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11 JAWBONE

12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF SAN FRANCISCO

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

17 Plaintiff,

18 v.

19 FITBIT, INC.;
KATHERINE MOGAL;
20 PATRICK NARRON;
PATRICIO ROMANO;
21 ANA ROSARIO;
RONG ZHANG; and
22 DOES 1 through 10, inclusive,

23 Defendants.
24
25
26
27

Case No. CGC-15-546004

COMPLAINT

- 1. Misappropriation of Trade Secrets
- 2. Breach of Contract
- 3. Breach of the Implied Covenant of Good Faith and Fair Dealing
- 4. Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

Jury Trial Demanded

1 Plaintiff AliphCom, Inc. d/b/a Jawbone (“Jawbone”), by its undersigned counsel, hereby
2 complains against Defendants Fitbit, Inc. (“Fitbit”), Katherine Mogal (“Mogal”), Patrick Narron
3 (“Narron”), Patricio Romano (“Romano”), Ana Rosario (“Rosario”), Rong “Audrey” Zhang
4 (“Zhang”) (collectively, the “Defendants”), and alleges, upon personal knowledge as to itself and
5 its own acts and upon information and belief as to all other matters, as follows:

6 INTRODUCTION

7 1. This case arises out of the clandestine efforts of Fitbit to steal talent, trade secrets
8 and intellectual property from its chief competitor, Jawbone. Indeed, tacitly acknowledging that it
9 lacked the proprietary technology, capabilities and expertise to progress to the next generation in a
10 rapidly changing technology space and thereby deliver on the lofty promises and expectations
11 conveyed to investors as part of its impending initial public offering (IPO) — promises that leading
12 financial analysts have since criticized as being unsubstantiated and “fuzzy” — Fitbit sought to
13 overcome those shortcomings and its admitted difficulties in “attracting and retaining highly skilled
14 employees” by systematically plundering Jawbone employees and their competitor’s critical trade
15 secrets and intellectual property. Specifically, beginning in early 2015, Fitbit recruiters contacted
16 an estimated 30 percent of Jawbone’s workforce, inducing at least five employees to join Fitbit,
17 each of them bringing along access to, and intimate knowledge of, key aspects of Jawbone’s
18 business and the future direction of the market and its business. As one Fitbit recruiter admitted in
19 a moment of unguarded candor: “Fitbit’s objective is to *decimate* Jawbone.” But, as Fitbit well
20 knows, the law prohibits companies from “decimating” their competitors through the theft of
21 confidential, proprietary information. The Defendants must now be held accountable for their
22 unlawful conduct and the substantial, and in many respects irreparable, harm inflicted on Jawbone.

23 2. Jawbone is a world leader in consumer technology and wearable devices, building
24 hardware products and software platforms powered by data science and extensive market research.
25 The key to Jawbone’s success lies in its unique and research-driven approach to meeting a variety
26 of consumer needs, ranging from fitness tracking to high quality audio to wireless communication.
27 Jawbone designs and engineers advanced hardware and software solutions to the novel problems it
28

1 has studied and understood, and as a result, over 600 patents have been granted or are pending
2 related to Jawbone's ecosystem and wearable technology manufacturing processes.

3 3. To maintain its position as a leader in this competitive industry, Jawbone places a
4 premium on the work ethic of its employees and in maintaining strict confidentiality over the
5 company's proprietary insights, methods, practices, intellectual property and other confidential
6 information. To ensure the highest level of protection for its confidential information, Jawbone
7 requires its employees to execute detailed confidentiality agreements, and the company is vigorous
8 in its enforcement of those contractual requirements.

9 4. In plain violation of the terms of Jawbone's stringent confidentiality protections, the
10 acts of the Defendants in this case bear the hallmarks of a carefully orchestrated plan to abscond
11 with reams of proprietary and confidential information regarding the intricacies of Jawbone's
12 business and the future direction of the market (information that Fitbit had plainly failed to develop
13 on its own). Namely, in the days, weeks and months leading up to their departures, the new
14 additions to Fitbit's workforce gained access to and downloaded from their work computers
15 information regarding Jawbone's current and projected business plans, products and technology.
16 By way of example, after deciding to join Fitbit as a User Experience Researcher (a fact that was
17 *not* revealed to Jawbone until later), Ms. Rosario sought a confidential meeting with Jawbone to
18 discuss all aspects of the future direction of the company, how it anticipated the market unfolding
19 in the future, and its product designs and prototypes. Recognizing the intrinsic value of this
20 information to her new employer (Fitbit) and for no other plausible justification but to use it in her
21 future employment, Ms. Rosario downloaded onto her personal computer a highly confidential
22 presentation that laid out in detail the positioning of Jawbone's current and future technologies and
23 products to the anticipated path of the market. This presentation was essentially the "Playbook for
24 the Future" for Jawbone's business.

25 5. Ms. Rosario's actions were only the tip of the iceberg. In fact, forensic analyses
26 performed by Jawbone on its former employees' computer devices revealed that a number of the
27 departed employees used USB thumb drives in their last days of employment at Jawbone to steal
28 proprietary company information, and in other cases forwarded confidential company information

1 to personal email addresses for later use. The stolen files are the informational equivalent of a gold
2 mine for Fitbit, as they provide an intricate roadmap into the core of Jawbone's business, including
3 such information as Jawbone's supply chain, gross margins, product lineup (both current and
4 future), product target costs, vendor contacts, product analysis, market trends and predictions, and
5 the future direction of Fitbit's main competitor. This stolen information, plus the proprietary
6 information to which the departed employees were exposed during their employment at Jawbone,
7 is the epitome of protected trade secrets under California law. A list of the trade secrets being
8 misappropriated by the Defendants is set forth in Exhibit A to the Complaint.

9 6. The forensic analyses likewise uncovered steps taken by Jawbone's former
10 employees to cover their tracks. Among other things, the analysis located a product called
11 "CCleaner" on their computer devices — a tool designed to conceal the forensic footprints of
12 activity on a computer device. As one website has described CCleaner: "When it comes to
13 cleaning up all of the extra traces that applications leave behind, nothing quite equals using
14 CCleaner to get rid of all those little bits that really shouldn't be there anymore."¹ Some
15 employees took a more primitive approach to concealing their illicit conduct: manually wiping
16 system logs generated by their computers in an effort to eliminate evidence of the files to which
17 they gained access in the waning days of their employment at Jawbone.

18 7. Recognizing the unlawful nature of its scheme to "decimate" Jawbone, and in an
19 apparent effort to mollify its competitor until after the conclusion of its IPO, Fitbit's Chief People
20 Officer, Marty Reaume, made an unsolicited call to her counterpart at Jawbone on or around April
21 17, 2015. During the call, Ms. Reaume acknowledged that Fitbit had been poaching Jawbone
22 employees but proclaimed that there was nothing untoward about its conduct. Of course, Ms.
23 Reaume revealed nothing of the knowing theft and misappropriation of Jawbone's proprietary
24 information, nor its plans to use such information to overcome the shortcomings in its overinflated
25 business projections.

26
27 ¹ See Liferhacker.com, "How to Really Browse Without Leaving a Trace," available at
28 <http://liferhacker.com/5395267/how-to-really-browse-without-leaving-a-trace> (last visited May 25,
2015).

1 **JURISDICTION AND VENUE**

2 17. This Court has personal jurisdiction over Defendants by virtue of their residence and
3 the wrongful conduct in which they engaged in the State of California, which caused harm to
4 Jawbone in this state.

5 18. Venue in this district is appropriate under California Code of Civil Procedure § 395.

