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LAGUNA 2, LLC and
JOEL BLANK

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO DIVISION

18 FITBIT, INC., a Delaware Corporation,
19 Plaintiff,
20 v.
21 LAGUNA 2, LLC, a New Jersey Limited
22 Liability Company; JOEL BLANK, an
23 individual; CALI RESOURCES, INC., a
24 California Corporation; CARLOS KELVIN,
25 an individual; and DOES 3-30, inclusive,
26 Defendants.

Case No. 3:17-cv-00079 EMC

~~[PROPOSED]~~ STIPULATED
PROTECTIVE ORDER

1 Plaintiff Fitbit, Inc. and Defendants Laguna 2, LLC, Joel Blank, Cali Resources, Inc., and
2 Carlos Kelvin (together the “parties”), by and through their respective counsel of record, hereby
3 submit the following Stipulated Protective Order to govern discovery in this action.

4 **1. PURPOSES AND LIMITATIONS**

5 Disclosure and discovery activity in this action are likely to involve production of
6 confidential, proprietary, or private information for which special protection from public
7 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
8 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
9 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
10 all disclosures or responses to discovery and that the protection it affords from public disclosure
11 and use extends only to the limited information or items that are entitled to confidential treatment
12 under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.4,
13 below, that this Stipulated Protective Order does not entitle them to file confidential information
14 under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards
15 that will be applied when a party seeks permission from the court to file material under seal.

16 **2. DEFINITIONS**

17 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
18 information or items under this Order.

19 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
20 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
21 of Civil Procedure 26(c).

22 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
23 well as their support staff).

24 2.4 Designated House Counsel: House Counsel who seek access to “HIGHLY
25 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

26 2.5 Designating Party: a Party or Non-Party that designates information or items that it
27 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
28

1 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

2 2.6 Disclosure or Discovery Material: all items or information, regardless of the
3 medium or manner in which it is generated, stored, or maintained (including, among other things,
4 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
5 responses to discovery in this matter.

6 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to
7 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as
8 a consultant in this action, (2) is not a past or current employee of a Party or of a Party’s
9 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party or
10 of a Party’s competitor.

11 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or
12 Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another
13 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by
14 less restrictive means.

15 2.9 House Counsel: attorneys who are employees of a party to this action. House
16 Counsel does not include Outside Counsel of Record or any other outside counsel.

17 2.10 Non-Party: any natural person, partnership, corporation, association, or other legal
18 entity not named as a Party to this action.

19 2.11 Outside Counsel of Record: attorneys who are not employees of a party to this
20 action but are retained to represent or advise a party to this action and have appeared in this action
21 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.
22

23 2.12 Party: any party to this action, including all of its officers, directors, employees,
24 consultants, retained experts, and Outside Counsel of Record (and their support staffs).
25

26 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
27 Material in this action.

28

1 2.14 Professional Vendors: persons or entities that provide litigation support services
2 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
3 organizing, storing, or retrieving data in any form or medium) and their employees and
4 subcontractors.

5 2.15 Protected Material: any Disclosure or Discovery Material that is designated as
6 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

7 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a
8 Producing Party.

9 **3. SCOPE**

10 The protections conferred by this Stipulation and Order cover not only Protected Material
11 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
12 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
13 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
14 However, the protections conferred by this Stipulation and Order do not cover the following
15 information: (a) any information that is in the public domain at the time of disclosure to a
16 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a
17 result of publication not involving a violation of this Order, including becoming part of the public
18 record through trial or otherwise; and (b) any information known to the Receiving Party prior to
19 the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained
20 the information lawfully and under no obligation of confidentiality to the Designating Party. Any
21 use of Protected Material at trial shall be governed by a separate agreement or order.

22 **4. DURATION**

23 Even after final disposition of this litigation, the confidentiality obligations imposed by this
24 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
25 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims
26 and defenses in this action, with or without prejudice; and (2) final judgment herein after the
27 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
28 including the time limits for filing any motions or applications for extension of time pursuant to

1 applicable law.

