MINDBODY, Inc.
Form DEFA14A
February 07, 2019

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14A

PROXY STATEMENT PURSUANT TO SECTION 14(a) OF THE

SECURITIES EXCHANGE ACT OF 1934

Filed by the Registrant

Filed by a party other than the Registrant

Check the appropriate box:

Preliminary Proxy Statement

Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material under §240.14a-12

MINDBODY, INC.

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

No fee required.

Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

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Fee paid previously with preliminary materials.

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(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

MINDBODY, Inc., a Delaware corporation (the Company or MINDBODY), filed its definitive proxy statement (the Proxy Statement) with the Securities and Exchange Commission (SEC) on January 23, 2019, relating to the Agreement and Plan of Merger, dated as of December 23, 2018 (the Merger Agreement), by and among the Company, Torreys Parent, LLC, a Delaware limited liability company (Parent), and Torreys Merger Sub, Inc., a Delaware corporation and wholly owned subsidiary of Parent (Merger Sub), pursuant to which Merger Sub will merge with and into the Company, with the Company surviving the merger and becoming a wholly owned subsidiary of Parent (the Merger). Capitalized terms used herein but not defined have the meanings set forth in the Proxy Statement.

Stockholder Litigation

As previously disclosed in the Company s Form 8-K and Schedule 14A filed on January 29, 2019, after the Proxy Statement was filed, the following putative class actions were commenced by purported stockholders of the Company:

(i) in the United States District Court of Delaware, captioned *Sabatini v. MINDBODY, Inc., et al.*, Case No. 1:19-cv-00138-UNA (the Sabatini Complaint);

(ii) in California Superior Court of San Luis Obispo County, captioned *Schmit v. MINDBODY, Inc., et al.*, Case No. 19CV-0043 (the Schmit Complaint), which was subsequently dismissed voluntarily without prejudice on February 1, 2019;

(iii) in the United States District Court of Central District of California, captioned *Tran v. MINDBODY, Inc., et al.*, Case No. 2:19-cv-00638 (the Tran Complaint); and

(iv) in the Court of Chancery of Delaware, captioned *Ryan v. MINDBODY, Inc., et al.*, Case No. 2019-0061 (the Ryan Complaint).

The Ryan Complaint alleges, among other things, that the irrevocable proxies granted by Richard Stollmeyer, the Company s Chief Executive Officer and Chairman of the Company Board, certain parties related to Richard Stollmeyer, and Institutional Venture Partners XIII, L.P. (the Signing Stockholders) caused a transfer of voting control of the Signing Stockholders Class B common stock, which in turn caused the Signing Stockholders shares of Class B common stock to be automatically converted into shares of Class A common stock entitled to one vote for each such share of Class A common stock, as opposed to ten votes for each share of Class B common stock. If, as alleged in the Ryan Complaint, the Class B common stock held by the Signing Stockholders were converted into shares of Class A common stock, then, as of the Record Date: (i) there would have been 47,763,583 shares of Class A common stock and 252,950 shares of Class B common stock outstanding and entitled to vote at the Special Meeting, (ii) 25,146,542 votes would constitute a majority of the voting power of the outstanding shares of MINDBODY common stock required to adopt the Merger Agreement and the holders of such majority of the voting power would constitute a quorum at the Special Meeting, (iii) the Signing Stockholders would have held, in the aggregate, approximately 6.33% of the voting power of the outstanding shares of MINDBODY s common stock (and approximately 8.43% when taking into account MINDBODY options and RSUs held, in the aggregate, by the Signing Stockholders), and (iv) our directors and executive officers would have held, in the aggregate, approximately 1.33% of the voting power of the outstanding shares of MINDBODY s common stock (and approximately 9.33% when taking into account MINDBODY options and RSUs held, in the aggregate, by our directors and executive officers). The Company vigorously disputes the allegations in the Ryan Complaint and the claim that the Signing Stockholders shares of Class B common stock were converted into Class A common stock, and believes that the numbers and percentages as of the Record Date are as set forth in the Proxy Statement. However, even if the Class B common stock were converted into Class A common stock as alleged in the Ryan Complaint, the Board of Directors nonetheless encourages stockholders to vote FOR the adoption of the Merger Agreement and the other proposals set forth in the Proxy Statement.

As previously disclosed in the Company s Schedule 14A, also filed on January 29, 2019, counsel for Luxor Capital Partners, LP, Luxor Wavefront, LP, Lugard Road Capital Master Fund, LP, Luxor Capital Partners Offshore Master Fund, LP, Luxor Capital Partners Offshore, Ltd., Luxor Capital Group, LP, LCG Holdings, LLC, Lugard Road Capital GP, LLC and Luxor Management, LLC (together, Luxor) sent a demand letter (the Luxor Demand Letter) to MINDBODY pursuant to Section 220(b) of the Delaware General Corporation Law (DGCL).

After the Company s January 29 filings, on January 30, 2019, Luxor filed a complaint in the Court of Chancery of Delaware, captioned *Luxor Capital Partners, LP, et. al. v. MINDBODY, Inc.*, Case No. 2019-0070 (the Luxor Complaint), included below, on January 31, 2019, Hyan Tang, a purported stockholder of the Company, filed a putative class action suit in the United States District Court of Delaware, captioned *Tang v. MINDBODY, Inc., et al.*, Case No. 1:19-cv-00210-UNA (the Tang Complaint), included below; and on February 4, 2019, Sunil Kumar, a purported stockholder of the Company, filed a putative class action suit in the United States District Court of the Central District of California, captioned *Kumar v. MINDBODY, Inc. et al.*, Case No. (the Kumar Complaint, included below, and together with the Sabatini Complaint, the Schmit Complaint, the Tran Complaint, the Ryan Complaint, the Luxor Complaint and the Tang Complaint, the Complaints).

The following documents in connection with the Luxor Complaint are also included below: Luxor s Motion to Expedite, filed in the Court of Chancery of Delaware on January 30, 2019, Luxor s Statement of Good Cause, filed in the Court of Chancery of Delaware on January 30, 2019, MINDBODY s Opposition to Luxor s Motion to Expedite, filed in the Court of Chancery of Delaware on February 1, 2019, Luxor s Reply to MINDBODY s Opposition, filed in the Court of Chancery of Delaware on February 4, 2019, and the Order of the Court of Chancery of Delaware, granted on February 4, 2019.