6 **GENERAL ALLEGATIONS**

7 **I. JAWBONE HAS DETAILED POLICIES DESIGNED TO PROTECT ITS
8 CONFIDENTIAL INFORMATION.**

9 **A. Jawbone's Substantial Investments in Attracting Talent and Developing Its
10 Processes and Intellectual Property Have Been Integral Components of Its
11 Success.**

12 19. Jawbone's success in the consumer electronics industry relies, in large part, on its
13 ability to attract and retain talent of the highest quality, which has resulted in the development of
14 core processes and intellectual property that are unmatched in the industry. To this end, Jawbone
15 has invested hundreds of millions of dollars developing the world's most technologically advanced
16 sensors in order to make the Jawbone UP system, like all of its products, the best possible offering
17 in an extremely competitive marketplace. For example, Jawbone acquired BodyMedia in April
18 2013 for over \$100 million in order to acquire a large portfolio of patents and other proprietary
19 technology, including the rights to integrate BodyMedia's proprietary sensors into its multi-sensor
20 product array, which are capable of delivering the kinds of high quality metrics and insights that
21 will be required in the marketplace for the next generation of wearable products. These proprietary
22 technologies, like all of Jawbone's confidential information, are used by Jawbone to set it apart
23 from its competitors.

24 20. In addition to its intensive investment in proprietary technologies, Jawbone has
25 cultivated a wealth of confidential information that allows it to succeed in producing high quality
26 consumer electronics. Key to Jawbone's success has been its thoughtful and holistic approach to
27 understanding its customers' needs, developing unique and unrivaled products, and manufacturing
28 and selling highly advanced products on a massive scale. To maintain its position as a leader in
this ultra-competitive industry, Jawbone places a premium on the integrity of its employees to
maintain strict confidentiality over the company's confidential information, methods and practices.

1 **B. To Preserve the Sanctity of Its Confidential Information, Jawbone Requires All**
2 **of Its Employees To Agree to Rigorous Confidentiality Protections as a**
3 **Condition of Their Employment.**

4 21. Upon being hired at Jawbone, all employees (including each of the former
5 employees named as Defendants in this case) are required to execute confidentiality agreements —
6 referred to as Confidential Information and Inventions Assignment Agreements (the
7 “Confidentiality Agreements,” copies of which are attached hereto as Exhibits B through F) — and
8 to acknowledge their willingness to adhere to Jawbone’s code of employee conduct set forth in its
9 detailed Employee Handbook.

9 **Jawbone Confidentiality Agreements**

10 22. Upon execution of the Confidential Information And Inventions Assignment
11 Agreement, Jawbone employees agreed that:

12 [A]t all times during my employment and after my employment ends
13 for any reason (whether voluntarily or involuntarily) . . . , I will hold
14 in strictest confidence, and not use, except for the benefit of the
15 Company, or disclose to any person, firm or corporation without
16 written authorization of the Chief Executive Officer of the Company
17 (“CEO”), any Confidential Information of the Company. I
18 understand that “Confidential Information” means any and all
19 Company confidential information, proprietary information,
20 technical data, trade secrets or knowhow, including, but not limited
21 to, information related to *research, product plans, products,*
22 *services, customers, customer lists and other customer data*
23 (including, but not limited to, information concerning customers on
24 whom I called or with whom I became acquainted during my
25 employment), *markets,* software, developments, inventions,
26 *processes,* formulas, *technology, designs,* drawings, *engineering,*
27 *hardware configuration information, marketing, finances,*
28 *personnel, business plans, strategic plans,* or other business
information disclosed to me by the Company, either directly or
indirectly in writing, orally or by drawings or observation of parts or
equipment, *or developed by me,* solely or jointly with others.

(Confidentiality Agreement at 1 (emphasis added).)

23 23. Likewise, to secure Jawbone’s confidential information and other property from its
24 competitors, Jawbone required that the individual Defendants agree, as a condition of their
25 employment, that:

26 I will not engage in any other employment, occupation, consulting or
27 other business activity directly related to the business in which the
28 Company is now involved or becomes involved during the term of

1 my employment, nor will I engage in any activities that conflict with
2 my obligations to the Company.

3 (*Id.* at 3.)

4 24. Further, to ensure that departing employees do not take confidential information
5 with them to Jawbone's competitors, the individual Defendants were forced to acknowledge that:

6 I agree that, when my employment with the Company ends or upon
7 the Company's earlier request, I will deliver to the Company (*and*
8 *will not keep in my possession, recreate or deliver to anyone else*)
9 any and all devices, records, data, notes, reports, proposals, lists,
10 correspondence, specifications, drawings, blueprints, sketches,
11 materials, equipment, other documents or property, or reproductions
12 of any aforementioned items developed by me pursuant to my
13 employment with the Company or otherwise belonging to the
14 Company, its successors or assigns, including, without limitation,
15 those records maintained pursuant to Section 3(d) above. *I agree*
16 *that I will not copy, delete, or alter any information contained upon*
17 *my Company computer or Company equipment before I return it to*
18 *Company.*

19 [I]f I have used any personal computer, server, or e-mail system to
20 receive, store, review, prepare or transmit any Confidential
21 Information, I agree to provide the Company with a computer-
22 useable copy of all such Confidential Information and then
23 permanently delete and expunge such Confidential Information from
24 those systems; and I agree to provide the Company access to my
25 system as reasonably requested to verify that the necessary copying
26 and/or deletion is completed.

27 (*Id.* (emphasis added).)

28 25. To preserve Jawbone's rights to pursue any legal remedies that might be necessary
to avoid further harm that would result from disclosure of its trade secrets, the individual
Defendants acknowledged that:

[V]iolation of this Agreement by me would cause the Company
irreparable harm, and therefore agree that the Company will be
entitled to obtain extraordinary relief in court, including but not
limited to temporary restraining orders, preliminary injunctions and
permanent injunctions (without having to post a bond or other
security), in addition to and without prejudice to any other rights or
remedies that the Company may have for a breach of this Agreement.

(*Id.* at 5.)

26 26. Jawbone also held its employees to a high standard of personal conduct, which
27 expressly prohibits the individual Defendants from:

1 Revealing confidential information to outsiders or misusing
2 confidential information. Unauthorized divulging of information is a
3 violation of this policy whether or not for personal gain and whether
4 or not harm to the Company is intended. . . . Unlawfully discussing
5 prices, costs, customers, sales or markets with competing companies
6 or their employees.

7 (*Id.* at 8-9.)

8 27. In addition to the Confidentiality Agreement, Mr. Narron entered into an additional
9 agreement with Jawbone: a “Mutual Non-Disclosure and Confidentiality Agreement” (the “Non-
10 Disclosure Agreement”), a copy of which is attached hereto as Exhibit G. By executing the Non-
11 Disclosure Agreement with Jawbone (the “Disclosing Party” to this Non-Disclosure Agreement),
12 Mr. Narron agreed that he would, among other things:

- 13 • Hold Confidential Information of the Disclosing Party in strict confidence using at
14 least the same level of care to protect this Confidential Information as the Recipient
15 employs with respect to its most confidential materials, but in no case using less
16 than reasonable precautions; and
- 17 • Only permit access to Confidential Information of the Disclosing Party by its
18 employees or authorized representatives with a need to know and who have signed
19 confidentiality agreements or are otherwise bound by confidentiality obligations
20 substantially similar to, and at least as restrictive as, those contained herein and not
21 disclose Confidential Information of the Disclosing Party or any information
22 derived therefrom to any third party; and
- Not use Confidential Information of the Disclosing Party except for the limited
purpose of evaluating or pursuing a business relationship with the Disclosing Party;
and
- Not reproduce Confidential Information of the Disclosing Party except to
accomplish the intent of this Agreement, and any permitted reproductions are the
property of the Disclosing Party and must contain all proprietary notices or legends
that appear on the original; and
- Not modify, reverse engineer, decompile, or disassemble any software disclosed by
the Disclosing Party.

23 (Mutual Non-Disclosure and Confidentiality Agreement at 1-2.)