2 **5. DESIGNATING PROTECTED MATERIAL**

3 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
4 or Non-Party that designates information or items for protection under this Order must take care to
5 limit any such designation to specific material that qualifies under the appropriate standards. To
6 the extent it is practical to do so, the Designating Party must designate for protection only those
7 parts of material, documents, items, or oral or written communications that qualify – so that other
8 portions of the material, documents, items, or communications for which protection is not
9 warranted are not swept unjustifiably within the ambit of this Order.

10 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
11 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
12 unnecessarily encumber or retard the case development process or to impose unnecessary
13 expenses and burdens on other parties) expose the Designating Party to sanctions.

14 If it comes to a Designating Party’s attention that information or items that it designated
15 for protection do not qualify for protection at all or do not qualify for the level of protection
16 initially asserted, that Designating Party must promptly notify all other parties that it is
17 withdrawing the mistaken designation.

18 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
19 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
20 Disclosure or Discovery

21 Material that qualifies for protection under this Order must be clearly so designated before
22 the material is disclosed or produced.

23 Designation in conformity with this Order requires:

24 (a) for information in documentary form (e.g., paper or electronic documents, but
25 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
26 affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
27 ONLY” to each page that contains protected material. If only a portion or portions of the material
28

1 on a page qualifies for protection, the Producing Party also must clearly identify the protected
2 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
3 portion, the level of protection being asserted.

4 A Party or Non-Party that makes original documents or materials available for inspection
5 need not designate them for protection until after the inspecting Party has indicated which material
6 it would like copied and produced. During the inspection and before the designation, all of the
7 material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –
8 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants
9 copied and produced, the Producing Party must determine which documents, or portions thereof,
10 qualify for protection under this Order. Then, before producing the specified documents, the
11 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY
12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) to each page that contains Protected
13 Material. If only a portion or portions of the material on a page qualifies for protection, the
14 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
15 markings in the margins) and must specify, for each portion, the level of protection being asserted.

16 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
17 Designating Party identify on the record, before the close of the deposition, hearing, or other
18 proceeding, all protected testimony and specify the level of protection being asserted. When it is
19 impractical to identify separately each portion of testimony that is entitled to protection and it
20 appears that substantial portions of the testimony may qualify for protection, the Designating Party
21 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right
22 to have up to 21 days to identify the specific portions of the testimony as to which protection is
23 sought and to specify the level of protection being asserted. Only those portions of the testimony
24 that are appropriately designated for protection within the 21 days shall be covered by the
25 provisions of this Stipulated Protective Order. Alternatively, a Designating Party may specify, at
26 the deposition or up to 21 days afterwards if that period is properly invoked, that the entire
27 transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
28 ATTORNEYS’ EYES ONLY.”

1 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or
2 other proceeding to include Protected Material so that the other parties can ensure that only
3 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”
4 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
5 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
6 – ATTORNEYS’ EYES ONLY.”

7 Transcripts containing Protected Material shall have an obvious legend on the title page
8 that the transcript contains Protected Material, and the title page shall be followed by a list of all
9 pages (including line numbers as appropriate) that have been designated as Protected Material and
10 the level of protection being asserted by the Designating Party. The Designating Party shall inform
11 the court reporter of these requirements. Any transcript that is prepared before the expiration of a
12 21-day period for designation shall be treated during that period as if it had been designated
13 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise
14 agreed. After the expiration of that period, the transcript shall be treated only as actually
15 designated.

16 (c) for information produced in some form other than documentary and for any other
17 tangible items, that the Producing Party affix in a prominent place on the exterior of the container
18 or containers in which the information or item is stored the legend “CONFIDENTIAL” or
19 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions of the
20 information or item warrant protection, the Producing Party, to the extent practicable, shall
21 identify the protected portion(s) and specify the level of protection being asserted.

22 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
23 designate qualified information or items does not, standing alone, waive the Designating Party’s
24 right to secure protection under this Order for such material. Upon timely correction of a
25 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
26 in accordance with the provisions of this Order.

27 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

28 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of

1 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
2 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
3 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
4 challenge a confidentiality designation by electing not to mount a challenge promptly after the
5 original designation is disclosed.

