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

12
13 **UNITED STATES DISTRICT COURT**

14 **NORTHERN DISTRICT OF CALIFORNIA**

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

17 Plaintiffs,

18 v.

19 FITBIT, INC.

20 Defendant.
21
22

Case No: 3:15-cv-2579-HSG

**FIRST AMENDED COMPLAINT FOR
PATENT INFRINGEMENT**

JURY TRIAL DEMANDED

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FIRST AMENDED COMPLAINT FOR
PATENT INFRINGEMENT

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

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

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

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

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

17 **JURISDICTION AND VENUE**

18 5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and
19 1338(a).

20 6. This Court has personal jurisdiction over Defendant because Defendant is located
21 in this District, has committed acts of infringement in violation of 35 U.S.C. § 271, and has
22 placed infringing products into the stream of commerce, through an established distribution
23 channel, with the knowledge and/or understanding that such products are used and sold in this
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25 ¹ AliphCom and BodyMedia intend to file a complaint requesting the International Trade
26 Commission (ITC) to commence an investigation pursuant to Section 337 of the Tariff Act of
27 1930, 19 U.S.C. § 1337, of Fitbit’s unlawful importation into the United States, sale for
28 importation into the United States, and sale within the United States after importation of products
that infringe AliphCom and BodyMedia’s patents. The ITC complaint will include some or all of
the patents and accused products asserted in this district court action.

1 District. These acts cause injury to Plaintiffs within the District. Defendant derives revenue from
2 the sale of infringing products distributed within the District, expects or should reasonably expect
3 transactions to have consequences within the District, and derives substantial revenue from
4 interstate and international commerce.

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

9 **BACKGROUND**

10 8. Jawbone is a world leader in consumer technology and wearable devices with
11 hundreds of patents that have been granted or are pending related to Jawbone's ecosystem and
12 wearable technology manufacturing processes. In the field of wearable technology, Jawbone's
13 UP® system in connection with its UP Move, UP24, UP2, UP3, and UP4 trackers collect and
14 provide personalized data about how consumers sleep, move and eat. The UP Platform also
15 includes apps and services that integrate with UP devices to offer new, customized experiences.

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

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

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

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

1 13. Jawbone employs over 400 people, spread across Jawbone’s San Francisco,
2 Sunnyvale, Pittsburgh, Seattle, and New York facilities as well as overseas. Jawbone’s
3 operations include BodyMedia employees and research operations.

4 14. Fitbit competes directly with Jawbone in the market for wearable fitness and
5 activity trackers through its product line, most notably the Zip, One, Flex, Charge, Charge HR,
6 Surge. These trackers – which make up virtually all of Fitbit’s wearable technology line – and
7 Fitbit’s associated Dashboard application and services platform infringe one or more of the
8 Jawbone patents.

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

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

17 16. Fitbit has infringed and continues to infringe one or more claims of the ’275 patent
18 by its making, manufacture, use, sale, importation, or offer for sale of its wearable fitness tracker
19 devices and Fitbit’s associated Dashboard application and services platform, including but not
20 limited to the following: Zip, One, Flex, Charge, Charge HR, Surge, and reasonably similar
21 products.

22 17. Fitbit is liable for its infringement of the ’275 patent pursuant to 35 U.S.C.
23 § 271(a), (b), and (c).

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

5 19. Fitbit is also liable for contributory infringement because it offers to sell or sells
6 within the United States or imports into the United States wearable fitness tracker devices that
7 constitute a component of a patented combination and a material part of the invention claimed by
8 the '275 patent, knowing the same to be especially made or especially adapted for use in an
9 infringement of such patent, which wearable fitness tracker devices are not a staple article or
10 commodity of commerce suitable for substantial noninfringing use.

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

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

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

23 22. Fitbit has infringed and continues to infringe one or more claims of the '707 patent
24 by its making, manufacture, use, sale, importation, or offer for sale of its wearable fitness tracker
25 devices and Fitbit's associated Dashboard application and services platform, including but not
26 limited to the following: Charge HR, Surge, and reasonably similar products.

1 23. Fitbit is liable for its infringement of the '707 patent pursuant to 35 U.S.C. §
2 271(a), (b), and (c).

3 24. Fitbit knowingly induces others to perform steps that infringe claims of the '707
4 patent. Fitbit's inducement of infringement includes, but is not limited to: (i) knowledge of the
5 '707 patent; (ii) intent to induce direct infringement of the '707 patent; (iii) knowingly aiding and
6 abetting infringement at least by providing and encouraging the use of the Fitbit App and/or Fitbit
7 Dashboard, as well as by providing instruction manuals, online websites including tutorials and
8 frequently asked questions, and other directions that instruct the purchaser or user of an accused
9 device to use that device in a manner that infringes certain claims of the '707 patent; and (iv)
10 actual or constructive knowledge that their actions induce infringement.