24 **Jawbone’s Employee Handbook**

25 28. To further protect and maintain the integrity of its trade secrets and other
26 confidential and proprietary information, Jawbone has detailed confidentiality policies that are set
27 forth in its Employee Handbook. Jawbone provided a copy of the Employee Handbook to the
28

1 individual Defendants upon joining the company and instructed them to review it carefully and to
2 be knowledgeable about its terms. The Employee Handbook provides that:

3 *The security of the Company's property is of vital importance.* The
4 Company's property includes not only tangible property, like desks
5 and computers, but also intangible property such as source code and
6 all other intellectual property. All employees are responsible for
7 ensuring that proper security is maintained at all times. Proprietary
8 information includes all information relating in any manner to the
9 business of the Company and its affiliates, consultants, users and
10 business associates that is produced or obtained by Company.

11 ...
12 *Protecting our Company's information is the responsibility of every
13 employee, and we all share a common interest in making sure
14 information is not improperly or accidentally disclosed.* Do not
15 discuss the company's confidential business or proprietary business
16 matters, or share confidential, personal employee information with
17 anyone who does not work for us such as friends, family members,
18 members of the media, or other business entities.

19 (Employee Handbook at 10, 16 (emphasis added).)

20 29. The Employee Handbook also reiterates the importance of maintaining the secrecy
21 of proprietary information in the context of social media, instructing that "employees are prohibited
22 from revealing, or making any reference to, any proprietary or confidential information, trade
23 secrets, or other information covered by such policy. Even vague or disguised references to such
24 information could violate the Company policies and applicable laws." (*Id.* at 15.) The Employee
25 Handbook further provides that employees may be disciplined for, among other things,
26 "[d]isclosing or using confidential or proprietary information without authorization." (*Id.* at 24.)

27 **C. Jawbone Has Extensive Regulations Regarding Employee Use of Company
28 Computers.**

29 30. As an employment benefit, the individual Defendants were furnished with laptop
30 computers and other electronic devices that permitted them to access Jawbone's computer network
31 while they were working remotely. To ensure that Jawbone's confidential information is secure
32 and confined to company-owned electronic devices, Jawbone created detailed regulations that all
33 employees are obligated to know and abide by during work *and non-work* hours.

1 31. With respect to computer and email usage, the Employee Handbook directs
2 employees that: “Employees may use our Systems² to communicate internally with co-workers or
3 externally with customers, suppliers, vendors, advisors, and other business acquaintances for
4 business purposes.” (*Id.* at 13-14.) The Employee Handbook specifically notes that “[e]mployees
5 must *not* copy, use, or transfer proprietary materials of the Company or others without appropriate
6 authorization.” (*Id.* at 14-15 (emphasis added).)

7 32. In addition, Jawbone established an IT Information Security Policy, attached hereto
8 as Exhibit H, which requires employees, among other things, to:

- 9 • Keep all passwords secure. Do not share accounts. Authorized users are
10 responsible for the security of their passwords and accounts. Passwords must never
11 be communicated via email. Always provide passwords to users in person or via a
12 phone call. All user-level passwords must be changed quarterly.
- 13 • All laptops and workstations should be secured with a password-protected screen
14 saver with automatic activation set at 15 minutes or less.
- 15 • User computers should NOT have local file shares that expose important or
16 sensitive company data on the network.
- 17 • All work-related activities should be performed on Jawbone-provided computers,
18 although exceptions can be made for contractors. Employees should not use
19 personally-owned computers for work purposes.
- 20 • Because information contained on portable computers is especially vulnerable,
21 special care should be exercised. If your laptop is left unattended, even in the
22 office, it should be physically secured to your desk via a laptop cable. If you leave
23 your laptop at your desk overnight, a laptop cable is a requirement.
- 24 • Smartphones and tablet computers (also iPads) are also very vulnerable. All
25 smartphones and tablets must have a software lock enabled, requiring a password
26 after 15 minutes of inactivity. If a device is lost or stolen, the Jawbone IT
27 department must be notified as quickly as possible to attempt to remotely erase the
28 device. Email between @jawbone.com email addresses is secure and encrypted.
*However, email sent to or received from other mail servers (i.e. non jawbone.com
email addresses) is not secure. Sensitive information should never be sent in*

24 ² System is defined to include, among other things:

25 Messages, images, data or any other information used in e-mail, instant messages, voice
26 mail, fax machines, computers, personal digital assistants (including Blackberry, iPhone or
27 similar devices), text messages, pagers, telephones, cellular and mobile phones including
28 those with cameras, Intranet, Internet, backup storage, information on a memory or flash
key or card, jump or zip drive or any other type of internal or external removable storage
drives. (Employee Handbook at 13.)

1 *emails other than between @jawbone.com addresses.* If this type of information
2 has to be shared with partners or vendors, it must be via secure channels or
3 applications such as SFTP, ShareFile, or shared/secured folders on our Intranet
4 whenever possible.

- 4 • Employees who travel or frequently use a laptop in public places must use a laptop
5 monitor privacy filter.
- 6 • SMS/IMNIS and external IM services are not secure channels and should never be
7 used for sharing sensitive information. We have an internal Jabber IM server that
8 enables secure chat sessions, please see <http://jabber.aliph.com> for installation
9 instructions.
- 10 • Arena is our repository for product-related documentation. All requests for new
11 accounts and access to information are managed by our Arena administrator.
12 Information stored in Arena should remain only in Arena, and must not be stored in
13 other systems.
- 14 • Access to source-code repositories (Subversions, Git) shall be granted only to those
15 who require source code access in order to perform their job function. Access
16 requests must be approved by a VP.
- 17 • Internal systems using email notifications that could potentially include sensitive
18 data must be configured using secure internal mail relays.
- 19 • The Jawbone Intranet consists of an Intranet Home area and a separate area of each
20 Department. Department home pages are for general employee information only.
21 No sensitive information should be included on Department home pages. Each
22 Department maintains a private team site with restricted access for sensitive
23 information, and each department's primary content owner is trained in setting
24 Sharepoint permissions. No source code or Arena documents should ever be stored
25 on the Intranet.
- 26 • Printed material containing sensitive information should be stored in locked
27 cabinets. If the printed material is no longer required, it should be shredded unless
28 directed otherwise, for example under a litigation hold. Sensitive printed material
should never be placed in normal recycling bins.

21 (IT Information Security Policy at 1 (emphasis added).)

22 **D. Defendants Mogal, Narron, Romano and Rosario Signed Jawbone's Exit**
23 **Paperwork, Which Reiterates the Importance of Maintaining Confidentiality.**

24 33. After they tendered their resignations, Ms. Mogal, Mr. Narron, Mr. Romano, and
25 Ms. Rosario reviewed their Confidentiality Agreements and signed a Termination Certification,
26 copies of which are attached hereto as Exhibits I through L, in which they stated:

27 This is to certify that I have returned to AliphCom (the "Company")
28 all Company Property. For purposes of this Termination
Certification, Company Property means all Company documents
(and all copies thereof) and other Company property which I had in

1 my possession at any time, including, but not limited to, Company
2 files, notes, drawings, records, plans, forecasts, reports, studies,
3 analyses, proposals, agreements, financial information, research and
4 development information, sales and marketing information,
5 operational and personnel information, specifications, code, software,
6 databases, computer recorded information, tangible property and
7 equipment (including, but not limited to, leased vehicles,
8 Blackberrys, computers, computer equipment, data storage or
9 memory devices, facsimile machines, mobile telephones, tools,
10 servers), credit cards, entry cards, storage unit keys, identification
11 badges and keys, key cards, gate openers; and any materials of any
12 kind which contain or embody any proprietary or confidential
13 information of the Company (and all reproductions thereof in whole
14 or in part).

15 I further certify that I have not made or retained copies,
16 reproductions or summaries of any such Company Property, and
17 have returned all Company Property in its present condition without
18 deletion or alteration.

19 I further certify that I have complied, and will continue to comply,
20 with all terms of my signed confidential information and inventions
21 assignment agreement with the Company.

22 (Termination Certification at 1.)