The Company believes the Complaints are without merit, and the Company has vigorously defended and continues to vigorously defend against the Complaints.

While the Company believes that the disclosures set forth in the Proxy Statement comply fully with applicable law, in order to moot plaintiffs disclosure claims in the Complaints, avoid nuisance and possible expense, and provide additional information to the Company s stockholders, the Company has determined to voluntarily supplement the Proxy Statement with the supplemental disclosures set forth below (the Supplemental Disclosures). Nothing in the Supplemental Disclosures shall be deemed an admission of the legal necessity or materiality under applicable laws of any of the disclosures set forth herein. To the contrary, the Company specifically denies all allegations in the Complaints that any additional disclosure was or is required.

Supplemental Disclosures to Proxy Statement

The following supplemental information should be read in conjunction with the Proxy Statement, which should be read in its entirety. All page references are to pages in the Proxy Statement, and terms used below, unless otherwise defined, have the meanings set forth in the Proxy Statement. Underlined text shows text being added to a referenced disclosure in the Proxy Statement and a line through text shows text being deleted from a referenced disclosure in the Proxy Statement.

The disclosure under the heading The Merger Background of the Merger is hereby supplemented by adding the underlined disclosure after the first paragraph under that heading on page 26 of the Proxy Statement:

In the first half of August 2018, as part of Qatalyst Partners customary coverage of software companies, a representative of Qatalyst Partners had a meeting with Mr. Stollmeyer. Following this meeting, Qatalyst Partners reached out to Vista, Party A, and Party B as typical outreach to connect strategic companies, including MINDBODY, to such parties.

Separately, on August 7, 2018, a representative of Vista emailed Mr. Stollmeyer, offering to meet for lunch, which took place on September 4, 2018, and at which Mr. Stollmeyer provided the representative of Vista with a general overview of MINDBODY and its approach to the fitness, beauty and wellness services industries as was typical for Mr. Stollmeyer to present to potential investors.

On September 19, 2018, Mr. Stollmeyer received an invitation from the representative of Vista to attend an annual meet and greet conference hosted by Vista bringing together hundreds of executives in the technology sector, including from Vista s portfolio companies.

The disclosure under the heading The Merger Background of the Merger is hereby supplemented by adding the underlined disclosure in the second paragraph under that heading on page 26 of the Proxy Statement:

In October 2018, at that meet and greet annual conference hosted by Vista, at which Mr. Stollmeyer was present as an attendee on October 8th and 9th, representatives of Vista and Mr. Stollmeyer discussed Vista s investment strategy and the firm s interest in learning more about MINDBODY s approach to the fitness, beauty and wellness services industries. On October 16, 2018, Vista indicated to Mr. Stollmeyer that it was interested in pursuing strategic

transaction discussions with MINDBODY. During this time period, Mr. Stollmeyer also had meetings with representatives of two other financial sponsors, Party A and Party B, which meetings (the latter occurring on October 15, 2018 and the former on November 1, 2018) were facilitated by Qatalyst Partners after the early August 2018 introductions described above as customary outreach to re-connect strategic companies like MINDBODY to such parties.

The disclosure under the heading The Merger Background of the Merger is hereby supplemented by adding the underlined disclosure in the second to last paragraph on page 26 of the Proxy Statement:

On October 30, 2018, the Board of Directors established the Transaction Committee and delegated authority to the Transaction Committee for the limited purpose of reviewing the potential engagement of a financial advisor to assist MINDBODY with evaluating potential strategic alternatives and evaluating candidates for this role, including financial advisors that had previously advised MINDBODY, as well as other financial advisors, such as Qatalyst Partners, in each case based on such financial advisors experience and reputation in the market for the type of strategic technology transaction MINDBODY s Board of Directors intended to consider.

The disclosure under the heading The Merger Background of the Merger is hereby supplemented by adding the underlined disclosure in the last paragraph on page 27 of the Proxy Statement:

From November 19, 2018 through December 2018, representatives of Qatalyst Partners contacted 15 parties (comprised of seven financial sponsors and eight strategic companies) to gauge interest in a potential strategic transaction with MINDBODY and provided a form confidentiality agreement to those parties that indicated such interest, including Vista, Party A (a potential financial sponsor participant), Party B (a potential financial sponsor participant), and Party C (a potential strategic company participant). The Board of Directors selected the 15 parties as the parties who were believed most likely to have interest in a strategic transaction with MINDBODY, and, as is a common strategy in transaction processes, outreach in the initial stage of the transaction was limited to those most-likely parties.

The disclosure under the heading The Merger Background of the Merger is hereby supplemented by adding the underlined disclosure in the third paragraph on page 28 of the Proxy Statement:

From November 27, 2018 through December 18, 2018, MINDBODY entered into confidentiality agreements with, and conducted management presentations for, 10 of the 15 parties contacted in the transaction process by representatives of Qatalyst Partners, including Vista (on December 5, 2018), Party A, Party B, and Party C. Each of the confidentiality agreements was based on a form used commonly in a strategic transaction process, and included a standstill (including a don t ask to waive provision), with a standard fall-away provision and/or permission for the counterparty to privately and confidentially approach MINDBODY senior management, the Board of Directors or Qatalyst Partners during the standstill period. As a result of these provisions, notwithstanding a standstill provision, none of such confidentiality agreements prevented a counterparty from submitting a bid privately and confidentially to MINDBODY at any time, including if MINDBODY signed a definitive agreement to be acquired by a different third party.

The disclosure under the heading The Merger Background of the Merger is hereby supplemented by adding the underlined disclosure in the penultimate sentence of the third full paragraph on page 29 of the Proxy Statement:

The non-binding indication of interest specified that any potential transaction between Vista and MINDBODY was not contingent on any individual at MINDBODY signing an employment agreement prior to Closing (and no discussions concerning any such potential employment agreements or arrangements occurred prior to signing) and emphasized that Vista s confirmatory due diligence could be completed in 48 hours with the full cooperation of MINDBODY management.