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

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

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

23 27. On March 19, 2013, the United States Patent and Trademark Office issued United
24 States Patent No. 8,398,546 ("the '546 patent") for an invention entitled "System For Monitoring
25 And Managing Body Weight And Other Physiological Conditions Including Iterative And
26 Personalized Planning, Intervention And Reporting Capability." BodyMedia is the assignee and
27 owner of the '546 patent and holds all rights, title and interests in the '546 patent, including the

1 right to sue for and recover all past, present and future damages for infringement. A true and
2 correct copy of the '546 patent is attached as Exhibit C.

3 28. Fitbit has infringed and continues to infringe one or more claims of the '546 patent
4 by its making, manufacture, use, sale, importation, or offer for sale of its wearable fitness tracker
5 devices and Fitbit's associated Dashboard application and services platform, including but not
6 limited to the following: One, Charge, Charge HR, Surge, and reasonably similar products.

7 29. Fitbit is liable for its infringement of the '546 patent pursuant to 35 U.S.C. §
8 271(a), (b), and (c).

9 30. Fitbit knowingly induces others to perform steps that infringe claims of the '546
10 patent. Fitbit's inducement of infringement includes, but is not limited to: (i) knowledge of the
11 '546 patent; (ii) intent to induce direct infringement of the '546 patent; (iii) knowingly aiding and
12 abetting infringement at least by providing and encouraging the use of the Fitbit App and/or Fitbit
13 Dashboard, as well as by providing instruction manuals, online websites including tutorials and
14 frequently asked questions, and other directions that instruct the purchaser or user of an accused
15 device to use that device in a manner that infringes certain claims of the '546 patent; and (iv)
16 actual or constructive knowledge that their actions induce infringement.

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

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

COUNT 4 – INFRINGEMENT OF U.S. PATENT NO. 8,529,811

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2 33. On September 10, 2013, the United States Patent and Trademark Office issued
3 United States Patent No. 8,529,811 (“the ’811 patent”) for an invention entitled “Component
4 Protective Overmolding Using Protective External Coatings.” AliphCom is the assignee and
5 owner of the ’811 patent and holds all rights, title and interests in the ’811 patent, including the
6 right to sue for and recover all past, present and future damages for infringement. A true and
7 correct copy of the ’811 patent is attached as Exhibit D.

8 34. Fitbit has infringed and continues to infringe one or more claims of the ’811 patent
9 by its making, manufacture, use, sale, importation, or offer for sale of its wearable fitness tracker
10 devices, including but not limited to the following: Charge, Charge HR, Surge, and reasonably
11 similar products.

12 35. Fitbit is liable for its infringement of the ’811 patent pursuant to 35 U.S.C.
13 § 271(a), (b), and (g).

14 36. Fitbit knowingly induces others to perform steps that infringe claims of the ’811
15 patent. Fitbit’s inducement of infringement includes, but is not limited to: (i) knowledge of the
16 ’811 patent; (ii) intent to induce direct infringement of the ’811 patent; (iii) knowingly aiding and
17 abetting infringement at least by encouraging manufacturers of its infringing products to use the
18 claimed methods in manufacturing Fitbit’s infringing wearable fitness tracker devices, as well as
19 by providing product specifications, drawings, designs, and other directions that instruct the
20 manufacturers to make Fitbit devices in a manner that infringes certain claims of the ’811 patent;
21 and (iv) actual or constructive knowledge that their actions induce infringement.

22 37. Fitbit is also liable for infringement under 35 U.S.C. 271(g) because it offers to
23 sell or sells within the United States or imports into the United States wearable fitness tracker
24 devices that are made by processes claimed by the ’811 patent.

25 38. Fitbit’s acts of infringement have damaged Plaintiffs, and Plaintiffs are entitled to
26 recover from Fitbit the damages they have sustained as a result of Fitbit’s wrongful acts in an
27 amount subject to proof at trial. Fitbit’s infringement of Plaintiffs’ rights under the ’811 patent
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1 will continue to damage Plaintiffs, causing irreparable harm for which there is no adequate
2 remedy at law, unless enjoined by this Court.

3 **COUNT 5 – INFRINGEMENT OF U.S. PATENT NO. 8,793,522**

4 39. On July 29, 2014, the United States Patent and Trademark Office issued United
5 States Patent No. 8,793,522 (“the ’522 patent”) for an invention entitled “Power Management In
6 A Data-Capable Strapband.” AliphCom is the assignee and owner of the ’522 patent and holds
7 all rights, title and interests in the ’522 patent, including the right to sue for and recover all past,
8 present and future damages for infringement. A true and correct copy of the ’522 patent is
9 attached as Exhibit E.

10 40. Fitbit has infringed and continues to infringe one or more claims of the ’522 patent
11 by its making, manufacture, use, sale, importation, or offer for sale of its wearable fitness tracker
12 devices, including but not limited to the following: Flex and reasonably similar products.

13 41. Fitbit is liable for its infringement of the ’522 patent pursuant to 35 U.S.C.
14 § 271(a) and (b).