23 34. Ms. Mogal, Mr. Narron, Mr. Romano and Ms. Rosario also signed an
24 Acknowledgment of Proprietary Information, copies of which are attached hereto as Exhibits M
25 through P, in which they stated that:

26 As an employee of the Company, I signed the Proprietary
27 Information Agreement (a copy of which has been given to me), and
28 I have now reread that Proprietary Information Agreement. I
acknowledge that I have acquired knowledge of or had access to
Proprietary Information of the Company during my employment,
including, *but not limited to*, the information in my files and
notebooks and those items identified below.³

- Electronic files, including but not limited to, source code, object code, tapes, disks, diskettes, and any other on-line documentation.
- *Product requirements, specifications, designs, materials, components and test results.*

³ The Acknowledgment also provides that: "I understand that the items below are not an exhaustive list of all of the Proprietary information to which I have been exposed. Rather they are intended as examples of the types of information covered by the Proprietary Information Agreement. I understand that the listing of certain areas of Proprietary Information does not mean that I am free to use or disclose other unlisted Proprietary Information."

- 1 • Production methods, facilities and systems, including techniques, designs,
2 efficiencies and capacities.
- 3 • *Research and development activities, methods, procedures, plans and*
4 *strategies.*
- 5 • Terms of agreements or proposed agreements with customers, vendors and
6 other companies.
- 7 • *Sales and marketing information, including pricing information, customer*
8 *lists, contacts, habits, sales techniques, plans and surveys.*
- 9 • *Financial information, including results of operations, margins, budgets,*
10 *and business plans.*
- 11 • Personnel lists and information regarding skills, compensation and
12 responsibilities of various personnel.

13 (Acknowledgment of Proprietary Information at 1 (emphasis added).)

14 35. Ms. Mogal, Mr. Narron, Mr. Romano and Ms. Rosario further certified that:

15 I acknowledge that I have had access to the types of information
16 described above. I am fully aware of the critical importance of
17 preserving the confidentiality of the Company's business information
18 and activities. I have actively participated in efforts to protect the
19 confidentiality of the Company's Proprietary Information.

20 I do not possess, nor have I failed to return, any files, drawings,
21 blueprints, notes, notebooks, memoranda, specifications, computer
22 tapes or disks, source code, object code or other documents or
23 electronic files containing or disclosing any of the Company's trade
24 secrets or proprietary or confidential information, or copies of any of
25 these items, or other materials, tools, equipment, or other property
26 belonging to the Company.

27 I further certify that I have complied with, and I will continue to
28 comply with, all of the terms of the Proprietary Information
Agreement. In compliance with my Proprietary Information
Agreement, I will preserve as confidential all Proprietary Information
pertaining to the Company and I will refrain from using or disclosing
the Company's Proprietary Information.

(*Id.* at 2.)

II. **FITBIT DEvised AN UNLAWFUL SCHEME TO "DECIMATE" JAWBONE BY
STEALING ITS EXPERTISE AND PROPRIETARY INFORMATION.**

36. In connection with its planned IPO, Fitbit made lofty representations to potential
investors about its business model and strategic vision to "make significant investments in research
and development . . . through both internally-developed and acquired technologies," Fitbit, Inc.,
Registration Statement (Form S-1) at 5 (May 7, 2015) — representations that were subsequently

1 criticized by Bloomberg and other leading financial analysts as “fuzzy” and demonstrating nothing
2 more than a near-term strategy, given the impending changes in the wearables market. The truth is
3 that Fitbit and its management lacked the strategic direction, talent and expertise necessary to
4 create a sustainable model for product growth and revenue in the future. Indeed, Fitbit itself has
5 admitted: “We have, from time to time, experienced, and we expect to continue to experience,
6 difficulty in hiring and retaining highly skilled employees with appropriate qualifications. . . . If we
7 fail to attract new personnel or fail to retain and motivate our current personnel, our business and
8 future growth prospects could be severely harmed.” *Id.* at 28. Fitbit has also acknowledged that its
9 failure to attract and retain talent is compounded by the “highly competitive market” it operates in,
10 and that its business could collapse if it fails to “anticipate and satisfy consumer preferences in a
11 timely manner,” “accurately forecast consumer demand for our products and services,” or “develop
12 and timely introduce new products and services or enhance existing products and services.” *Id.* at
13 6.

14 37. Fitbit thus sought to find what it was lacking internally by embarking on a
15 systematic campaign to steal talent, expertise, strategic direction and highly confidential
16 information from Jawbone concerning its current and future products and its market projections —
17 and, in the process, “decimate” its chief competitor. As detailed below, Fitbit has knowingly
18 benefitted from its new employees’ use, knowledge and disclosure of Jawbone’s most sensitive
19 confidential information and trade secrets (a list of which is contained in Exhibit A). Once that
20 critical information concerning Jawbone’s, and the wearable market’s, future was revealed, there is
21 no manner by which it can be stripped from Fitbit’s institutional knowledge base — hence the
22 irreparable harm to Jawbone.

23 **A. Fitbit Targeted Defendants Mogal and Rosario To Obtain Access to**
24 **Jawbone’s Market Research Regarding User Experiences and Preferences**
25 **and Its Corporate Wellness Program.**

26 38. It is generally understood in the industry that Fitbit’s consumer experience and
27 opinion research capabilities were lacking. As with any technology company, but especially one
28 unprepared for the next generation of technology, this information is critical to the sustainability of
Fitbit’s business, and to the ability of the company to achieve the objectives outlined to its

1 investors. In early 2015, Fitbit sought to overcome its internal deficiencies by poaching key talent
2 and proprietary intelligence and experience from its chief competitor, Jawbone.

3 39. By contrast, Jawbone invested significant time and financial resources to research
4 consumer experiences and to develop a highly specialized understanding into consumer
5 preferences. This research was extensive and included, among other things, analysis regarding
6 consumer use of not only its products, but also the products of its competitors. The insights
7 developed during this confidential research played an integral role in the development of
8 Jawbone's complex UP system — a top competitor with Fitbit's products, which incorporates
9 Jawbone's research-based designs, marketing and functionality, as compared to other, simpler
10 fitness trackers like Fitbit's offerings.

11 40. Defendants Mogal and Rosario were at the crux of Jawbone's extensive experience,
12 research and intellectual property relating to consumer experiences in the fitness tracker industry.
13 Indeed, Ms. Mogal began working for Jawbone on or around August 5, 2013, as the Director of
14 Market and Customer Experience Insights. In that capacity, Ms. Mogal was intimately involved
15 with every aspect of Jawbone's business, ranging from product development to customer service to
16 Jawbone's corporate wellness program. Similarly, Ms. Rosario began working for Jawbone on or
17 around May 19, 2014, in Design & User Researcher/Customer Experience. Both Ms. Mogal and
18 Ms. Rosario had access to confidential information including, but not limited to, studies
19 commissioned by Jawbone, customer perceptions of Jawbone as compared to Fitbit, pricing
20 information and analyses, Jawbone's financial health, Jawbone's product development pipeline and
21 product strategy over the next several years, and senior executive and management decisions
22 regarding key aspects of Jawbone's business.

23 41. For example, in the regular course of their work at Jawbone, Ms. Mogal and Ms.
24 Rosario were responsible for overseeing Jawbone's efforts to evaluate the differences between
25 Jawbone's products — in particular its UP system — and Jawbone's competitors' products,
26 including those offered by Fitbit. To better understand these issues, Ms. Mogal and Ms. Rosario
27 commissioned, directed and performed market, ethnographic and usability surveys, reports and
28 analyses comparing the respective advantages and disadvantages of Fitbit and Jawbone products.

1 Among other things, these reports, surveys and analyses evaluated: (i) Fitbit's and Jawbone's
2 demographics; (ii) how users perceived the differences between Jawbone's and Fitbit's physical
3 products; (iii) Jawbone's and Fitbit's web portals; (iv) consumer perceptions regarding Jawbone
4 and Fitbit software applications; (v) the premium services that Fitbit offered; and (vi) the
5 advertising strategies of its competitors.