The disclosure under the heading The Merger Background of the Merger is hereby revised by deleting the language that is struck through below and adding the underlined disclosure in the first full paragraph on page 32 of the Proxy Statement:

Later that evening, MINDBODY and Vista executed the Merger Agreement and related agreements in connection with the transactions contemplated by the Merger Agreement. At the time of the signing of the Merger Agreement, Vista and MINDBODY had not ~~engaged in any employment or retention-related discussions with regard to MINDBODY management~~ discussed the terms of post-closing employment or equity participation for MINDBODY management. Prior to (but after the signing of the Merger Agreement) and following the closing of the Merger, however, certain of our executive officers may already have had, or may have discussions, and following the closing of the Merger, may enter into agreements with, Parent or Merger Sub, their subsidiaries or their respective affiliates regarding employment with, or the right to purchase or participate in the equity of, the Surviving Corporation or one or more of its affiliates.

The disclosure under the heading The Merger Background of the Merger is hereby supplemented by adding the underlined disclosure in the last paragraph on page 32 of the Proxy Statement:

Since execution of the Merger Agreement, in connection with the Go Shop Period provided for in the Merger Agreement, which expired at 12:00 p.m., Pacific time on January 22, 2019, at the direction of the Board of Directors, representatives from Qatalyst Partners contacted 52 parties (including, of the initial 15 parties contacted prior to signing the Merger Agreement, all 14 parties other than Vista), comprised of 23 strategic parties and 29 financial sponsors to gauge interest in such parties providing an Alternative Proposal. Of those parties, MINDBODY executed confidentiality agreements, with nine parties (two strategic parties and seven financial sponsors), each of which was based on a form used commonly in a strategic transaction process, and six of which confidentiality agreements included a standstill with a don t ask to waive provision, and with a standard fall-away provision and/or permission for the counterparty to privately and confidentially approach MINDBODY senior management, the Board of Directors or Qatalyst Partners during the standstill period. As a result of these provisions, notwithstanding a standstill provision, none of such

confidentiality agreements prevented a counterparty from submitting a bid privately and confidentially to MINDBODY at any time, during the Go Shop Period or after the expiration of the Go Shop Period, and regardless of whether MINDBODY executed an agreement to be acquired by a different third party. Each party that executed a confidentiality agreement with MINDBODY during the Go Shop Period that requested access was granted access to the same electronic data room populated by MINDBODY with the same documents to which Vista was provided access. Party A, Party B, and Party C declined to continue discussions with the Company during the Go Shop Period. To date, the Company has not received an alternative Acquisition Proposal.

The disclosure under the heading The Merger Opinion of Qatalyst Partners LP Discounted Cash Flow Analysis is hereby revised by adding the language underlined below to paragraph (d) on page 38 of the Proxy Statement:

(d) MINDBODY s cash net of the face value of outstanding convertible debt and financing obligations, as of December 31, 2018, as provided by MINDBODY management (see page 43 of the section of this proxy statement captioned The Merger Management Projections); and

The disclosure under the heading The Merger Opinion of Qatalyst Partners LP Selected Companies Analysis is hereby revised by adding the language underlined below to the second paragraph under that heading on page 39 of the Proxy Statement:

Based upon the Analyst Projections as of December 21, 2018 for calendar year 2019 (see the table on page 43 of the section of this proxy statement captioned The Merger Management Projections), and using the closing prices as of December 21, 2018 for shares of the selected companies, Qatalyst Partners calculated, among other things, the implied fully-diluted enterprise value divided by the estimated consensus revenue for calendar year 2019 (the CY2019E Revenue Multiples) for each of the selected companies.

The disclosure under the heading The Merger Opinion of Qatalyst Partners LP Selected Transactions Analysis is hereby revised by adding the language underlined below to the first paragraph on page 41 of the Proxy Statement:

Based on an analysis of the NTM Revenue Multiple for each of the selected transactions, and the application of its professional judgment, Qatalyst Partners selected a representative range of 5.0x to 8.5x and applied that range to MINDBODY s estimated revenue for the next twelve-month period ending on September 30, 2019 reflected in the Analyst Projections as of December 21, 2018 (see the table on page 43 of the section of this proxy statement captioned The Merger Management Projections). This analysis implied a range of per share values for MINDBODY common stock of approximately $27.46 to $45.70.

The disclosure under the heading The Merger Management Projections is hereby supplemented by adding footnote (4) next to the reference to footnote (2) on the line referencing Adjusted EBITDA in the table on page 42 of the Proxy Statement, and by adding the disclosure underlined below underneath the text of footnote (3) on page 43 of the Proxy Statement:

(4) The numbers listed in the line item for Adjusted EBITDA were calculated by adding the numbers listed in the line item for Non-GAAP Operating Income plus the numbers listed in the line item for Depreciation.

The disclosure under the heading The Merger Management Projections is hereby supplemented by adding the following language underlined below to the first paragraph on page 43 of the Proxy Statement:

MINDBODY also projected federal net operating losses and tax credits of $413 million as of December 31, 2022, including $264 million of net operating losses generated prior to December 31, 2018. MINDBODY also projected cash net of the face value of MINDBODY s outstanding convertible debt and financing obligations of negative $13 million as of December 31, 2018.

The disclosure under the heading The Merger Management Projections is hereby supplemented by adding the following language and table underneath the first paragraph on page 43 of the Proxy Statement:

The following table presents analyst projections for MINDBODY based on Capital IQ mean consensus estimates as of December 21, 2018, the last full trading day prior to announcement of the Merger Agreement:

	($MM)		
	NTM		
	Ending Sept. 30, 2019	**CY 2019E**	**CY 2020E**
Revenue	$ 283	$ 297	$ 357
Non-GAAP Gross Profit		$ 211	$ 255
Adjusted EBITDA		$ 12	$ 28
Non-GAAP Operating Income		$ (1)	$ 14

The disclosure under the heading The Merger Management Projections is hereby supplemented by adding the following language underlined below to the last paragraph on page 43 of the Proxy Statement:

The Management Projections were not prepared with a view toward public disclosure or with a view toward complying with the published guidelines of the SEC regarding projections or accounting principles generally accepted in the United States (GAAP), or the guidelines established by the American Institute of Certified Public Accountants with respect to prospective financial information. The non-GAAP financial measures used in the financial forecasts were relied upon by Qatalyst Partners for purposes of its opinion and by our Board of Directors in connection with its consideration of the Merger. The SEC rules which would otherwise require a reconciliation of a non-GAAP financial measure to a GAAP financial measure do not apply to non-GAAP financial measures included in disclosures relating to a proposed business combination like the Merger if the disclosure is included in a document like this proxy statement. In addition, reconciliations of non-GAAP financial measures were not relied upon by Qatalyst Partners for purposes of its opinion or by our Board of Directors in connection with its consideration of the Merger. Accordingly, MINDBODY has not provided a reconciliation of the financial measures included in the financial forecasts to the relevant GAAP financial measures. Non-GAAP financial measures should not be considered in isolation from, or as a substitute for, financial information presented in compliance with GAAP, and non-GAAP financial measures as used by MINDBODY may not be comparable to similarly titled amounts used by other companies. Neither MINDBODY s independent auditor nor any other independent accountant has compiled, examined or performed any procedures with respect to the Management Projections, nor have they expressed any opinion or any other form of assurance on such information or its achievability.

