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10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 SUNIL KUMAR, Individually and On  
13 Behalf of All Others Similarly Situated,  
14 Plaintiff,

15 v.

16 MINDBODY, INC., RICHARD  
17 STOLLMAYER, KATHERINE BLAIR  
18 CHRISTIE, COURT CUNNINGHAM,  
19 GAIL GOODMAN, CIPORA  
20 HERMAN, ERIC LIAW, ADAM  
21 MILLER, and GRAHAM SMITH,  
22 Defendants.

Case No. \_\_\_\_\_

CLASS ACTION

**COMPLAINT FOR VIOLATIONS  
OF THE FEDERAL SECURITIES  
LAWS**

JURY TRIAL DEMANDED

23 Plaintiff Sunil Kumar (“Plaintiff”), by his undersigned attorneys, for his  
24 complaint against defendants, alleges upon personal knowledge with respect to  
25 himself, and upon information and belief based upon, *inter alia*, the investigation of  
26 counsel as to all other allegations herein, as follows:  
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**NATURE OF THE ACTION**

1  
2 1. This is a class action brought on behalf of the public stockholders of  
3 MINDBODY, Inc. (“MINDBODY” or the “Company”) against MINDBODY and  
4 its Board of Directors (the “Board” or the “Individual Defendants”) for their  
5 violations of Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 (the  
6 “Exchange Act”), 15 U.S.C. §§ 78n(a), 78t(a), and U.S. Securities and Exchange  
7 Commission (“SEC”) Rule 14a-9, 17 C.F.R. 240.14a-9, and to enjoin the vote on a  
8 proposed transaction, pursuant to which MINDBODY will be acquired by affiliates  
9 of Vista Equity Partners through Torreys Parent, LLC (“Parent”) and Parent’s  
10 wholly owned subsidiary Torreys Merger Sub, Inc. (“Merger Sub” and together with  
11 Parent and the affiliates of Vista Equity Partners, “Vista”) (the “Proposed  
12 Transaction”).

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17 2. On December 24, 2018, MINDBODY issued a press release  
18 announcing it had entered into an Agreement and Plan of Merger (the “Merger  
19 Agreement”) to sell MINDBODY to Vista for \$36.50 in cash for each share of  
20 MINDBODY common stock held (the “Merger Consideration”). The Proposed  
21 Transaction is valued at approximately \$1.9 billion.

22  
23  
24 3. On January 23, 2019, MINDBODY filed a Definitive Proxy Statement  
25 on Schedule 14A (the “Proxy Statement”) with the SEC. The Proxy Statement,  
26 which recommends that MINDBODY stockholders vote in favor of the Proposed  
27

1 Transaction, omits or misrepresents material information concerning, among other  
2 things: (i) MINDBODY insiders’ potential conflicts of interest and the background  
3 process leading to the Proposed Transaction; and (ii) the data and inputs underlying  
4 the financial valuation analyses that support the fairness opinion provided by the  
5 Company’s financial advisor, Qatalyst Partners LP (“Qatalyst”). The failure to  
6 adequately disclose such material information constitutes a violation of Sections  
7 14(a) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) as  
8  
9 MINDBODY stockholders need such information in order to cast a fully-informed  
10 vote or seek appraisal in connection with the Proposed Transaction.

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13 **JURISDICTION AND VENUE**

14 4. This Court has jurisdiction over all claims asserted herein for violations  
15 of Sections 14(a) and 20(a) of the Exchange Act and SEC Rule 14a-9 promulgated  
16 thereunder pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa, and 28  
17 U.S.C. § 1331 (federal question jurisdiction).

18  
19 5. This Court has jurisdiction over defendants because each defendant is  
20 either a corporation that conducts business in and maintains operations within this  
21 District, or is an individual who has sufficient minimum contacts with this District  
22 so as to render the exercise of jurisdiction by this Court permissible under traditional  
23 notions of fair play and substantial justice.

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25  
26 6. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because  
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1 Plaintiff's claims arose in this District, where a substantial portion of the conduct  
2 took place, where most of the documents are electronically stored, and where the  
3 evidence exists. MINDBODY is incorporated in Delaware and is headquartered in  
4 this District. Moreover, each of the Individual Defendants, as Company officers or  
5 directors, either resides in this District or has extensive contacts within this District.  
6

7  
8 **PARTIES**

9 7. Plaintiff is, and has been continuously throughout all times relevant  
10 hereto, the owner of MINDBODY common stock.