6 42. During her tenure at Jawbone, Ms. Mogal was also intimately involved in the
7 company's corporate wellness program. This is a key area of strategic improvement for Fitbit. In
8 fact, in its Registration Statement filed with the Securities and Exchange Commission on April 1,
9 2015, Fitbit acknowledged that it intended to "focus on building relationships with employers and
10 wellness providers and increase revenue through employee wellness programs." Fitbit, Inc.,
11 Registration Statement (Form S-1) at 90 (May 7, 2015).

12 43. Shortly before her departure from Jawbone, Ms. Mogal contributed to the
13 development of a highly confidential presentation, entitled Market Trends & Opportunities, in
14 which Jawbone executives and senior management set forth in detail the technology and product
15 plans for Jawbone, the future direction of the market, and how Jawbone intended to position itself
16 in the future marketplace — invaluable information for any competitor to know. Seizing on the
17 opportunity to gain intelligence and access regarding Jawbone's inner workings and its strategic
18 path forward, Fitbit poached Ms. Mogal on March 16, 2015, to become Head of User Experience
19 Research — a brand new position at Fitbit. As Ms. Mogal informed Jawbone as she was leaving
20 the company, Fitbit did not previously have these capabilities, and the company was looking for
21 her to use her experience and proprietary insights gained as a result of the extensive research
22 performed at Jawbone to build a comparable department at Fitbit. There is no conceivable way
23 that Ms. Mogal could perform her function in understanding and predicting the market trends and
24 the positioning of Fitbit's competitors without tapping into Jawbone's trade secrets.

25 44. Not content with simply absconding with Jawbone's highly confidential
26 information, Fitbit and Ms. Mogal sought to "decimate" Jawbone by dismantling its consumer
27 research department, in direct violation of Ms. Mogal's contractual obligations to Jawbone.
28 Indeed, despite having agreed that, for twelve months following her departure from Jawbone, she

1 would not “solicit, induce, recruit or encourage, or attempt to solicit, induce, recruit or encourage
2 any Company employee or consultant to terminate his, her or its employment or consulting
3 relationship with the Company,” (Confidentiality Agreement at 4), Ms. Mogal did just that.
4 Namely, Ms. Mogal solicited Ms. Rosario to once again work for her, this time at Fitbit.

5 45. Ms. Rosario interviewed at Fitbit on April 16, 2015, and decided to join the
6 company at or around that time. On April 20, 2015, despite her clear intention to join Fitbit, but
7 before announcing her impending departure to anyone at Jawbone, Ms. Rosario asked for a one-on-
8 one meeting with Jawbone’s Senior Director of Product Management — wherein she pressed for
9 several hours for a detailed roadmap regarding Jawbone’s future plans, products, projections and
10 understanding of the future of the wearables market. During the meeting, Ms. Rosario also secured
11 access to the highly confidential “Market Trends & Opportunities” presentation, which set forth
12 this information in detail, *and she then impermissibly downloaded it to her personal computer in*
13 *clear violation of company policy*. There is no conceivable basis for Ms. Rosario to have stolen
14 this presentation, other than to have it for her future employment at Fitbit.

15 46. Two days later, on April 22, 2015, Ms. Rosario gave notice to Jawbone that she
16 intended to leave to work under Ms. Mogal at Fitbit as a Senior User Experience Researcher.
17 During her exit interview, when confronted by Jawbone employees who asked whether she had
18 removed any confidential information from Jawbone’s premises, Rosario initially denied doing so.
19 Later in the same interview, after Jawbone employees continued to press her on the matter, Ms.
20 Rosario recanted and admitted that she had removed the “Market Trends & Opportunities”
21 presentation from Jawbone’s premises.

22 47. In her new position at Fitbit, like in her prior role at Jawbone, Ms. Mogal’s
23 responsibilities are to make recommendations to Fitbit executives regarding consumer experiences
24 in utilizing fitness trackers and the future path and direction of the market, key competitors (such
25 as Jawbone), and the suitability of Fitbit’s product lineup to address future market movements.
26 Likewise, Ms. Rosario’s position at Fitbit, as was the case at Jawbone, is to facilitate those
27 decisions by performing research and analyses relating to consumer experiences using the various
28 fitness trackers that are available on the market. Ms. Mogal and Ms. Rosario remain in possession

1 of extensive confidential and proprietary information that belongs to Jawbone and bears directly on
2 their new roles at Fitbit. Jawbone's proprietary information is inextricably intertwined in the
3 performance of their newly created positions at Fitbit.

4 48. Specifically, in addition to the confidential, trade secret information described
5 above, Ms. Mogal and Ms. Rosario had, and continue to have, access to the Jawbone trade secrets
6 identified in Exhibit A. Ms. Mogal and Ms. Rosario have disclosed, used and continue to use these
7 trade secrets in the performance of their respective jobs at Fitbit, and threaten to continue to use
8 some or all of these trade secrets in the future, for example, by performing analyses and projecting
9 the future positioning of Fitbit and its product lineup with those offered by its competitors (chiefly,
10 Jawbone).

11 **B. Fitbit Targeted Defendant Narron To Obtain Access to Jawbone's Confidential**
12 **Information and Intellectual Property Regarding Audio Products and Designs.**

13 49. To date, Fitbit has never offered to consumers any product that contains a speaker or
14 other component designed for independent audio playback. Although the development of audio
15 products appears now to be a strategic objective for Fitbit, the company lacked the expertise and
16 competency to succeed in that competitive market (a function of its lack of strategic vision).
17 Rather than developing that knowledge and expertise through accepted means, a process that would
18 take a significant amount of time and capital to accomplish, Fitbit sought to capitalize on the
19 substantial investments made by Jawbone in that arena and acquire that expertise overnight by
20 luring Mr. Narron to join the company (with a wealth of Jawbone's confidential information about
21 audio products in tote). As Fitbit's recruiters unabashedly acknowledged, the company lacked the
22 institutional capability or vision to execute on any future concept that would require audio without
23 hiring an employee that could bring those skills to Fitbit.

24 50. Jawbone is a world leader in audio products. In fact, Jawbone released its first
25 audio product — the critically acclaimed Jawbone Bluetooth headset — in 2007. Building on its
26 technical and design prowess, Jawbone released a wireless speaker — the Jambox — in 2010.
27 Jawbone has numerous patents relating to its audio designs and products, and audio products
28 remain an area of priority and significant investment for the company. In particular, Jawbone has

1 invested substantial resources in developing and refining both the Jawbone Bluetooth headset and
2 the Jambox to maintain its position of profitability in the market for a long time.

3 51. Mr. Narron was a central player in Jawbone's development of its audio products, as
4 one of the most senior and knowledgeable engineers at the company. Mr. Narron began working
5 for Jawbone in September 2011 as a Staff Audio Engineer. In that capacity, Mr. Narron became an
6 expert in audio signal chain — from input sources to output transducers — in speakers and
7 wearables. Mr. Narron was likewise knowledgeable about every aspect of Jawbone's audio
8 business, and had access to extensive confidential information relating to Jawbone's methods,
9 designs, components, suppliers, specifications, pricing and the development of new audio and other
10 products that have not yet been announced to the public.

11 52. For example, as an expert in audio signal chain, Mr. Narron was leading Jawbone's
12 design of its new headset, which is a product category for which Fitbit did not, and does not, have a
13 competing offering. Moreover, in his regular course of work, Mr. Narron contributed to the design,
14 development, and production of all of Jawbone's audio electronics products, including those that
15 are still in the non-public development or prototype phase. Put simply, Mr. Narron was an ideal
16 target for Fitbit, which wanted to develop a lineup of audio products using the proprietary expertise
17 of its chief competitor.