Other Additional Disclosures to Proxy Statement

In addition to the Supplemental Disclosures, the following additional disclosures should be read in conjunction with the Proxy Statement, which should be read in its entirety. All page references are to pages in the Proxy Statement, and terms used below, unless otherwise defined, have the meanings set forth in the Proxy Statement. Underlined text shows text being added to a referenced disclosure in the Proxy Statement.

The disclosure under the heading Summary Regulatory Approvals Required for the Merger is hereby supplemented by adding the disclosure underlined below to the second paragraph under that heading on page 4 of the Proxy Statement:

On January 3, 2019, MINDBODY and Vista Fund VI made the filings required to be made under the HSR Act. The applicable waiting period under the HSR Act was terminated early on January 31, 2019.

The disclosure under the heading The Merger Regulatory Approvals Required for the Merger is hereby supplemented by adding the disclosure underlined below to the first paragraph under the subheading HSR Act and U.S. Antitrust Matters on page 64 of the Proxy Statement:

The Merger is subject to the provisions of the HSR Act and therefore cannot be completed until MINDBODY and Vista Funds file a notification and report form with the FTC and the DOJ under the HSR Act and the applicable waiting period has expired or been terminated. MINDBODY and Vista Funds made the necessary filings with the FTC and the Antitrust Division of the DOJ on January 3, 2019. The applicable waiting period under the HSR Act was terminated early on January 31, 2019.

Additional Information and Where to Find It

In connection with the proposed Merger, MINDBODY has filed with the Securities and Exchange Commission (the SEC) and furnished to its stockholders a definitive proxy statement on Schedule 14A, as well as other relevant documents concerning the proposed transaction. Promptly after filing its definitive proxy statement with the SEC,

MINDBODY mailed the definitive proxy statement and a proxy card to each stockholder of MINDBODY entitled to vote at the special meeting relating to the proposed transaction. The proxy statement contains important information about the proposed Merger and related matters. STOCKHOLDERS AND SECURITY HOLDERS OF MINDBODY ARE URGED TO READ THESE MATERIALS (INCLUDING ANY AMENDMENTS OR SUPPLEMENTS THERETO) AND ANY OTHER RELEVANT DOCUMENTS IN CONNECTION WITH THE MERGER THAT MINDBODY WILL FILE WITH THE SEC WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT MINDBODY AND THE TRANSACTION. This communication is not a substitute for the proxy statement or for any other document that MINDBODY may file with the SEC and send to its stockholders in connection with the proposed Merger. The proposed Merger will be submitted to MINDBODY s stockholders for their consideration. Before making any voting decision, stockholders of MINDBODY are urged to read the proxy statement regarding the Merger and any other relevant documents filed with the SEC, as well as any amendments or supplements to those documents, because they will contain important information about the proposed Merger.

Stockholders of MINDBODY are able to obtain a free copy of the proxy statement, as well as other filings containing information about MINDBODY and the proposed transaction, without charge, at the SEC s website (http://www.sec.gov). Copies of the proxy statement, and the filings with the SEC that will be incorporated by reference therein can also be obtained, without charge, by contacting MINDBODY s Investor Relations at (888) 782-7155, by email at IR@mindbodyonline.com, or by going to MINDBODY s Investor Relations page on its website at investors.mindbodyonline.com and clicking on the link titled Financials & Filings to access MINDBODY s SEC Filings.

Participants in the Solicitation

MINDBODY and certain of its directors, executive officers and employees may be deemed to be participants in the solicitation of proxies in respect of the proposed Merger. Information regarding the interests of MINDBODY s directors and executive officers and their ownership of Company Common Stock is set forth in MINDBODY s definitive proxy statement on Schedule 14A filed with the SEC on January 23, 2019, in connection with the proposed Merger, MINDBODY s proxy statement on Schedule 14A filed with the SEC on April 5, 2018, and certain of its Current Reports on Form 8-K. Other information regarding the participants in the proxy solicitation and a description of their direct and indirect interests in the proposed Merger, by security holdings or otherwise, are contained in the proxy statement and may be contained in other relevant materials to be filed with the SEC in connection with the proposed Merger. Free copies of this document may be obtained as described in the preceding paragraph.

Notice Regarding Forward-Looking Statements

This communication, and any documents to which MINDBODY refers you in this communication, contains not only historical information, but also forward-looking statements made pursuant to the safe-harbor provisions of the Private Securities Litigation Reform Act of 1995. These forward-looking statements represent MINDBODY s current expectations or beliefs concerning future events, including but not limited to the expected completion and timing of the proposed transaction, expected benefits and costs of the proposed transaction, management plans and other information relating to the proposed transaction, strategies and objectives of MINDBODY for future operations and other information relating to the proposed transaction. Without limiting the foregoing, the words believes, anticipates, plans, expects, intends, forecasts, should, estimates, contemplate, future, goal, potential, predict target, seek, may, will, could, should, would, assuming, and similar expressions are intended to identify forward-looking statements. You should read any such forward-looking statements carefully, as they involve a number of risks, uncertainties and assumptions that may cause actual results to differ significantly from those projected or contemplated in any such forward-looking statement. Those risks, uncertainties and assumptions include (i) the risk that the proposed transaction may not be completed in a timely manner or at all, which may adversely affect MINDBODY s business and the price of the common stock of MINDBODY, (ii) the failure to satisfy any of the conditions to the consummation of the proposed transaction, including the adoption of the merger agreement by the stockholders of MINDBODY and the receipt of certain regulatory approvals, (iii) the occurrence of any event, change or other circumstance or condition that could give rise to the termination of the merger agreement, (iv) the effect of the announcement or pendency of the proposed transaction on MINDBODY s business relationships, operating results and business generally, (v) risks that the proposed transaction disrupts current plans and operations and the potential difficulties in employee retention as a result of the proposed transaction, (vi) risks related to diverting management s attention from MINDBODY s ongoing business operations, (vii) the outcome of any legal proceedings that may be instituted against MINDBODY related to the merger agreement or the proposed transaction, (viii) unexpected costs, charges or expenses resulting from the proposed transaction, and (ix) other risks described in MINDBODY s filings with the SEC, such as its Quarterly Reports on Form 10-Q and Annual Reports on Form 10-K. Forward-looking statements speak only as of the date of this communication or the date of any document incorporated by reference in this document. Except as required by applicable law or regulation, MINDBODY does not assume any obligation to update any such forward-looking statements whether as the result of new developments or otherwise.