11 8. Defendant MINDBODY is a leading technology platform for the  
12 fitness, beauty and wellness services industries. The Company is a Delaware  
13 corporation and maintains its principal executive offices at 4051 Broad Street, Suite  
14 220, San Luis Obispo, California 93401. MINDBODY's common stock is traded  
15 on the NASDAQ Global Market under the ticker symbol "MB."  
16

17 9. Defendant Richard Stollmeyer ("Stollmeyer") has been Chief  
18 Executive Officer ("CEO") of the Company and Chairman of the Board since 2004.  
19 Defendant Stollmeyer previously served as the Company's President from October  
20 2004 to June 2017.  
21

22 10. Defendant Katherine Blair Christie ("Christie") has been a director of  
23 the Company since March 2015.  
24

25 11. Defendant Court Cunningham ("Cunningham") has been a director of  
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1 the Company since June 2017.

2 12. Defendant Gail Goodman (“Goodman”) has been a director of the  
3 Company since April 2016 and lead independent director of the Company since June  
4 2017.  
5

6 13. Defendant Cipora Herman (“Herman”) has been a director of the  
7 Company since February 2014.  
8

9 14. Defendant Eric Liaw (“Liaw”) has been a director of the Company  
10 since 2017.

11 15. Defendant Adam Miller (“Miller”) has been a director of the Company  
12 since February 2017.  
13

14 16. Defendant Graham Smith (“Smith”) has been a director of the  
15 Company since January 2015.  
16

17 17. Defendants Stollmeyer, Christie, Cunningham, Goodman, Herman,  
18 Liaw, Miller, and Smith are collectively referred to herein as the “Board” or the  
19 “Individual Defendants.”  
20

21 **OTHER RELEVANT ENTITIES**

22 18. Vista Equity Partners is a U.S.-based investment firm with more than  
23 \$46 billion in cumulative capital commitments. Vista Equity Partners exclusively  
24 invests in software, data, and technology-enabled organizations.  
25

26 19. Parent is a Delaware limited liability company formed by affiliates of  
27  
28

1 Vista Equity Partners.

2 20. Merger Sub is a Delaware corporation and a wholly owned subsidiary  
3 of Parent.  
4

5 **CLASS ACTION ALLEGATIONS**

6 21. Plaintiff brings this action as a class action pursuant to Rule 23 of the  
7 Federal Rules of Civil Procedure on behalf of all persons and entities that own  
8 MINDBODY common stock (the “Class”). Excluded from the Class are defendants  
9 and their affiliates, immediate families, legal representatives, heirs, successors or  
10 assigns and any entity in which defendants have or had a controlling interest.  
11

12 22. Plaintiff’s claims are properly maintainable as a class action under Rule  
13 23 of the Federal Rules of Civil Procedure.  
14

15 23. The Class is so numerous that joinder of all members is impracticable.  
16 While the exact number of Class members is unknown to Plaintiff at this time and  
17 can only be ascertained through discovery, Plaintiff believes there are thousands of  
18 members in the Class. As of January 18, 2019, there were 45,643,595 shares of  
19 Class A common stock and 2,372,938 shares of Class B common stock issued and  
20 outstanding. All members of the Class may be identified from records maintained  
21 by MINDBODY or its transfer agent and may be notified of the pendency of this  
22 action by mail, using forms of notice similar to that customarily used in securities  
23 class actions.  
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1 24. Questions of law and fact are common to the Class and predominate  
2 over questions affecting any individual Class member, including, *inter alia*:

3 (a) Whether defendants have violated Section 14(a) of the Exchange  
4 Act and Rule 14a-9 promulgated thereunder;

6 (b) Whether the Individual Defendants have violated Section 20(a)  
7 of the Exchange Act; and

9 (c) Whether Plaintiff and the other members of the Class would  
10 suffer irreparable injury were the Proposed Transaction consummated.