18 53. On or around April 8, 2015, Mr. Narron announced to Jawbone that he would be
19 leaving the company in two weeks. With full knowledge that disclosing an intention to join a
20 competitor would result in his immediate removal from the premises, and thereby deprive him of
21 the opportunity to gather the confidential Jawbone information that he intended to take to Fitbit,
22 Mr. Narron declined to respond to questions about where he would be finding new employment.
23 Jawbone thus allowed Mr. Narron to continue his work at Jawbone for the next two weeks, during
24 which time Mr. Narron perfected his plan to steal confidential information. In fact, on April 16,
25 2015, *less than one week before Mr. Narron's last day at Jawbone*, Mr. Narron sent Jawbone's
26 confidential information to his personal email account, in direct violation of Jawbone policy. This
27 information included an email discussion between Jawbone engineers regarding the advantages for
28

1 certain cutting-edge components that were under consideration for implementation in one of
2 Jawbone's upcoming, next-generation products.

3 54. As Jawbone's recent forensic analysis has revealed, Mr. Narron was a serial violator
4 of the company's confidentiality policies. For example, Mr. Narron frequently sent confidential
5 information to his personal email addresses, including information concerning Jawbone's product
6 component lists, component prices, product cost estimates, production design schedules and other
7 highly sensitive confidential information that would give a competitor (here, Fitbit) invaluable
8 insight into Jawbone's audio supply chain, margins and future product developments. Mr. Narron
9 never disclosed his improper acquisition of Jawbone's confidential information.

10 55. Rather, on April 22, 2015, when Mr. Narron left Jawbone, Fitbit instantly acquired
11 Jawbone's most sensitive trade secrets concerning its entire line of audio products. Specifically, in
12 addition to the confidential, trade secret information described above, Mr. Narron had, and
13 continues to have, access to the Jawbone trade secrets identified in Exhibit A. Mr. Narron has
14 disclosed, used and continues to use these trade secrets in the performance of his job at Fitbit, and
15 threatens to continue to use some or all of these trade secrets in the future, for example, by utilizing
16 Jawbone's manufacturing processes or audio signal chain designs in developing audio products for
17 Fitbit as it scrambles to figure out a strategic path forward.

18 **C. Fitbit Targeted Defendant Romano To Obtain Access to Jawbone's**
19 **Confidential Information and Intellectual Property Regarding Headsets,**
20 **Fitness Trackers and Audio Products.**

21 56. Jawbone's fitness trackers incorporate numerous technological advances that
22 Fitbit's fitness tracker offerings do not. For example, the Jawbone UP3 is built on an advanced
23 multi-sensor platform that allows Jawbone to deliver more in-depth insights than more simplistic
24 fitness trackers, like those offered by Fitbit. The UP3's band uses this sensor setup to, among other
25 things: reveal a wearer's resting heart rate, a crucial indicator of overall heart health; track users'
26 sleep patterns and differentiate between REM, light and deep sleep; and its companion application
27 also provides information and analysis to help users improve their sleep patterns. Furthermore, the
28 Jawbone UP3 has automatic sport detection skills and offers (in conjunction with the UP3
application) the new Smart Coach system — a real-time information system that analyzes the data

1 that the UP3 band records about users to provide personal advice on users' goals and objectives.
2 Fitbit offers *none* of these technologies to its users — a key limiting factor in Fitbit's ability to
3 survive and grow in the industry.

4 57. Rather than employing the time, resources and capital necessary to enhance its
5 technologies to effectively compete in tomorrow's marketplace, Fitbit sought to poach that
6 expertise from Jawbone. Indeed, as one leading financial analyst noted with regard to Fitbit's
7 inability to attract and retain capable engineers and designers with expertise in the wearables space:
8 "FitBit admits it has had trouble 'attracting and retaining' these highly skilled workers in the past."
9 Defendant Romano was, therefore, an ideal target. During his tenure at Jawbone, which began in
10 2013, Mr. Romano worked as a Product Design Engineer and, in that capacity, had access to every
11 aspect of the mechanical and industrial design of Jawbone's products, including its fitness trackers
12 and its full lineup of audio and headset products. Mr. Romano had virtually unfettered access to
13 confidential information at Jawbone including, but not limited to, the designs and production
14 methods for Jawbone's fitness tracker, headset and audio products; Jawbone's product pipeline,
15 prototypes, the prices and relative merits of component parts; and strategic design considerations
16 and decisions that would chart the course of Jawbone's business.

17 58. For example, in the course of his work as a Product Design Engineer, Mr. Romano
18 was leading Jawbone's design of a new headset, which is a product category for which Fitbit did
19 not, and does not, have a competing offering. Mr. Romano also contributed to the design,
20 development and production of all of Jawbone's audio electronics products, including, but not
21 limited to, those that have not yet been released to the general public.

22 59. *After already accepting a position at Fitbit*, but before giving notice of his decision
23 to leave Jawbone, Mr. Romano accessed his Jawbone computer and used a portable USB storage
24 device to remove word processing documents, spreadsheets and other media from Jawbone's
25 premises — in plain violation of the terms of his confidentiality agreements with the company. To
26 cover the tracks of his wrongdoing, remnants of a forensic wiping tool called CCleaner were found
27 on his work computer. Even more egregious, on his last day of employment with Jawbone, Mr.
28 Romano manually deleted certain automatically generated file logs that would otherwise indicate

1 what kind of activity Mr. Romano had conducted on his work computer, and manually altered the
2 system's date and time to facilitate the concealment of his illicit activities.

3 60. Also in plain violation of his confidentiality and computer use obligations,
4 Mr. Romano routinely sent confidential information from his Jawbone email account to his own
5 personal email account while he was employed at the company.

6 61. On or around March 17, 2015, when Mr. Romano joined Fitbit, he took with him
7 not only the stolen confidential electronic files, but also a wealth of confidential information
8 concerning Jawbone's fitness trackers, headsets and audio products, including, specifically,
9 Jawbone's product pipeline, prototypes, the prices and relative merits of component parts, and
10 strategic design considerations and decisions. Specifically, in addition to the confidential, trade
11 secret information described above, Mr. Romano had, and continues to have, access to the Jawbone
12 trade secrets identified in Exhibit A. Mr. Romano has disclosed, used and continues to use these
13 trade secrets in the performance of his job at Fitbit, and threatens to continue to use some or all of
14 these trade secrets in the future, for example, by incorporating the designs and combinations of
15 sensors to enhance Fitbit products through Jawbone's proprietary trade secrets.

16 **D. Fitbit Targeted Defendant Zhang To Obtain Access to Jawbone's Confidential**
17 **Information Regarding Jawbone's Supply Chain Contacts, Margins and**
18 **Pricing Information.**

19 62. In early 2015, Fitbit recognized that it was losing ground in developing the next
20 generation of products in the wearables market, due to the absence of headsets and other audio
21 systems from its product lineup, as well as its lack of a strategic vision for the future of fitness
22 trackers. Fitbit has further acknowledged its lack of product and manufacturing diversity by
23 admitting that it relies on only one manufacturer that is "currently the sole manufacturer of the
24 majority of our devices," and that Fitbit "do[es] not currently have any alternative or replacement
25 manufacturers." Thus, the company determined to poach employees with audio and product
26 manufacturing expertise from its competitors, Jawbone in particular, and in the process acquire the
27 benefits of Jawbone's proprietary research and development — including, among other things, the
28 supply chain contacts, plans and processes that are integral to the successful development,
marketing and distribution of any advanced technology.

1 63. Jawbone has produced headsets since 2007 and speaker products since 2010, with
2 fitness trackers becoming part of its product offering in 2012. Over the course of the last near-
3 decade, Jawbone has established a network of suppliers, producers and retailers for all of its
4 products. Jawbone relies on its personal relationships with these suppliers and retailers to obtain
5 favorable terms, pricing and inventory space in its sourcing of component parts for its products,
6 and in evaluating available shelf space for distribution and sale. The company has also developed
7 intricate strategic plans for the future direction of the company in the face of changing markets and
8 consumer preferences.