EFiled: Jan 30 2019 11:48AM EST

Transaction ID 62910673

Case No. 2019-0070-
IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

LUXOR CAPITAL PARTNERS, LP, LUXOR WAVEFRONT, LP, LUGARD ROAD CAPITAL MASTER FUND, LP, and LUXOR CAPITAL PARTNERS OFFSHORE MASTER FUND, LP,	)	
Plaintiffs,	)	
v.	)	C.A. No. _____
MINDBODY, INC.,	)	
Defendant.	)	

PLAINTIFF S MOTION TO EXPEDITE PURSUANT TO 8 *DEL. C.* § 220

Plaintiffs Luxor Capital Partners, LP, Luxor Wavefront, LP, Lugard Road Capital Master Fund, LP, and Luxor Capital Partners Offshore Master Fund, LP (collectively Luxor or Plaintiffs), by and through their undersigned counsel, hereby move for the entry of an order expediting proceedings in this action. The grounds for this motion are as follows:

BACKGROUND

1. Plaintiffs are the beneficial owners of 13.8% of Mindbody s common stock, worth approximately $136,748,815.92 as of market close on December 21, 2018.

2. On December 24, 2018, Mindbody announced that Mindbody, Torreys Parent LLC (Parent), and Torreys Merger Sub, Inc. (Merger Sub) had entered into an Agreement and Plan of Merger (the Merger Agreement) pursuant to which Mindbody would merge into Merger Sub, with Mindbody continuing as the surviving corporation and as a wholly owned direct subsidiary of Parent (the Merger). Parent and Merger Sub are affiliates of Vista Equity Partners Management LLC (Vista). The Company s stockholders will vote on the Merger on February 14, 2019.

3. If the Merger closes, each share of Mindbody common stock will be cancelled and converted into the right to receive $36.50 in cash, without interest and less any applicable withholding taxes (the Merger Consideration).

4. The Merger is the result of an expedited sale process triggered by the Company s Chief Executive Officer and Chairman, Richard Stollmeyer s, seemingly unauthorized efforts to shop the Company. Given the hasty sale process, it is no wonder that the Merger Consideration significantly undervalues the Company.

5. When Luxor tried to schedule a meeting with the Company and Vista to discuss its concerns about the sale process and the adequacy of the Merger Consideration, Mr. Stollmeyer gave Luxor the run-around and refused to facilitate such a meeting.

6. Left with no other option, on January 18, 2019, Luxor served Mindbody with a sworn demand for books and records (the Demand) pursuant to 8 *Del. C.* § 220.

7. The purposes of the Demand are to investigate: (i) whether the members of the Mindbody Board of Directors (the Board) breached their fiduciary duties in connection with the Merger; (ii) whether the members of the Board were independent with respect to the Merger and any related matters; (iii) the value of Luxor s shares and the fairness of the Merger; (iv) whether to communicate with Mindbody stockholders in advance of the vote on the Merger; (v) the completeness and accuracy of the Company s disclosures regarding the Merger; and (vi) whether to pursue a pre-closing injunction, appraisal, corrective measures, or a post-closing money damages claim in relation to the Merger.

8. The Company waited five business days and then responded to the Demand with a host of objections (the Response). Without conceding anything, it has produced its stockholder list (but not its NOBO list or attendant data), and it has offered to provide access to certain information that it has reasonably available.

9. On January 29, counsel for the Company and Luxor met and conferred to discuss the scope and timing of the Company s production in response to the Demand. Company counsel confirmed that the Company was only willing to produce certain limited stocklist materials its list of stockholders of record (produced with the Response) and its NOBO list and attendant data but none of the substantive materials requested in Section B of the Demand.

10. Given the impending stockholder vote scheduled for February 14, 2019, Luxor cannot afford to wait any longer. It seeks an order expediting these proceedings so it will have sufficient time to review the requested books and records prior to the February 14, 2019 stockholder meeting. In the alternative, Luxor seeks a schedule that will provide it sufficient time to review the books and records prior to the deadline for withdrawal of appraisal demands.

ARGUMENT

11. The Court of Chancery Rules grant this Court broad power to order expedited proceedings. *See* Ct. Ch. R. 12, 30, 34, 57 and 173. The burden on a plaintiff in seeking an expedited proceeding is not high. *Renco Grp., Inc. v. MacAndrews AMG Holdings LLC,* 2013 WL 209124, at *1 (Del. Ch. Jan. 18, 2013) (citing *In re Ness Techs., Inc.*, 2011 WL 3444573, at *2 (Del. Ch. Aug. 3, 2011)).

12. The Court has traditionally acted with a certain solicitude for parties seeking expedited proceedings and has followed the practice of erring on the side of more hearings rather than fewer. *Id.* n.10 (quoting *Giammargo v. Snapple Beverage Corp.*, 1994 WL 672698, at *2 (Del. Ch. Nov. 15, 1994)). The Delaware Supreme Court has observed that Delaware Courts are always receptive to expediting any type of litigation in the interests of affording justice to the parties. *Box v. Box,* 697 A.2d 395, 399 (Del. 1997).

13. Section 220 authorizes this Court to summarily order the corporation to permit the stockholder to inspect the corporation s stock ledger, an existing list of stockholders, and its other books and records, and to make copies or extracts therefrom. 8 *Del. C.* § 220(c). Courts have construed § 220 as mandating an expedited and, sometimes, summary adjudication to preserve the orderly and proper governance of the corporation. *Gotham Partners, L.P. v. Hallwood Realty Partners, L.P.*, 714 A.2d 96, 103 (Del. Ch. 1998); *see also Brehm v. Eisner,* 746 A.2d 244, 267 (Del. 2000) (stating that an action under § 220 is a summary one that should be managed expeditiously).