11 25. Plaintiff will fairly and adequately protect the interests of the Class and  
12 has no interests contrary to or in conflict with those of the Class that Plaintiff seeks  
13 to represent. Plaintiff has retained competent counsel experienced in litigation of  
14 this nature.  
15

16 26. A class action is superior to all other available methods for the fair and  
17 efficient adjudication of this controversy. Plaintiff knows of no difficulty to be  
18 encountered in the management of this action that would preclude its maintenance  
19 as a class action.  
20

21 27. Defendants have acted, or refused to act, on grounds generally  
22 applicable to the Class as a whole, and are causing injury to the entire Class.  
23 Therefore, final injunctive relief on behalf of the Class is appropriate.  
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26 **SUBSTANTIVE ALLEGATIONS**

1 **Company Background and Strong Financial Outlook**

2 28. Since the Company was founded in 2001 as a hybrid desktop-web  
3 solution focused on yoga, Pilates and indoor cycling businesses, MINDBODY has  
4 grown into a leading provider of cloud-based business management software for the  
5 wellness service industry.  
6

7 29. For example, in 2005, the Company released MINDBODY Online, its  
8 software-as-a-service (“SaaS”) platform to grow into adjacent fitness categories and  
9 increase the Company’s total addressable market. In 2009, the Company released  
10 MINDBODY Finder, enabling available classes and appointments to be aggregated  
11 for consumer search, and an open web services application programming interface  
12 (“API”) that enabled other developers to build solutions on MINDBODY’s platform.  
13 In 2013, the Company launched its MINDBODY Express mobile application for  
14 businesses and MINDBODY Connect application for consumers, which was  
15 redesigned in 2015.  
16

17 30. MINDBODY has continued to make significant investments in its  
18 platform to enable increased business penetration and consumer adoption of its two-  
19 sided marketplace.  
20

21 31. For example, on February 20, 2018, the Company announced the  
22 acquisition of FitMetrix, Inc. (“FitMetrix”), a performance tracking solutions  
23 company that has been a MINDBODY platform partner since 2015. In the press  
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1 release announcing the acquisition, defendant Stollmeyer highlighted the benefits of  
2 acquiring FitMetrix, stating, “FitMetrix's powerful and intuitive tools help our  
3 customers drive results and retention while providing their clients with a fun and  
4 unique approach to fitness. . . . Interactive engagement is the future of fitness, and  
5 we see some of our most successful customers integrating performance tracking  
6 technology into their studios.”  
7

8  
9 32. Additionally, on April 2, 2018, MINDBODY announced it had  
10 completed the acquisition of Booker Software, a cloud-based business management  
11 platform for salons and spas, for \$150 million. According to the press release,  
12 “[t]he acquisition of Booker adds approximately 10,000 salons and spas to the  
13 MINDBODY marketplace, combining MINDBODY’s leadership in boutique  
14 fitness studios and its vast consumer network with Booker’s leadership in high-value  
15 salons and spas.”  
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18 33. On November 6, 2018, MINDBODY announced its third quarter 2018  
19 financial results. For the quarter, total revenue was \$63.8 million, a 37% increase  
20 compared to the third quarter of 2017. Subscription and services revenue was \$40.8  
21 million, a 44% increase compared to the third quarter of 2017. Brett White, the  
22 Company’s Chief Operating Officer and Chief Financial Officer, commented on the  
23 quarter’s financial results, stating:  
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26 In the third quarter we delivered the highest average monthly  
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1 subscription revenue for new subscribers in the history of both the  
2 MINDBODY and Booker platforms. . . . As the newly formed Beauty  
3 and Wellness team ramps, we expect to continue to grow our target  
4 market customer base, increase our platform partnerships and expand  
5 our consumer brand into 2019.  
6

7 **The Proposed Transaction**  
8

9 34. Following entry into the Merger Agreement, on December 24, 2018,  
10 MINDBODY issued a press release announcing the Proposed Transaction. The  
11 press release states, in relevant part:  
12

