, you will not be able to file your own suit against Fitbit about these matters and your claim will be released, and you will be bound by the Court’s decisions and Orders, whether favorable or unfavorable to the Class.

## **Who are the lawyers for the Class and how do they get paid?**

The Court has designated the following attorneys to represent the Class in this lawsuit:

Patrick J. Perotti, Esq.  
Frank A. Bartela, Esq.  
DWORKEN & BERNSTEIN CO., L.P.A.  
60 SOUTH PARK PLACE  
PAINESVILLE, OH 44077

Ronald A. Margolis, Esq.  
BONEZZI SWITZER POLITO & HUPP CO. L.P.A.  
1300 EAST 9TH STREET, SUITE 1950  
CLEVELAND, OH 44114

You will not be separately charged for the services of the lawyers representing the Class in this lawsuit. You have the right (but do not need) to retain your own attorney in this matter, but if you do, you will be responsible for paying your own attorney's fees and expenses.

Plaintiffs' will make an application for an award of attorney's fees and expenses for the lawyers representing the Class, no later than May 10, 2019. The amount of Plaintiff's attorney's fee award is based on the lodestar method, which requires that the Court multiply the number of hours the lawyers spent working on the case by the applicable hourly fees of those lawyers. Plaintiffs calculate that amount to be approximately \$3,800,000. The Plaintiffs will also ask the Court to multiply their attorney's fee award by a number known as a "multiplier," but Plaintiffs have agreed not to seek a multiplier of more than 2.5. In addition, Plaintiffs will seek to recover out-of-pocket expenses of \$394,688. Whatever is approved by the Court will not reduce your payment, and will be paid separately by Fitbit. Fitbit has reserved its rights to object to, challenge or otherwise dispute the amount of the award of attorney's fees and expenses sought by Plaintiffs. Plaintiffs' attorney's fees and expenses application will be available on the settlement website.

No later than May 10, 2019, Plaintiffs will also apply to the Court for an award of \$5,000 each in incentive compensation to Class Representatives Clingman and Brickman, and for \$500 each in incentive compensation to Class Representatives Carissa Ray, Stephanie Curtis, Michael Landis, Carolyn Ciavarella, Erica Wathey, James E. Gau, II, and Amanda Samy.

## **Where do I get additional information?**

This Notice is only a summary of the proposed settlement, which is set forth in detail in a Settlement Agreement, which you may view online at [www.SleepDeviceSettlement.com](http://www.SleepDeviceSettlement.com). For more details about the litigation, you may review all case filings at the Clerk of Court, United States District Court, Northern District of California, 450 Golden Gate Avenue, San Francisco, California, 94102, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays. You can also access the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>.

If you have any questions, visit [www.SleepDeviceSettlement.com](http://www.SleepDeviceSettlement.com), call the Settlement Administrator at 1-855-336-4163 or contact Plaintiffs' counsel listed above. **PLEASE DO NOT CALL THE COURT, CLERK OF COURT, THE CLASS REPRESENTATIVES, FITBIT, OR COUNSEL FOR FITBIT REGARDING THIS MATTER. THEY ARE NOT ABLE TO ANSWER YOUR QUESTIONS.**

DATED: March 1, 2019

The Honorable James Donato  
Judge, United States District Court  
Northern District of California