14. Accordingly, it is well-settled that Section 220 proceedings are summary in nature, involving expedited discovery and hearing. *Coit v. Am. Century Corp.*, 1987 WL 8458, at *1 (Del. Ch. Mar. 20, 1987); *accord, e.g.*, *Rainbow Navigation, Inc. v. Pan Ocean Navigation, Inc.*, 535 A.2d 1357, 1360 (Del. 1987) (acknowledging [t]he normally expedited nature of the litigation following a demand for inspection).

15. As a summary proceeding, Section 220 proceedings will be scheduled for an expedited trial without the usual showings required to obtain expedition in other matters. Donald J. Wolfe, Jr. & Michael A. Pittenger, CORPORATE AND COMMERCIAL PRACTICE IN THE DELAWARE COURT OF CHANCERY, § 4.10[a] (2017). But even if the usual showings are required, Plaintiff easily satisfies the standard for obtaining expedited proceedings. *See Sinchareonkul v. Fahnemann,* 2015 WL 292314, at *4 (Del. Ch. Jan. 22, 2015) (expedited proceedings are granted when a plaintiff has articulated a sufficiently colorable claim and shown a sufficient possibility of a threatened irreparable injury .) (quotation marks omitted).

A. Plaintiffs Have Articulated A Colorable Claim

16. In assessing whether a claim is colorable, the Court ha[s] no real choice other than to accept the complaint s assertions at face value and need not determine the merits of the case or even the legal sufficiency of the pleadings at this stage . . . . *TCW Tech. Ltd. P ship v. Intermedia Commc ns, Inc.*, 2000 WL 1478537, at *2 (Del. Ch. Oct. 2, 2000); *Morton v. Am. Mktg. Indus. Holdings, Inc.*, 1995 WL 1791090, at *2 (Del. Ch. Oct. 5, 1995) (citing *Giammargo)*.

17. The Complaint easily satisfies the very low standard for demonstrating a colorable claim. *Vansant v. Ocean Dunes Condo. Council Inc.*, 2014 WL 718058, at *1 (Del. Ch. Feb. 26, 2014). The Complaint alleges that (i) Plaintiffs are stockholders, (ii) Plaintiffs complied with the statutory requirements specifying the form and manner for making a demand under Section 220, (iii) Plaintiffs possess a proper purpose for conducting the inspection, and (iv) each category of books and records is essential to Plaintiffs purpose. *See Cent. Laborers Pension Fund v. News Corp.*, 45 A.3d 139, 144 (Del. 2012); *Sec. First Corp. v. U.S. Die Casting & Dev. Co.,* 687 A.2d 563, 565 (Del. 1997).

18. With respect to the proper purpose requirement, a stockholder is not required to prove by a preponderance of the evidence that waste and [mis]management are actually occurring. *Seinfeld v. Verizon Commc ns, Inc.*, 909 A.2d 117, 123 (Del. 2006). A stockholder need only show, by a preponderance of the evidence, a credible basis from which the Court of Chancery can infer there is possible mismanagement that would warrant further investigation. *Id.* A showing that is sufficient to conduct an inspection may ultimately fall well short of demonstrating that anything wrong occurred. *Id.* [T]he credible basis standard sets the lowest possible burden of proof. *Id.*

19. Here, the Complaint alleges a more than colorable claim that there is a credible basis to suspect wrongdoing in connection with the Merger. The Complaint alleges that, shortly following an Analyst Day at which the Company conveyed enormous optimism about the Company and its prospects, in October 2018, the Company s Chief Executive Officer and Chairman began shopping the Company, seemingly without Board authorization. Compl. ¶¶ 21-23. Thereafter, the Board (i) adjusted its guidance downward, triggering a 20% decrease in its stock price, reflecting a dramatic change in tone from the optimistic statements made just two months earlier at the Company s Analyst Day, (Compl. ¶¶ 29-30); (ii) engaged an apparently conflicted financial advisor (Compl. ¶ 32); (iii) conducted what appears to have been an unnecessarily expedited sale process that did not allow serious bidders to conduct thorough due diligence on the Company (Compl. ¶¶ 34-44), and (iv) approved a deal that significantly undervalues the Company with Vista, who had been in discussions with the Company about a potential transaction for at least one month longer than any other potential acquirer (Compl. ¶¶ 37, 53-61).

B. Plaintiffs Have Demonstrated A Sufficient Possibility Of Irreparable Injury

20. In addition, Plaintiffs claims involve an imminent risk of irreparable harm. *ZRII, LLC v. Wellness Acquisition Grp., Inc.*, 2009 WL 2998169, at *13 (Del. Ch. Sept. 21, 2009) (irreparable harm exists where injury cannot be adequately compensated by money damages).

21. Any delay in these Section 220 proceedings would limit Luxor s ability to consider the books and records subject to production and consider whether to seek timely relief from this Court prior to consummation of the Merger. The Company has scheduled the stockholder vote on the Merger for February 14, 2019. Without an expedited Section 220 proceeding, Plaintiff may be unable to receive and review books and records in time to vindicate its rights regarding the Merger.

22. This delay is itself irreparable harm because it may limit or foreclose Luxor s ability to inform fellow stockholders of material information which may influence their vote on the Merger or to seek timely redress of any breach of fiduciary duties. *See FrontFour Capital Grp. LLC, et al. v. Medley Capital Corp.*, C.A. No. 2019-0021-KSJM, at *28 (Del. Ch. Jan. 16, 2019) (Transcript) (scheduling

expedited books and records trial prior to stockholder vote and within two weeks of the filing of the complaint); *High River Ltd. P ship et al., v. Dell Techs. Inc.*, C.A. No. 2018-0790-AGB at 39-40 (Del. Ch. Nov. 5, 2018) (TRANSCRIPT) (scheduling expedited trial in order to facilitate potential use of information in proxy contest); *Blackrock Corp. High Yield Fund, Inc., et al. v. Rachesky, et al.*, C.A. No. 2808-VCS at 42-44 (Del. Ch. Mar. 22, 2007) (TRANSCRIPT) (scheduling expedited trial in proceedings seeking rescission of dilutive financing orchestrated by controlling stockholder). In contrast, there is no prejudice to the Company in moving forward expeditiously.