13 SAN LUIS OBISPO, Calif., Dec. 24, 2018 (GLOBE NEWSWIRE) --  
14 MINDBODY, Inc. (NASDAQ: MB) today announced that it has  
15 entered into a definitive agreement to be acquired by Vista Equity  
16 Partners (“Vista”), a leading investment firm focused on software, data  
17 and technology-enabled businesses.  
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21 Under the terms of the agreement, Vista will acquire all outstanding  
22 shares of MINDBODY common stock for a total value of  
23 approximately \$1.9 billion. MINDBODY shareholders will receive  
24 \$36.50 in cash per share, representing a 68% premium to the unaffected  
25 closing price as of December 21, 2018.  
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2 “MINDBODY’s purpose is to help people lead healthier, happier lives  
3 by connecting the world to fitness, beauty and wellness,” said Rick  
4 Stollmeyer, Co-Founder and CEO of MINDBODY. “We are thrilled to  
5 provide immediate liquidity to our shareholders at a significant  
6 premium to market prices and to leverage Vista’s resources and deep  
7 expertise to accelerate our growth while achieving that purpose more  
8 effectively than ever before.”  
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13 “MINDBODY’s position as the leading technology platform for the  
14 fitness, beauty and wellness industries makes it an ideal addition to the  
15 Vista family of companies,” said Brian Sheth, Co-Founder and  
16 President of Vista. “We look forward to partnering with Rick and the  
17 entire MINDBODY team to deliver innovation to customers that will  
18 help grow their businesses and to consumers who depend on  
19 MINDBODY to strengthen their health and well-being.”  
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22  
23 MINDBODY’s Board of Directors unanimously approved the deal and  
24 recommended that stockholders vote their shares in favor of the  
25 transaction. Closing of the transaction is subject to customary closing  
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1 conditions, including the approval of MINDBODY stockholders and  
2 antitrust approval in the United States. The transaction is expected to  
3 close in the first quarter of 2019 and is not subject to a financing  
4 condition.  
5

6 **Insiders' Interests in the Proposed Transaction**

7 35. MINDBODY and Vista insiders are the primary beneficiaries of the  
8 Proposed Transaction, not the Company's public stockholders. The Board and the  
9 Company's executive officers are conflicted because they will have secured unique  
10 benefits for themselves from the Proposed Transaction not available to Plaintiff and  
11 the public stockholders of MINDBODY.  
12

13 36. Notably, it appears that defendant Stollmeyer has secured a position for  
14 himself with the combined company upon consummation of the Proposed  
15 Transaction. In MINDBODY's December 31, 2018 Employee Letter, filed with the  
16 SEC on January 2, 2019, in response to the question "[a]re you planning to leave  
17 [MINDBODY]," defendant Stollmeyer stated: "No. I am excited to continue serving  
18 [MINDBODY] and all of you for years to come."  
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22 37. Further, MINDBODY insiders stand to reap substantial financial  
23 benefits for securing the deal with Vista. According to the Merger Agreement, all  
24 vested and unvested Company RSUs and options will be converted into the right to  
25 receive cash payments.  
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38. Moreover, if they are terminated in connection with the Proposed Transaction, MINDBODY's named executive officers are set to receive substantial cash payments in the form of golden parachute compensation, as set forth in the following table:

Name	Cash \$(1)	Equity \$(2)	Perquisites/ Benefits \$(3)	Total \$(4)
Richard Stollmeyer	\$880,671	\$40,981,156	\$ 22,786	\$41,884,613
Michael Mansbach	\$425,000	\$ 5,313,897	\$ 17,740	\$ 5,756,637
Brett White	\$641,250	\$11,043,053	\$ 122,882	\$11,807,185
Mark Baker	\$171,200	\$ 2,633,222	\$ 7,595	\$ 2,812,017
Kimberly Lytikainen	\$138,502	\$ 2,241,416	\$ 0	\$ 2,379,918

### **The Proxy Statement Contains Material Misstatements or Omissions**

39. The defendants filed a materially incomplete and misleading Proxy Statement with the SEC and disseminated it to MINDBODY's stockholders. The Proxy Statement misrepresents or omits material information that is necessary for the Company's stockholders to make an informed decision whether to vote their shares in favor of the Proposed Transaction or seek appraisal.

40. Specifically, as set forth below, the Proxy Statement fails to provide Company stockholders with material information or provides them with materially misleading information concerning: (i) MINDBODY insiders' potential conflicts of interest and the background process leading to the Proposed Transaction; and (ii) the data and inputs underlying the financial valuation analyses that support the fairness opinion provided by Qatalyst. Accordingly, MINDBODY stockholders are being asked to make a decision whether to vote in favor of the Proposed Transaction or

1 seek appraisal without all material information at their disposal.

