UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

PHILIPS NORTH AMERICA LLC,	)	
	)	
Plaintiff,	)	
	)	C.A. No. 1:19-cv-11586
v.	)	
	)	
FITBIT, INC.	)	
	)	
Defendant.	)	
	)	

[PROPOSED] PROTECTIVE ORDER

WHEREAS, documents and information may be sought, produced or exhibited by and among the parties to the above captioned proceeding, which materials relate to trade secrets or other confidential research, development or commercial information;

IT IS HEREBY ORDERED THAT:

1. Confidential business information is information which concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers, inventories, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or other organization, or other information of commercial value, the disclosure of which is likely to have the effect of either causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained.

2. Any information submitted, in discovery or in a pleading, motion, or response to a motion either voluntarily or pursuant to lawful discovery request, or a court order, which is asserted

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by a party to contain or constitute confidential business information shall be so designated by such party in writing, or orally at a deposition, conference or hearing. Documents shall be clearly and prominently marked on their face with the legend: "CONFIDENTIAL" or a comparable notice. Such information, whether submitted in writing or in oral testimony, shall be treated in accordance with the terms of this protective order.   No party shall redact confidential information in a document; rather, the disclosing party should simply label the document as Confidential, and if it becomes relevant, will inform the receiving party subsequently of any particular portion of the document deemed confidential.

3. In the absence of written permission from the disclosing party or an order by the Court, any confidential documents or business information submitted in accordance with the provisions of paragraph 2 above shall not be disclosed to any person other than: (i) outside counsel for parties to this action, including necessary secretarial and support personnel assisting such counsel; (ii) qualified persons taking testimony involving such documents or information and necessary stenographic and clerical personnel thereof; (iii) technical experts and their staff who are employed for the purposes of this litigation (unless they are otherwise employed by, consultants to, or otherwise affiliated with a non-governmental party, or are employees of any domestic or foreign manufacturer, wholesaler, retailer, or distributor of the products, devices or component parts that are the subject of this action); (iv) the Court and its staff.

4. Confidential business information submitted in accordance with the provisions of paragraph 2 above shall not be made available to any person designated in paragraph 3(iii) unless he or she shall have first read this order and shall have signed the undertaking at Attachment A. However, Attorneys who have filed an appearance in this matter need not sign the undertaking at

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Attachment A, but shall nevertheless be subject to, and bound by, the provisions of this Protective Order.

5. If the Court orders, or the disclosing party agrees, that access to, or dissemination of information submitted as confidential business information shall be made to persons not included in paragraph 3 above, such matter shall only be accessible to, or disseminated to, such persons based upon the conditions pertaining to, and obligations arising from this order, and such persons shall be considered subject to it, unless the Court finds that the information is not confidential business information as defined in paragraph 1 hereof.

6. ~~Any confidential business information submitted to the Court in connection with a motion or other proceeding shall be submitted under seal pursuant to the Local Rules.~~

7. The restrictions upon, and obligations accruing to, persons who become subject to this order shall not apply to any information submitted in accordance with paragraph 2 above to which the person asserting the confidential status thereof agrees in writing, or the Court rules, after an opportunity for hearing, was publicly known at the time it was supplied to the receiving party or has since become publicly known through no fault of the receiving party.

8. If a party who receives materials or information that has been designated as confidential and submitted in accordance with paragraph 2 disagrees with respect to such a designation, in full or in part, it shall notify the disclosing party in writing, and they will thereupon confer as to the status of the subject information proffered within the context of this order. If the receiving party and the disclosing party are unable to concur upon the status of the subject information submitted as confidential business information within ten days from the date of notification of such disagreement, the party challenging the confidentiality designation may file a motion with the

Court seeking to remove the confidentiality designation. If such motion is granted, the non-movant shall compensate the movant for the reasonable expenses and fees associated with the motion. In the event of a mixed result, the Court may fairly apportion fees and expenses. The Court may sua sponte question the designation of the confidential status of any information and, after opportunity for hearing, may remove the confidentiality designation.

9. No less than 10 days (or any other period of time designated by the Court) prior to the initial disclosure to a proposed expert of any confidential information submitted in accordance with paragraph 2, the party proposing to use such expert shall submit in writing the name of such proposed expert and his or her educational and detailed employment history to the opposing party. If the opposing party objects to the disclosure of such confidential business information to such proposed expert as inconsistent with the language or intent of this order or on other grounds, it shall notify the recipient in writing of its objection and the grounds therefore prior to the initial disclosure. If the dispute is not resolved on an informal basis within ten days of receipt of such notice of objections, the opposing party may file a motion with the Court seeking to block the proposed expert's access to the confidential information. During the pendency of the motion, the expert shall not have access to the disputed information. If the non-movant prevails on the motion, the moving party shall pay to the non-movant all reasonable fees and expenses associated with opposing the motion. In the event of a mixed result, the Court may fairly apportion fees and expenses.

10. If confidential business information submitted in accordance with paragraph 2 is disclosed to any person other than in the manner authorized by this protective order, the party responsible for the disclosure must immediately bring all pertinent facts relating to such disclosure

to the attention of the party that designated the information as confidential, and make every effort to prevent further disclosure by it or by the person who was the recipient of such information.

11. If any confidential business information which is supplied in accordance with paragraph 2 above is supplied by a nonparty to this case, such a nonparty shall be considered a "party" as that term is used in the context of this order. Each nonparty party shall be provided a copy of this order by the party seeking information from said party.

12. **Source Code**. A supplier may designate documents, information, or things that constitute or contain non-public Source Code of the supplier or of any non-party whose documents or information a supplier is permitted to produce in this case as "CONFIDENTIAL SOURCE CODE–ATTORNEYS' EYES ONLY INFORMATION."

A. "Source Code" shall mean source code, object code (i.e., computer instructions and data definitions expressed in a form suitable for input to an assembler, compiler, or other translator), microcode, register transfer language ("RTL"), firmware, and hardware description language ("HDL"), as well as any and all programmer notes, annotations, and other comments of any type related thereto and accompanying the code. For avoidance of doubt, this includes source files, make files, intermediate output files, executable files, header files, resource files, library files, module definition files, map files, object files, linker files, browse info files, and debug files.

B. Materials designated as CONFIDENTIAL SOURCE CODE– ATTORNEYS' EYES ONLY INFORMATION shall only be reviewable by SOURCE CODE QUALIFIED PERSONS and shall not be disclosed to anyone except SOURCE CODE QUALIFIED PERSONS. SOURCE CODE QUALIFIED PERSONS include the

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