23. Plaintiffs respectfully request that the Company be required to answer the Complaint within three business days, that discovery be expedited, and that a trial be held as soon as possible in February 2019, but no later than February 8, so that the information requested in the Demand can be promptly made available to and reviewed by Plaintiffs in advance of the stockholder vote. In the alternative, Plaintiff requests a trial in February or March 2019, so that the information requested in the Demand can be reviewed by Plaintiffs in advance of the deadline to withdraw any appraisal demands, which deadline is likely to be in mid-April.[1] *See FrontFour,*

[1] Without access to the Company s books and records prior to the deadline to withdraw any appraisal demands, Luxor would be forced to make a potentially irrevocable decision to seek appraisal and forego its right to the Merger Consideration on the basis of only the incomplete and inaccurate information in the Proxy.

C.A. No. 2019-0021-KSJM, at 28 (scheduling expedited books and records trial prior to stockholder vote and within two weeks of the filing of the complaint); *High River Limited Partnership et al., v. Dell Techs. Inc.*, C.A. No. 2018-0790-AGB at 39-40 (Del. Ch. Nov. 5, 2017) (TRANSCRIPT) (scheduling expedited trial within two weeks from hearing on motion to expedite in books and records proceeding); *Soleno Inc. v. Magic Sliders, Inc.*, 1999 WL 669369 (Del. Ch. Aug. 18, 1999) (granting motion to expedite books and records proceeding and providing trial dates less than thirty days).

WHEREFORE, Plaintiff respectfully requests that the Court grant this Motion to Expedite and order summary, expedited proceedings culminating in a trial to be held as soon as possible.

OF COUNSEL:

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Dated: January 30, 2019

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Words: 2122

SUPPLEMENTAL INFORMATION PURSUANT TO RULE 3(A)

OF THE RULES OF THE COURT OF CHANCERY

EFiled: Jan 30 2019 11:48AM EST

Transaction ID 62910673

Case No. 2019-0070-

The information contained herein is for the use by the Court for statistical and administrative purposes only. Nothing stated herein shall be deemed an admission by or binding upon any party.

1. Caption of Case:

Luxor Capital Partners, LP, Luxor Wavefront, LP, Lugard Road Capital Master Fund, LP, and Luxor Capital Partners Offshore Master Fund, LP v. Mindbody, Inc.

2. Date Filed: **January 30, 2019**

3. Name and address of counsel for plaintiff(s):

A. Thompson Bayliss (#4379)

April M. Kirby (#6152)

Abrams & Bayliss LLP

20 Montchanin Road, Suite 200

Wilmington, DE 19807

4. Short statement and nature of claim asserted:

Complaint seeking judgment and the production of books and records

5. Substantive field of law involved (check one):

____ Administrative law	____ Labor law	____ Trusts, Wills and Estates
____ Commercial law	____ Real Property	____ Consent trust petitions
____ Constitutional law	____ 348 Deed Restriction	____ Partition
_X_ Corporation law	____ Zoning	____ Rapid Arbitration (Rules 96,97)
____ Trade secrets/trade mark/or other intellectual property		____ Other

6. Related cases, including any Register of Wills matters (this requires copies of all documents in this matter to be filed with the Register of Wills):

7. Basis of court s jurisdiction (including the citation of any statute(s) conferring jurisdiction):

8 *Del. C.* § 220

8. If the complaint seeks preliminary equitable relief, state the specific preliminary relief sought.

9. If the complaint seeks a TRO, summary proceedings, a Preliminary Injunction, or Expedited Proceedings, check here X. (If #9 is checked, a Motion to Expedite must accompany the transaction.)

10. If the complaint is one that in the opinion of counsel should not be assigned to a Master in the first instance, check here and attach a statement of good cause. X

/s/ A. Thompson Bayliss
A. Thompson Bayliss (#4379)

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

LUXOR CAPITAL PARTNERS, LP, LUXOR WAVEFRONT, LP, LUGARD ROAD CAPITAL MASTER FUND, LP, and LUXOR CAPITAL PARTNERS OFFSHORE MASTER FUND, LP,	)	
Plaintiffs,	)	
v.	)	C.A. No. _____
MINDBODY, INC.,	)	
Defendant.	)	

STATEMENT OF GOOD CAUSE

I am a partner at Abrams & Bayliss LLP and a member in good standing of the Bar of the State of Delaware. With my firm, I am counsel to plaintiffs Luxor Capital Partners, LP, Luxor Wavefront, LP, Lugard Road Capital Master Fund, LP, and Luxor Capital Partners Offshore Master Fund, LP (collectively Plaintiffs). We respectfully submit that this action is inappropriate for submission to a Master in the first instance, as it involves a request for expedited consideration of a books and records demand in advance of a stockholder vote scheduled for February 14, 2019 or, in the alternative, in February or March 2019 so that the information requested can be reviewed by Plaintiffs in advance of the deadline to withdraw any appraisal demands (likely to be in mid-April). Therefore, the process of taking and briefing exceptions pursuant to Court of Chancery Rule 144 would unnecessarily delay consideration of this matter.

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Dated: January 30, 2019

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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

LUXOR CAPITAL PARTNERS, LP, LUXOR WAVEFRONT, LP, LUGARD ROAD CAPITAL MASTER FUND, LP, and LUXOR CAPITAL PARTNERS OFFSHORE MASTER FUND, LP,	)))))))	
Plaintiffs,	)	C.A. No. 2019-0070-JTL
v.	)	
MINDBODY, INC.,	)	
Defendant.	)	

DEFENDANT S OPPOSITION TO PLAINTIFF S

MOTION TO EXPEDITE PURSUANT TO 8 *DEL. C.* § 220

The Complaint for Inspection of Books and Records Pursuant to 8 *Del. C.* § 220 filed by Plaintiffs Luxor Capital Partners, LP, Luxor Wavefront, LP, Lugard Road Capital Master Fund, LP, and Luxor Capital Partners Offshore Master Fund, LP (collectively, Luxor) is filled with innuendo and speculation, and represents just one prong of Luxor s coordinated and premeditated campaign to disrupt for its sole benefit the merger between MINDBODY, Inc. (MINDBODY) and affiliates of Vista Equity Partners Management, LLC (Vista). Luxor s motion to expedite a hearing on its Section 220 complaint should be denied for four reasons:

First, Luxor lacks a colorable claim under Section 220. Not only was Luxor s demand grossly overbroad and lacking in any proper purpose, Luxor failed to comply with the requirements of Section 220 by (i) neglecting to submit its demand under oath and (ii) neglecting to provide sufficient evidence establishing stockholder status. As Luxor has not properly invoked the statute, the Court should not grant Luxor the privilege of expediting its claims.