2 ***Material Omissions Concerning MINDBODY Insiders' Potential Conflicts of***  
3 ***Interest***

4 41. The Proxy Statement fails to disclose material information concerning  
5 potential conflicts of interest faced by the Company's directors and executive  
6 officers, including in connection with the sale process leading up to the Proposed  
7 Transaction.  
8

9 42. The Proxy Statement sets forth:

10 On November 1, 2018, representatives of Cooley provided the  
11 Transaction Committee with a general written framework for  
12 management neutrality with respect to potential strategic transaction  
13 participants, which included avoidance of any discussions or activities  
14 that would indicate favoring one participant over another or would  
15 indicate a preference between MINDBODY engaging in a strategic  
16 transaction or continuing as a stand-alone entity. Each member of  
17 MINDBODY senior management acknowledged and confirmed the  
18 management neutrality guidelines.  
19  
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22

23 Proxy Statement at 27.

24 43. However, the Proxy Statement fails to disclose the details of any  
25 employment-related discussions and negotiations that occurred between Vista and  
26 MINDBODY executive officers prior to November 1, 2018, including who  
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1 participated in all such communications, when they occurred, and their content, as  
2 well as whether any of Vista's proposals or indications of interest mentioned  
3 management retention. Notably, according to the Proxy Statement defendant  
4 Stollmeyer met with representatives of Vista in October 2018, prior to any  
5 discussions regarding management neutrality. Indeed, it appears defendant  
6 Stollmeyer has secured employment with the post-merger company. In  
7 MINDBODY's December 31, 2018 Employee Letter, filed with the SEC on January  
8 2, 2019, in response to the question "[a]re you planning to leave [MINDBODY],"  
9 defendant Stollmeyer stated: "No. I am excited to continue serving [MINDBODY]  
10 and all of you for years to come."  
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14 44. With respect to defendant Stollmeyer's October 2018 meeting with  
15 representatives of Vista, the Proxy Statement further fails to disclose whether  
16 defendant Stollmeyer or Vista initiated the October 2018 meeting, the exact date of  
17 the meeting, what the parties discussed at the meeting and whether the Board  
18 authorized the meeting. The Proxy Statement similarly fails to disclose whether  
19 defendant Stollmeyer's October 2018 introductory meetings with representatives of  
20 two other financial sponsors referred to in the Proxy Statement as "Party A" and  
21 "Party B" were authorized by the Board.  
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25 45. In addition, the Proxy Statement fails to disclose the date of the earliest  
26 discussions that occurred between representatives of the Company and Vista  
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1 regarding a potential sale transaction, who participated in the discussions and the  
2 details of the discussions. The Proxy Statement further fails to disclose the dates  
3 and details of any discussions between representatives of Vista and the Company  
4 from October 2018 to November 19, 2018.  
5

6 46. Communications regarding post-transaction employment and merger-  
7 related benefits during the negotiation of the underlying transaction must be  
8 disclosed to stockholders. This information is necessary for stockholders to  
9 understand potential conflicts of interest of management and the Board, as that  
10 information provides illumination concerning motivations that would prevent  
11 fiduciaries from acting solely in the best interests of the Company's stockholders.  
12

13 47. Additionally, the Proxy Statement fails to disclose the details of the  
14 "conflict disclosure by Qatalyst Partners" as discussed by the Transaction  
15 Committee at its November 14, 2018 meeting. *Id.* Full disclosure of investment  
16 banker compensation and all potential conflicts is required due to the central role  
17 played by investment banks in the evaluation, exploration, selection, and  
18 implementation of strategic alternatives.  
19

20 48. The omission of this information renders the statements in the  
21 "Background of the Merger" and "Interests of MINDBODY's Directors and  
22 Executive Officers in the Merger" sections of the Proxy Statement false and/or  
23 materially misleading in contravention of the Exchange Act.  
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1 ***Material Omissions Concerning Qatalyst's Financial Analyses***