6 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
7 process by providing written notice of each designation it is challenging and describing the basis
8 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
9 notice must recite that the challenge to confidentiality is being made in accordance with this
10 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in
11 good faith and must begin the process by conferring directly (in voice to voice dialogue; other
12 forms of communication are not sufficient) within 14 days of the date of service of notice. In
13 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
14 designation was not proper and must give the Designating Party an opportunity to review the
15 designated material, to reconsider the circumstances, and, if no change in designation is offered, to
16 explain the basis for the chosen designation. A Challenging Party may proceed to the next stage of
17 the challenge process only if it has engaged in this meet and confer process first or establishes that
18 the Designating Party is unwilling to participate in the meet and confer process in a timely
19 manner.

20 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
21 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
22 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of
23 the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer
24 process will not resolve their dispute, whichever is earlier. Each such motion must be
25 accompanied by a competent declaration affirming that the movant has complied with the meet
26 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to
27 make such a motion including the required declaration within 21 days (or 14 days, if applicable)
28 shall automatically waive the confidentiality designation for each challenged designation. In

1 addition, the Challenging Party may file a motion challenging a confidentiality designation at any
2 time if there is good cause for doing so, including a challenge to the designation of a deposition
3 transcript or any portions thereof. Any motion brought pursuant to this provision must be
4 accompanied by a competent declaration affirming that the movant has complied with the meet
5 and confer requirements imposed by the preceding paragraph.

6 The burden of persuasion in any such challenge proceeding shall be on the Designating
7 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
8 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
9 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to
10 file a motion to retain confidentiality as described above, all parties shall continue to afford the
11 material in question the level of protection to which it is entitled under the Producing Party's
12 designation until the court rules on the challenge.

13 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

14 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
15 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
16 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
17 the categories of persons and under the conditions described in this Order. When the litigation has
18 been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
19 DISPOSITION).

20 Protected Material must be stored and maintained by a Receiving Party at a location and in
21 a secure manner that ensures that access is limited to the persons authorized under this Order.

22 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
23 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
24 information or item designated "CONFIDENTIAL" only to:

25 (a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of
26 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for
27 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is
28 attached hereto as Exhibit A;

1 (b) the officers, directors, and employees (including House Counsel) of the Receiving
2 Party to whom disclosure is reasonably necessary for this litigation and who have signed the
3 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
5 reasonably necessary for this litigation and who have signed the “Acknowledgment and
6 Agreement to Be Bound” (Exhibit A);

7 (d) the court and its personnel;

8 (e) court reporters and their staff, professional jury or trial consultants, and Professional
9 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the
10 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

11 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
12 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
13 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed
14 deposition testimony or exhibits to depositions that reveal Protected Material must be separately
15 bound by the court reporter and may not be disclosed to anyone except as permitted under this
16 Stipulated Protective Order.

17 (g) the author or recipient of a document containing the information or a custodian or other
18 person who otherwise possessed or knew the information.

19 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

20 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
21 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
22 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

23 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of
24 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for
25 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is
26 attached hereto as Exhibit A;

27 (b) Designated House Counsel of the Receiving Party (1) who has no involvement in competitive
28 decision-making, (2) to whom disclosure is reasonably necessary for this litigation, (3) who has signed the

1 “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (4) as to whom the procedures set forth
2 in paragraph 7.4(a)(1), below, have been followed¹;

3 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this
4 litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
5 and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed;

6 (d) the court and its personnel;

7 (e) court reporters and their staff, professional jury or trial consultants, and Professional
8 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the
9 “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

10 (f) the author or recipient of a document containing the information or a custodian or other
11 person who otherwise possessed or knew the information.

12 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
13 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Designated House
14 Counsel or Experts.

15 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating
16 Party, a Party that seeks to disclose to Designated House Counsel any information or item that has
17 been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to
18 paragraph 7.3(b) first must make a written request to the Designating Party that (1) sets forth the
19 full name of the Designated House Counsel and the city and state of his or her residence, and (2)
20 describes the Designated House Counsel’s current and reasonably foreseeable future primary job
21 duties and responsibilities in sufficient detail to determine if House Counsel is involved, or may
22 become involved, in any competitive decision-making;

23 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating
24 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item

25 _____
26 ¹ Fitbit has designated Gloria Lee as its Designated House Counsel, and the other parties do not
27 object to that designation or to her receiving access to information consistent with the terms of this
28 Protective Order.