Second, Luxor s strategic delay in invoking Section 220 belies the existence of any true emergency. Since MINDBODY announced the merger in December, Luxor (along with the world) has been fully aware of the deal price: $36.50 in cash per share of MINDBODY common stock a ***68% premium*** over the trading price on the day before announcement. Yet Luxor waited nearly three weeks before articulating its purported concerns about the adequacy of that substantial premium, and Luxor chose to do so by filing a Schedule 13D with the SEC (which its Section 220 complaint and motion fail to mention). Only after Luxor s 13D failed to attract support did Luxor attempt to deploy Section 220. Thus, it was not until nearly four weeks after the merger s announcement that Luxor sent MINDBODY a books-and-records demand. And it was not until January 30, 2019, close to five weeks after the announcement, that Luxor filed this action. Luxor now abruptly seeks a trial no later than February 8. Pls. Br. ¶ 23. But there is no urgency requiring a Section 220 trial to be held in less than 4 days after the hearing on the motion to expedite and Luxor has not pointed to *any* precedent where this Court has ordered a trial on such short notice. Doing so would inconvenience the Court as well as MINDBODY, while advancing no legitimate goal.

Third, Luxor will not suffer any injury, much less irreparably so, without an expedited trial. MINDBODY has already provided Luxor a list of MINDBODY stockholders as of the merger record date, and offered to direct its proxy solicitor to share other available stocklist information (Luxor did not respond). Given MINDBODY s willingness to produce those core stocklist materials to Luxor, expedition is unnecessary. Any remaining dispute can be resolved on a typical Section 220 schedule. *See FrontFour Capital Grp. LLC, et al. v. Medley Capital Corp.*, C.A. No. 2019-0021-KSJM, at 27-29 (Del. Ch. Jan. 16, 2019) (TRANSCRIPT) (prioritizing production of stocklist materials). And, because Luxor s concerns can be addressed adequately after the merger closes (if ever), there is no reason for a trial before the stockholder vote on February 14. Indeed, Luxor implicitly confirms this by requesting, in the alternative, that the Court set a trial as late as March 2019.

Finally, the equities weigh against expedition because Luxor is improperly attempting to use Section 220 to circumvent Rule 34. *See Polygon Glob. Opportunities Master Fund v. West Corp.*, 2006 WL 2947486, at *5 (Del. Ch. Oct. 12, 2006) (Section 220 is not intended to supplant or circumvent

discovery proceedings.). Luxor is secretly coordinating with one of the named plaintiffs in a separate action related to the merger, *Ryan Jr. and Friedman v. MINDBODY, Inc., et al.*, C.A. No. 2019-0061-VCL (the Ryan/Friedman Action), filed in this Court on January 29, 2019, which alleges breaches of fiduciary duty by MINDBODY s directors. In particular, on information and belief, Luxor principal Douglas Friedman is an immediate family member of Donald Friedman, a named plaintiff in the Ryan/Friedman Action. On information and belief, the Friedmans have coordinated these actions without disclosing their relationship to MINDBODY or this Court. Luxor s shadow participation in the Ryan/Friedman Action where the breach of fiduciary duty claims that Luxor purports to be interested in investigating have already been asserted undermines its claimed need for expedited proceedings here. It also indicates that this action is little more than a fishing expedition designed to bolster the Ryan/Friedman Action.

Luxor s motion to expedite should be denied.

BACKGROUND

A. Vista Agrees to Acquire MINDBODY and MINDBODY Plans a Go-Shop.

On December 24, 2018, MINDBODY and Vista announced a merger agreement at $36.50 per share, ***68%*** above the closing price of MINDBODY s common stock on the trading day before the merger was announced and ***42% above*** the 30-day volume weighted average price. Compl. ¶ 2. This represents the

second-highest revenue multiple ever paid by a private equity firm for a public software-as-a-service company and the third highest multiple for any public software asset. *See* Compl. Ex. B at 1-2. The merger is subject to approval by MINDBODY shareholders, regulatory review, and other closing conditions. MINDBODY s Board of Directors, who collectively own tens of thousands of shares of MINDBODY common stock and are thus aligned with the interests of MINDBODY S stockholders, unanimously approved the transaction. *See* Compl. Ex. B. at 2. The merger agreement provided a 30-day go-shop period. Compl. ¶ 45.

B. Luxor Publicly Criticizes the Merger in a Detailed Schedule 13D Filing.

On January 9, 2019, MINDBODY filed a preliminary proxy statement disclosing the process leading to the agreement with Vista. Compl. ¶ 77. The next day, Luxor filed a Schedule 13D with the SEC. Ex. 1, Luxor Schedule 13D (Jan. 10, 2019). After declaring the size of its MINDBODY investments $140 million in common stock and $130 million in convertible notes Luxor proclaimed that it believe[d] that the Proposed Merger significantly undervalue[d] the Shares and that it intended to discuss the merger with MINDBODY s stockholders, board of directors, and management[1]. *Id.*

[1] Luxor s ownership of convertible notes makes it an atypical stockholder and sheds light on Luxor s economic motivations for attacking the merger. Had the merger price been in the range of $39, Luxor would have received a unique premium on its debt investment.

C. Luxor Seeks Meetings with Vista and MINDBODY But Refuses to Execute an NDA.

After going public to blast the merger, Luxor attempted to meet with Vista and MINDBODY. *See* Compl. Ex. D. Vista, unsurprisingly, declined to sit down with Luxor, whose manifest intention was to break the deal that Vista hoped to consummate. *Id.* MINDBODY, busy in the process of approaching 38 new parties to suss out any potential topping bid,[2] invited Luxor to execute an NDA to receive MINDBODY s management presentation and access its data room. *See* Compl. Ex. E. Luxor declined.

D. Luxor Serves its Sweeping Books and Records Demand on MINDBODY.

Hours after Luxor refused an opportunity to review the corporate materials that Vista and other potential bidders had received, Luxor submitted a books-and-records demand to MINDBODY. Compl. ¶ 67. MINDBODY responded within the statutory time period. Compl. Ex. B. Luxor s 11-page demand seeks 6 broad categories of information (with *27 subparts)*. Compl. Ex. A.

[2] This was in addition to the 14 others besides Vista that had been contacted pre-signing.