15 42. Fitbit knowingly induces others to perform steps that infringe claims of the ’522
16 patent. Fitbit’s inducement of infringement includes, but is not limited to: (i) knowledge of the
17 ’522 patent; (ii) intent to induce direct infringement of the ’522 patent; (iii) knowingly aiding and
18 abetting infringement at least by encouraging manufacturers of its infringing products to make
19 Fitbit’s infringing wearable fitness tracker devices, as well as by providing product specifications,
20 drawings, designs, and other directions that instruct the manufacturers to make the devices that
21 infringe certain claims of the ’522 patent; and (iv) actual or constructive knowledge that their
22 actions induce infringement.

23 43. Fitbit’s acts of infringement have damaged Plaintiffs, and Plaintiffs are entitled to
24 recover from Fitbit the damages they have sustained as a result of Fitbit’s wrongful acts in an
25 amount subject to proof at trial. Fitbit’s infringement of Plaintiffs’ rights under the ’522 patent
26 will continue to damage Plaintiffs, causing irreparable harm for which there is no adequate
27 remedy at law, unless enjoined by this Court.

COUNT 6 – INFRINGEMENT OF U.S. PATENT NO. 8,961,413

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2 44. On February 24, 2015, the United States Patent and Trademark Office issued
3 United States Patent No. 8,961,413 (“the ’413 patent”) for an invention entitled “Wireless
4 Communications Device And Personal Monitor.” BodyMedia is the assignee and owner of the
5 ’413 patent and holds all rights, title and interests in the ’413 patent, including the right to sue for
6 and recover all past, present and future damages for infringement. A true and correct copy of the
7 ’413 patent is attached as Exhibit F.

8 45. Fitbit has infringed and continues to infringe one or more claims of the ’413 patent
9 by its making, manufacture, use, sale, importation, or offer for sale of its wearable fitness tracker
10 devices and Fitbit’s associated Dashboard application and services platform, including but not
11 limited to the following: One, Charge, Charge HR, Flex, Surge, and reasonably similar products.

12 46. Fitbit is liable for its infringement of the ’413 patent pursuant to 35 U.S.C.
13 § 271(a), (b), and (c).

14 47. Fitbit knowingly induces others to perform steps that infringe claims of the ’413
15 patent. Fitbit’s inducement of infringement includes, but is not limited to: (i) knowledge of the
16 ’413 patent; (ii) intent to induce direct infringement of the ’413 patent; (iii) knowingly aiding and
17 abetting infringement at least by providing and encouraging the use of the Fitbit App and/or Fitbit
18 Dashboard, as well as by providing instruction manuals, online websites including tutorials and
19 frequently asked questions, and other directions that instruct the purchaser or user of an accused
20 device to use that device in a manner that infringes certain claims of the ’413 patent; and (iv)
21 actual or constructive knowledge that their actions induce infringement.

22 48. Fitbit is also liable for contributory infringement because it offers to sell or sells
23 within the United States or imports into the United States wearable fitness tracker devices that
24 constitute a component of a patented combination and a material part of the invention claimed by
25 the ’413 patent, knowing the same to be especially made or especially adapted for use in an
26 infringement of such patent, which wearable fitness tracker devices are not a staple article or
27 commodity of commerce suitable for substantial noninfringing use.

1 49. Fitbit's acts of infringement have damaged Plaintiffs, and Plaintiffs are entitled to
2 recover from Fitbit the damages they have sustained as a result of Fitbit's wrongful acts in an
3 amount subject to proof at trial. Fitbit's infringement of Plaintiffs' rights under the '413 patent
4 will continue to damage Plaintiffs, causing irreparable harm for which there is no adequate
5 remedy at law, unless enjoined by this Court.

6 **JURY DEMAND**

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

9 **PRAYER FOR RELIEF**

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

- 12 a. Declaring that Defendant has infringed the '275,'707,'546, '811, '522, and '413
13 patents;
- 14 b. Awarding compensatory damages arising out of Defendant's infringement of the
15 '275,'707,'546, '811, '522, and '413 patents to Plaintiffs together with prejudgment
16 and post-judgment interest, in an amount according to proof;
- 17 c. Permanently enjoining Defendant and its respective officers, agents, employees, and
18 those acting in privity with them from the make, manufacture, use, sale, importation,
19 or offer for sale of products that infringe, including by contributory infringement or
20 induced infringement, the '275,'707,'546, '811, '522, and '413 patents;
- 21 d. Awarding attorney's fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by
22 law; and
- 23 e. Awarding such other costs and further relief as the Court may deem just and proper.
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1 Dated: July 3, 2015

KALPANA SRINIVASAN
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13 By: /s/ *Kalpana Srinivasan*

14 Kalpana Srinivasan
Attorneys for Plaintiffs AliphCom d/b/a
15 *Jawbone and BodyMedia, Inc.*

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CERTIFICATE OF SERVICE

I hereby certify that on July 3, 2015, I caused to be electronically filed the foregoing First Amended Complaint for Patent Infringement with the Clerk of the Court via CM/ECF. Notice of this filing will be sent by email to all parties by operation of the Court’s electronic filing systems.

Dated: July 3, 2015.

By: /s/ Kalpana Srinivasan