1 that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant
2 to paragraph 7.3(c) first must make a written request to the Designating Party that (1) identifies the
3 general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information
4 that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of
5 the Expert and the city and state of his or her primary residence, (3) attaches a copy of the Expert’s
6 current resume, (4) identifies the Expert’s current employer(s), (5) identifies each person or entity
7 from whom the Expert has received compensation or funding for work in his or her areas of
8 expertise or to whom the expert has provided professional services, including in connection with a
9 litigation, at any time during the preceding five years, and (6) identifies (by name and number of
10 the case, filing date, and location of court) any litigation in connection with which the Expert has
11 offered expert testimony, including through a declaration, report, or testimony at a deposition or
12 trial, during the preceding five years;²

13 (b) A Party that makes a request and provides the information specified in the preceding
14 respective paragraphs may disclose the subject Protected Material to the identified Designated
15 House Counsel or Expert unless, within 14 days of delivering the request, the Party receives a
16 written objection from the Designating Party. Any such objection must set forth in detail the
17 grounds on which it is based;

18 (c) A Party that receives a timely written objection must meet and confer with the
19 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
20 agreement within seven days of the written objection. If no agreement is reached, the Party
21 seeking to make the disclosure to Designated House Counsel or the Expert may file a motion as
22 provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable)
23 seeking permission from the court to do so. Any such motion must describe the circumstances

24 _____

25 ² If the Expert believes any of this information is subject to a confidentiality obligation to a
26 third-party, then the Expert should provide whatever information the Expert believes can be
27 disclosed without violating any confidentiality agreements, and the Party seeking to disclose to the
28 Expert shall be available to meet and confer with the Designating Party regarding any such
engagement.

1 with specificity, set forth in detail the reasons why the disclosure to Designated House Counsel or
2 the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and
3 suggest any additional means that could be used to reduce that risk. In addition, any such motion
4 must be accompanied by a competent declaration describing the parties' efforts to resolve the
5 matter by agreement (i.e., the extent and the content of the meet and confer discussions) and
6 setting forth the reasons advanced by the Designating Party for its refusal to approve the
7 disclosure; and,

8 In any such proceeding, the Party opposing disclosure to Designated House Counsel or the
9 Expert shall bear the burden of proving that the risk of harm that the disclosure would entail
10 (under the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected
11 Material to its Designated House Counsel or Expert.

12 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
13 **OTHER LITIGATION**

14 If a Party is served with a subpoena or a court order issued in other litigation that compels
15 disclosure of any information or items designated in this action as "CONFIDENTIAL" or
16 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" that Party must:

17 (a) promptly notify in writing the Designating Party. Such notification shall include a copy
18 of the subpoena or court order;

19 (b) promptly notify in writing the party who caused the subpoena or order to issue in the
20 other litigation that some or all of the material covered by the subpoena or order is subject to this
21 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

22 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
23 Designating Party whose Protected Material may be affected.

24 If the Designating Party timely seeks a protective order, the Party served with the subpoena
25 or court order shall not produce any information designated in this action as "CONFIDENTIAL"
26 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" before a determination by the
27 court from which the subpoena or order issued, unless the Party has obtained the Designating
28 Party's permission. The Designating Party shall bear the burden and expense of seeking protection

1 in that court of its confidential material – and nothing in these provisions should be construed as
2 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from
3 another court.

4 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
5 **THIS LITIGATION**

6 (a) The terms of this Order are applicable to information produced by a Non-Party in this
7 action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
8 EYES ONLY.” Such information produced by Non-Parties in connection with this litigation is
9 protected by the remedies and relief provided by this Order. Nothing in these provisions should be
10 construed as prohibiting a Non-Party from seeking additional protections.

11 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
12 Party’s confidential information in its possession, and the Party is subject to an agreement with the
13 Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

14 1. promptly notify in writing the Requesting Party and the Non-Party that
15 some or all of the information requested is subject to a confidentiality agreement with a Non-
16 Party;

17 2. promptly provide the Non-Party with a copy of the Stipulated Protective
18 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of
19 the information requested; and

20 3. make the information requested available for inspection by the Non-Party.