2 49. The Proxy Statement describes Qatalyst's fairness opinion and the  
3 various valuation analyses performed in support of its opinion. However, the  
4 description of Qatalyst's fairness opinion and analyses fails to include key inputs  
5 and assumptions underlying these analyses. Without this information, as described  
6 below, MINDBODY's public stockholders are unable to fully understand these  
7 analyses and, thus, are unable to determine what weight, if any, to place on  
8 Qatalyst's fairness opinion in determining whether to vote in favor of the Proposed  
9 Transaction or seek appraisal. This omitted information, if disclosed, would  
10 significantly alter the total mix of information available to MINDBODY's  
11 stockholders.  
12

13 50. With respect to Qatalyst's *Discounted Cash Flow Analysis*, the Proxy  
14 Statement fails to disclose: (i) quantification of the inputs underlying the discount  
15 rate range of 9.0% to 11.0%; (ii) the basis for applying enterprise value to next-  
16 twelve-months estimated unlevered free cash flow multiples ranging from 20.0x to  
17 30.0x to derive the Company's terminal value; (iii) the value of MINDBODY's cash  
18 net of the face value of outstanding debt and financing obligations, as of December  
19 31, 2018, utilized in the analysis; and (iv) the implied perpetuity growth rates  
20 resulting from the analyses.  
21

22 51. With respect to Qatalyst's *Selected Companies Analysis* and *Selected*  
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1 *Transactions Analysis*, the Proxy Statement fails to disclose the Analyst Projections  
2 utilized by Qatalyst in the analyses.

3 52. When a banker's endorsement of the fairness of a transaction is touted  
4 to stockholders, the valuation methods used to arrive at that opinion as well as the  
5 key inputs and range of ultimate values generated by those analyses must also be  
6 fairly disclosed.  
7

8  
9 53. The omission of this information renders the statements in the "Opinion  
10 of Qatalyst Partners LP" section of the Proxy Statement false and/or materially  
11 misleading in contravention of the Exchange Act.  
12

13 54. The Individual Defendants were aware of their duty to disclose this  
14 information and acted negligently (if not deliberately) in failing to include this  
15 information in the Proxy Statement. Absent disclosure of the foregoing material  
16 information prior to the stockholder vote on the Proposed Transaction, Plaintiff and  
17 the other members of the Class will be unable to make a fully-informed decision  
18 whether to vote in favor of the Proposed Transaction or seek appraisal and are thus  
19 threatened with irreparable harm warranting the injunctive relief sought herein.  
20  
21

22 **CLAIMS FOR RELIEF**

23 **COUNT I**

24 **Class Claims Against All Defendants for Violations of Section 14(a) of the**  
25 **Exchange Act and SEC Rule 14a-9 Promulgated Thereunder**  
26

27 55. Plaintiff repeats and realleges the preceding allegations as if fully set  
28

1 forth herein.

2 56. SEC Rule 14a-9, 17 C.F.R. §240.14a-9, promulgated pursuant to  
3 Section 14(a) of the Exchange Act, provides:  
4

5 No solicitation subject to this regulation shall be made by means of any  
6 proxy statement, form of proxy, notice of meeting or other  
7 communication, written or oral, containing any statement which, at the  
8 time and in light of the circumstances under which it is made, is false  
9 or misleading with respect to any material fact, or which omits to state  
10 any material fact necessary in order to make the statements therein not  
11 false or misleading or necessary to correct any statement in any earlier  
12 communication with respect to the solicitation of a proxy for the same  
13 meeting or subject matter which has become false or misleading.  
14  
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16

17 57. During the relevant period, defendants disseminated the false and  
18 misleading Proxy Statement specified above, which failed to disclose material facts  
19 necessary in order to make the statements made, in light of the circumstances under  
20 which they were made, not misleading in violation of Section 14(a) of the Exchange  
21 Act and SEC Rule 14a-9 promulgated thereunder.  
22

23 58. By virtue of their positions within the Company, the defendants were  
24 aware of this information and of their duty to disclose this information in the Proxy  
25 Statement. The Proxy Statement was prepared, reviewed, and/or disseminated by  
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28

1 the defendants. The Proxy Statement misrepresented and/or omitted material facts,  
2 including material information about potential conflicts of interest faced by  
3 Company insiders, the background process leading up to the Proposed Transaction  
4 and the data and inputs underlying the financial valuation analyses that support the  
5 fairness opinion provided by Qatalyst. The defendants were at least negligent in  
6 filing the Proxy Statement with these materially false and misleading statements.  
7