9 64. Defendant Zhang was fully integrated into Jawbone's operations with respect to its
10 supply chain, component part sourcing and strategic future vision for the company. Ms. Zhang
11 began working for Jawbone on or around August 22, 2012, as a Cost Accounting Manager, and
12 became a Senior Supply Chain Manager on October 14, 2013. In those capacities, Ms. Zhang had
13 access to Jawbone's confidential information relating to every aspect of the company's supply
14 chain, including Jawbone's manufacturing capabilities, vendor relationships, product development
15 strategy, component pricing information, cost of goods sold, distribution, inventory, and supply
16 chain liability.

17 65. *After already accepting a position at Fitbit*, but before giving notice of her decision
18 to leave Jawbone, Ms. Zhang accessed her work computer and used a portable USB storage device
19 to remove confidential information from Jawbone's premises, in plain violation of her
20 confidentiality obligations. Some of the files Ms. Zhang took with her were titled:

- 21 • Supply Chain
- 22 • Gross Margin_terms_090814_FINAL Tim.pdf
- 23 • Contacts
- 24 • Vendor Liability
- 25 • Product Target Costs Tim.xlsx
- 26 • Spitz Tim.xlsx
- 27 • 745-00241-G0303D-Spitz black ramp up recipe and deviation_03092015_rd
markup Richard Z.xlsx
- 28 • Spitz Cost proposal 03132015_rd markup_16March2015.xlsx

- Jawbone COGS Analysis 8'22'14_V2 Tim.pdf

66. Ms. Zhang thereafter removed any trace of these files on her work computer. Indeed, Jawbone discovered the presence of CCleaner on Ms. Zhang's work computer and, like Mr. Romano, Ms. Zhang likewise deleted automatically generated log files and manually altered the system's date and time functions to conceal her activity. *The day after* Ms. Zhang removed Jawbone's confidential information, she resigned from Jawbone.

67. Ms. Zhang joined Fitbit on or around April 2, 2015, and brought with her not only the stolen confidential information on the USB drive, but also the universe of Jawbone's confidential information concerning, among other things, its supply chain and headset and audio product development. Specifically, in addition to the confidential trade secret information described above, Ms. Zhang had, and continues to have, access to the Jawbone trade secrets identified in Exhibit A. Ms. Zhang has disclosed, used and continues to use these trade secrets in the performance of her job at Fitbit, and threatens to continue to use some or all of these trade secrets in the future, for example, by accounting for Jawbone's pricing breakdowns in developing Fitbit's pricing breakdowns, and by directing Fitbit to purchase components or manufacturing capabilities to vendors who previously supplied components to Jawbone.

III. DEFENDANTS MOGAL, NARRON, ROMANO, ROSARIO AND ZHANG LIED TO JAWBONE TO COVER UP THEIR THEFT OF CONFIDENTIAL INFORMATION.

68. Upon leaving Jawbone, Ms. Mogal, Mr. Narron, Mr. Romano and Ms. Rosario executed a Termination Certification, certifying, among other things, that each had surrendered any and all Jawbone property, including Jawbone's confidential information and its tangible property. (Termination Certification.) The individual Defendants certified that they had not "made or retained copies, reproductions or summaries of any such Company Property, and have returned all Company Property in its present condition without deletion or alteration." (*Id.*) These representations simply reaffirm the obligations to which each of the individual Defendants agreed at the outset of their Jawbone employment.

69. These representations were false. Contrary to their promises not to remove confidential information, as well as their oral assurances to that effect upon leaving Jawbone, the

1 individual Defendants each removed Jawbone's confidential files, documents and information from
2 Jawbone's premises throughout the course of their employment — including confidential
3 information removed on the days and weeks leading up to their departures. *None* of this
4 proprietary information has been returned to Jawbone, but rather, as Fitbit is well aware, the
5 individual Defendants continue to have access to, and use, Jawbone's confidential information in
6 connection with their new employment. The uniform dishonesty by the individual Defendants
7 regarding Jawbone's proprietary and confidential information reveals a common scheme to use that
8 information for the benefit of Fitbit.

9 **SPECIFIC ALLEGATIONS**

10 **FIRST CAUSE OF ACTION**

11 **(Misappropriation of Trade Secrets — Cal. Civil Code § 3426, et seq.)**
12 **(Against All Defendants)**

13 70. Jawbone hereby realleges and incorporates by reference the allegations contained in
14 paragraphs 1 through 69 as though fully set forth herein.

15 71. Ms. Mogal, Mr. Narron, Mr. Romano, Ms. Rosario and Ms. Zhang each agreed that
16 they had access to Jawbone's trade secret information including, without limitation, information
17 related to research, product plans, products, services, customers, customer lists and other customer
18 data, markets, software, developments, inventions, processes, formulas, technology, designs,
19 drawings, engineering, hardware configuration information, marketing, finances, personnel,
20 business plans, strategic plans, or other business information. All of Jawbone's confidential
21 information was and still is vital to Jawbone's continued operations, and, as Ms. Mogal,
22 Mr. Narron, Mr. Romano, Ms. Rosario and Ms. Zhang acknowledged, disclosure of such
23 Confidential Information "would cause the Company irreparable harm." (Confidentiality
24 Agreement at 5.) Indeed, as the Employee Handbook stated:

25 The security of the Company's property is of vital importance. The
26 Company's property includes not only tangible property, like desks
and computers, but also intangible property such as source code and
all other intellectual property. All employees are responsible for
ensuring that proper security is maintained at all times.

27 (Employee Handbook at 10.) Given the importance of the confidential information to Jawbone, it
28 was maintained with the highest degree of security pursuant to the Company's robust policies. In

1 addition to the trade secrets set forth above, a list of the trade secrets that have been
2 misappropriated, or which Defendants threaten to misappropriate (all of which constitute
3 protectable trade secrets under California Civil Code § 3426.1), are set forth in Exhibit A.

4 72. Having executed written confidentiality agreements, and reviewed and understood
5 the Employee Handbook and other agreements discussing Jawbone's policies and procedures, Ms.
6 Mogal, Mr. Narron, Mr. Romano, Ms. Rosario and Ms. Zhang were familiar with their
7 confidentiality obligations, the extent of the confidentiality protections regarding Jawbone's
8 confidential information, and the prohibitions on the unauthorized access, use, copying and
9 disclosure of such trade secret information. Likewise, through its employee onboarding process,
10 Fitbit became aware of the former employees' contractual obligations to Jawbone.

11 73. Nevertheless, Fitbit knowingly induced and solicited Ms. Mogal, Mr. Narron, Mr.
12 Romano, Ms. Rosario and Ms. Zhang to leave Jawbone for Fitbit, with full access to and
13 knowledge of Jawbone's trade secrets (including, in some instances, the acquisition of Jawbone's
14 trade secrets through improper means) with the intent to use Jawbone's trade secrets during the
15 employees' tenure at Fitbit in order to help Fitbit survive now and in the future. In doing so, Fitbit
16 wrongly obtained and continues to benefit from Jawbone's proprietary insights, methods, practices,
17 observations, predictions, assumptions and intellectual property. These actions of the individual
18 Defendants, which were orchestrated and directed by Fitbit, were intended to redound to Fitbit's
19 advantage even though Jawbone had spent the time, energy and resources to develop that
20 information for its own advantage.

21 74. As a direct result of these concerted actions, Jawbone has suffered monetary,
22 competitive and irreparable harm.

23 **SECOND CAUSE OF ACTION**
24 **(Breach of Contract)**

25 **(Against Ms. Mogal, Mr. Narron, Mr. Romano, Ms. Rosario and Ms. Zhang)**

26 75. Jawbone hereby realleges and incorporates by reference the allegations contained in
27 paragraphs 1 through 74 as though fully set forth herein.

28 76. Ms. Mogal, Mr. Narron, Mr. Romano, Ms. Rosario and Ms. Zhang each entered into
the Confidentiality Agreement with Jawbone. Under the Confidentiality Agreement, Ms. Mogal,

1 Mr. Narron, Mr. Romano, Ms. Rosario and Ms. Zhang recognized that their employment created a
2 duty of trust and confidentiality to Jawbone with respect to confidential, proprietary and non-public
3 information. In particular, they agreed to keep confidential information in the strictest confidence,
4 and not to access, copy, use or disclose any confidential information without authorization from
5 Jawbone. Distinct from their obligation to not disclose any confidential information to any
6 individual outside of Jawbone, Ms. Mogal, Mr. Narron, Mr. Romano, Ms. Rosario and Ms. Zhang
7 further agreed to promptly return confidential information upon the termination of their
8 employment with Jawbone.