21 (c) If the Non-Party fails to object or seek a protective order from this court within 14 days
22 of receiving the notice and accompanying information, the Receiving Party may produce the Non-
23 Party’s confidential information responsive to the discovery request. If the Non-Party timely seeks
24 a protective order, the Receiving Party shall not produce any information in its possession or
25 control that is subject to the confidentiality agreement with the Non-Party before a determination
26 by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense
27 of seeking protection in this court of its Protected Material.

28

1 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
3 Material to any person or in any circumstance not authorized under this Stipulated Protective
4 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
5 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected
6 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the
7 terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and
8 Agreement to Be Bound” that is attached hereto as Exhibit A.

9 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
10 **PROTECTED MATERIAL**

11 When a Producing Party gives notice to Receiving Parties that certain inadvertently
12 produced material is subject to a claim of privilege or other protection, the obligations of the
13 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
14 provision is not intended to modify whatever procedure may be established in an e-discovery order
15 that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence
16 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
17 communication or information covered by the attorney-client privilege or work product protection,
18 the parties may incorporate their agreement in the stipulated protective order submitted to the
19 court.

20 **12. MISCELLANEOUS**

21 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
22 seek its modification by the court in the future.

23 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
24 Order no Party waives any right it otherwise would have to object to disclosing or producing any
25 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
26 Party waives any right to object on any ground to use in evidence of any of the material covered
27 by this Protective Order.

28 12.3 Legal Advice Based on Protected Material. Nothing in this Protective Order shall

1 be construed to prevent Counsel from advising their clients with respect to this case based in
2 whole or in part upon Protected Materials, provided Counsel does not disclose the Protected
3 Material itself except as provided in this Order.

4 12.4 Filing Protected Material. Without written permission from the Designating Party
5 or a court order secured after appropriate notice to all interested persons, a Party may not file in
6 the public record in this action any Protected Material. A Party that seeks to file under seal any
7 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
8 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
9 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request
10 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or
11 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected
12 Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the court, then the Receiving
13 Party may file the Protected Material in the public record pursuant to Civil Local Rule 79-5(e)(2)
14 unless otherwise instructed by the court.

15 **13. FINAL DISPOSITION**

16 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
17 Receiving Party must return all Protected Material to the Producing Party or destroy such material.
18 As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
19 summaries, and any other format reproducing or capturing any of the Protected Material. Whether
20 the Protected Material is returned or destroyed, the Receiving Party must submit a written
21 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)
22 by the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected
23 Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained
24 any copies, abstracts, compilations, summaries or any other format reproducing or capturing any
25 of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival
26 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
27 correspondence, deposition and trial exhibits, expert reports, attorney work product, and
28 consultant and expert work product, even if such materials contain Protected Material. Any such

1 archival copies that contain or constitute Protected Material remain subject to this Protective Order
2 as set forth in Section 4 (DURATION).

3 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

4
5 DATED: March 3, 2017

SIDEMAN & BANCROFT, LLP

6
7 By: /s/ Zachary J. Alinder
8 Zachary J. Alinder, Esq.
9 Attorneys for Plaintiff Fitbit, Inc.

10 DATED: March 3, 2017

MAURIEL KAPOUYTIAN WOODS LLP

11 By: /s/ Jason Bartlett
12 Jason Bartlett, Esq.
13 Attorneys for Defendants Laguna 2, LLC and Joel
14 Blank

15 DATED: March 3, 2017

ONE LLP

16
17 By: /s/ Stephen M. Lobbin
18 Stephen M. Lobbin, Esq.
19 Attorneys for Defendants Cali Resources, Inc.
20 and Carlos Kelvin

21
22 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

23
24
25
26 DATED: 3/7/17

EDWARD M. CHEN
United States District Judge



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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the case of *Fitbit, Inc. v. Laguna 2, LLC, et al.*, Case No. 3:17-cv-00079 EMC. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order. I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____
City and State where sworn and signed: _____
Printed name: _____
[printed name]
Signature: _____
[signature]

ATTESTATION OF CONCURRENCE

I hereby attest pursuant to Civil Local Rule 5-1(i)(3) that concurrence in the electronic filing of this document has been obtained from the other signatories.

DATED: March 3, 2017

SIDEMAN & BANCROFT, LLP

By: /s/ Zachary J. Alinder
Zachary J. Alinder, Esq.

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