8  
9 59. The omissions and false and misleading statements in the Proxy  
10 Statement are material in that a reasonable stockholder would consider them  
11 important in deciding how to vote on the Proposed Transaction or whether to seek  
12 appraisal. In addition, a reasonable investor would view a full and accurate  
13 disclosure as significantly altering the “total mix” of information made available in  
14 the Proxy Statement and in other information reasonably available to stockholders.  
15

16  
17 60. By reason of the foregoing, the defendants have violated Section 14(a)  
18 of the Exchange Act and SEC Rule 14a-9(a) promulgated thereunder.  
19

20 61. Because of the false and misleading statements in the Proxy Statement,  
21 Plaintiff and the Class are threatened with irreparable harm, rendering money  
22 damages inadequate. Therefore, injunctive relief is appropriate to ensure  
23 defendants’ misconduct is corrected.  
24

25 **COUNT II**

26 **Class Claims Against the Individual Defendants for Violations of Section 20(a)**  
27 **of the Exchange Act**

1           62. Plaintiff repeats and realleges the preceding allegations as if fully set  
2  
3 forth herein.

4           63. The Individual Defendants acted as controlling persons of  
5 MINDBODY within the meaning of Section 20(a) of the Exchange Act as alleged  
6  
7 herein. By virtue of their positions as officers and/or directors of MINDBODY and  
8 participation in and/or awareness of the Company's operations and/or intimate  
9 knowledge of the false statements contained in the Proxy Statement filed with the  
10 SEC, they had the power to influence and control and did influence and control,  
11 directly or indirectly, the decision making of the Company, including the content  
12 and dissemination of the various statements that Plaintiff contends are false and  
13 misleading.  
14

15  
16           64. Each of the Individual Defendants was provided with or had unlimited  
17 access to copies of the Proxy Statement alleged by Plaintiff to be misleading prior  
18 to and/or shortly after these statements were issued and had the ability to prevent the  
19 issuance of the statements or cause them to be corrected.  
20

21           65. In particular, each of the Individual Defendants had direct and  
22 supervisory involvement in the day-to-day operations of the Company, and,  
23 therefore, is presumed to have had the power to control and influence the particular  
24 transactions giving rise to the violations as alleged herein, and exercised the same.  
25

26  
27 The Proxy Statement contains the unanimous recommendation of the Individual  
28

1 Defendants to approve the Proposed Transaction. They were, thus, directly involved  
2 in the making of this document.

3 66. In addition, as the Proxy Statement sets forth, and as described herein,  
4 the Individual Defendants were involved in negotiating, reviewing, and approving  
5 the Proposed Transaction. The Proxy Statement purports to describe the various  
6 issues and information that the Individual Defendants reviewed and considered —  
7 descriptions which had input from the Individual Defendants.  
8  
9

10 67. By virtue of the foregoing, the Individual Defendants have violated  
11 Section 20(a) of the Exchange Act.  
12

13 68. Plaintiff and the Class have no adequate remedy at law. Only through  
14 the exercise of this Court's equitable powers can Plaintiff and the Class be fully  
15 protected from the immediate and irreparable injury that Defendants' actions  
16 threaten to inflict.  
17

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff demands judgment and preliminary and permanent  
20 relief in his favor on behalf of MINDBODY, and against the defendants, as follows:  
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22 A. Ordering that this action may be maintained as a class action and  
23 certifying Plaintiff as the Class representative and Plaintiff's counsel as Class  
24 counsel;  
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26 B. Preliminarily and permanently enjoining defendants and all persons  
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1 acting in concert with them from proceeding with, consummating, or closing the  
2 Proposed Transaction, unless and until defendants disclose and disseminate the  
3 material information identified above to MINDBODY;  
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5 C. In the event defendants consummate the Proposed Transaction,  
6 rescinding it and setting it aside or awarding rescissory damages to Plaintiff and the  
7 Class;  
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9 D. Awarding Plaintiff the costs of this action, including reasonable  
10 allowance for Plaintiff's attorneys' and experts' fees; and  
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12 E. Granting such other and further relief as this Court may deem just and  
13 proper.  
14

**JURY DEMAND**

15  
16 Plaintiff hereby demands a trial by jury.

17 Dated: February 4, 2019

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18  
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