9 77. Ms. Mogal, Mr. Narron, Mr. Romano, Ms. Rosario and Ms. Zhang breached the
10 Confidentiality Agreement by, without authorization, accessing, copying, using and/or disclosing
11 to third parties Jawbone's confidential and trade secret information protected by the agreements.
12 Apart from disclosing Jawbone's confidential information, Ms. Mogal, Mr. Narron, Mr. Romano,
13 Ms. Rosario and Ms. Zhang further, and independently; breached the Confidentiality Agreement by
14 failing to take the necessary steps to return any confidential information to Jawbone upon each
15 employee's termination from Jawbone. Finally, Ms. Mogal, Mr. Narron, Mr. Romano, Ms.
16 Rosario and Ms. Zhang separately breached the Confidentiality Agreement by failing to satisfy
17 Jawbone that any confidential information does not exist on any of the individual Defendants' non-
18 Jawbone devices or email systems.

19 78. Each of Ms. Mogal, Mr. Narron, Mr. Romano, Ms. Rosario and Ms. Zhang's
20 breaches of the Confidentiality Agreement has caused significant monetary, competitive and
21 irreparable harm to Jawbone.

22 79. Further, and apart from the aforementioned breaches of the Confidentiality
23 Agreement, Ms. Mogal agreed not to solicit, induce, recruit or encourage, or attempt to solicit,
24 induce, recruit or encourage any Jawbone employee or consultant to terminate his, her or its
25 employment or consulting relationship with Jawbone.

26 80. Ms. Mogal sought to solicit and induce Ms. Rosario to work with her at Fitbit. As a
27 result, Ms. Mogal further, and intentionally, breached the Confidentiality Agreement and, as a
28 result, Jawbone suffered substantial monetary, competitive and irreparable harm.

1 81. By contrast, Jawbone performed all of its obligations under each of the agreements
2 at issue, having employed the individual Defendants as agreed, and paid them handsomely for their
3 work.

4 **THIRD CAUSE OF ACTION**
5 **(Breach of Implied Covenant of Good Faith and Fair Dealing)**
6 **(Against Ms. Mogal, Mr. Narron, Mr. Romano, Ms. Rosario and Ms. Zhang)**

7 82. Jawbone hereby realleges and incorporates by reference the allegations contained in
8 Paragraphs 1 through 81 as though fully set forth herein.

9 83. Jawbone and Ms. Mogal, Mr. Narron, Mr. Romano, Ms. Rosario and Ms. Zhang
10 entered into the Confidentiality Agreement. As in every contract or agreement, under California
11 law, there was an implied covenant of good faith and fair dealing.

12 84. Jawbone performed all of its obligations under the Confidentiality Agreement. As
13 such, all conditions for Ms. Mogal, Mr. Narron, Mr. Romano, Ms. Rosario and Ms. Zhang's
14 performance under the Confidentiality Agreement had occurred — not least of which, the payment
15 of substantial compensation to Ms. Mogal, Mr. Narron, Mr. Romano, Ms. Rosario and Ms. Zhang
16 during their employment with Jawbone.

17 85. Ms. Mogal, Mr. Narron, Mr. Romano, Ms. Rosario and Ms. Zhang unfairly
18 interfered with Jawbone's right to receive the benefit of the contract, namely the expectation that
19 its employees would uphold the confidentiality and trade secret protection of Jawbone's
20 confidential information and trade secrets.

21 86. Jawbone suffered significant monetary, competitive and irreparable harm as a result
22 of Ms. Mogal, Mr. Narron, Mr. Romano, Ms. Rosario and Ms. Zhang's conduct.

23 **FOURTH CAUSE OF ACTION**
24 **(Unfair And Unlawful Business Practices — Cal. Bus. & Prof. Code §§ 17200, et seq.)**
25 **(Against All Defendants)**

26 87. Jawbone hereby realleges and incorporates by reference the allegations contained in
27 paragraphs 1 through 86 as though fully set forth herein.

28 88. The conduct of Fitbit, Ms. Mogal, Mr. Narron, Mr. Romano, Ms. Rosario and Ms.
Zhang, alleged herein, constitutes unfair and unlawful business practices in violation of Bus. &
Prof. Code §§ 17200, et seq. Instead of devoting the substantial time and resources necessary to

1 develop an understanding of the evolution of the consumer technology and wearables market, and
2 developing its own strategic vision of the next generation of products and services, Fitbit took a
3 shortcut by poaching Jawbone's employees. Fitbit hired Ms. Mogal, Mr. Narron, Mr. Romano,
4 Ms. Rosario and Ms. Zhang with knowledge that they possessed Jawbone's confidential and
5 proprietary information, and with the intent that those employees would use that knowledge to
6 enable Fitbit to compete more effectively (and unfairly) with Jawbone. Indeed, Ms. Mogal, Mr.
7 Narron, Mr. Romano, Ms. Rosario and Ms. Zhang provided Fitbit with knowledge of critical
8 aspects of Jawbone's business and strategic thinking with regard to where technology and
9 consumer demand are moving and how Jawbone anticipates effectively meeting those changes.

10 89. The Defendants knew that by stealing and using Jawbone's confidential information
11 without its express permission for Fitbit's benefit, they were engaging in unfair business practices
12 by acting in violation of Cal. Civ. Code §§ 3426, *et seq.* In the performance of their
13 responsibilities at Fitbit, Ms. Mogal, Mr. Narron, Mr. Romano, Ms. Rosario and Ms. Zhang have
14 used, and continue to use, Jawbone's trade secrets unfairly and unlawfully, plainly in violation of
15 Jawbone's Confidentiality Agreement, Jawbone's Employee Handbook, Jawbone's computer use
16 policies, and basic principles of professional decency.

17 90. As a direct result of these concerted actions, Jawbone has suffered monetary,
18 competitive and irreparable harm.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Jawbone prays for judgment against Fitbit, Inc., Katherine Mogal, Patrick
21 Narron, Patricio Romano, Ana Rosario and Rong Zhang as follows:

- 22 1. Compensatory damages, plus interest and prejudgment interest in an amount to be
23 determined at trial;
- 24 2. Other economic and consequential damages in an amount to be determined at trial;
- 25 3. Punitive and exemplary damages in an amount appropriate to punish or set an
26 example of Fitbit, Ms. Mogal, Mr. Narron, Mr. Romano, Ms. Rosario and Ms. Zhang, to be
27 determined at trial;

1 4. Preliminary and permanent injunctive relief to prevent the individual Defendants
2 from disclosing any additional trade secrets belonging to Jawbone and to prevent Fitbit from using
3 Jawbone's trade secrets in any way, including in designing, manufacturing or marketing presently
4 available or future products;

5 5. Restitution of all profits made by Defendants, in the past and future, as a result of
6 having engaged in the wrongful conduct which has or will damage Plaintiff;

7 6. Attorneys' fees, witness fees and the costs of the litigation incurred by Jawbone in
8 an amount to be determined at trial;

9 7. For the costs of the suit incurred herein; and

10 8. For such other and further relief as the Court deems just and proper.

11
12 Dated: May 27, 2015 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

13
14 By: 
15 LANCE A. ETCHEVERRY
16 Attorney for Plaintiff
17 ALPHCOM, INC., D/B/A JAWBONE

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JURY DEMAND

Jawbone hereby demands that this matter be tried before a jury under California Code of Civil Procedure Section 631.

DATED: May 27, 2015

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

By: *Lance Etcheberry*
LANCE A. ETCHEVERRY
Attorney for Plaintiff
ALIPHCOM, INC., D/B/A JAWBONE