

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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	:
WALLEYE TRADING LLC, Individually and	:
on Behalf of All Others Similarly Situated,	:
	:
Plaintiff,	:
	:
vs.	:
	:
MINDBODY, INC., RICHARD L.	:
STOLLMEYER, and BRETT WHITE	:
	:
Defendants.	:
_____	X

Case No.

CLASS ACTION

COMPLAINT FOR VIOLATIONS OF
THE FEDERAL SECURITIES LAWS

DEMAND FOR JURY TRIAL

INTRODUCTION

Plaintiff Walleye Trading LLC (“Plaintiff”), individually and on behalf of all others similarly situated, alleges the following based on personal knowledge as to Plaintiff and Plaintiff’s own acts, and upon information and belief as to all other matters based upon the investigation conducted by and through Plaintiff’s attorneys, which included, among other things, a review of Securities and Exchange Commission (“SEC”) filings by MINDBODY, Inc. (“MINDBODY” or the “Company”), as well as conference call transcripts and media and analyst reports about the Company. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

SUMMARY OF THE ACTION

1. This is a securities class action brought on behalf of all former owners of MINDBODY Class A common stock who sold shares, and were damaged thereby, during the period from November 7, 2018 through February 15, 2019, both dates inclusive (the “Class Period”). Excluded from the Class are: Defendants (as defined herein); the officers and directors of the Company during the Class Period (the “Excluded D&Os”); members of Defendants’ and the Excluded D&Os’ immediate families; the subsidiaries and affiliates of the Company, including the Company’s employee retirement and benefit plan(s) and their participants or beneficiaries, to the extent they made purchases through such plan(s); any entity in which Defendants or the Excluded D&Os have or had a controlling interest; and the legal representatives, heirs, successors or assigns of any excluded person or entity; and anyone who filed a petition or pursued appraisal rights of their MINDBODY Class A common stock pursuant to Delaware law.

2. This case concerns a scheme by MINDBODY, certain of its officers and/or directors, and Vista Equity Partners Management, LLC (“Vista”), to depress the value of

MINDBODY shares to allow Vista to avoid paying a fair price to MINDBODY shareholders in connection with the merger and subsequent delisting of the Company, in violation of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), and Rule 10b-5 promulgated thereunder. Defendants executed this scheme by misstating and/or omitting material information concerning MINDBODY’s financial results. As a result, MINDBODY shareholders were misled into accepting consideration that was well below the fair value for their MINDBODY shares.

3. MINDBODY, a Delaware Corporation headquartered in San Luis Obispo, California, provides cloud-based business management software for the wellness services industry, and a rapidly growing marketplace for wellness services.

4. In early 2018, the Company underwent several successful acquisitions. Following these acquisitions, which Defendants defined as “pivotal,” investors were repeatedly assured that MINDBODY was on track to successfully integrate the companies, and that the acquisitions offered a substantial value proposition for the Company. For example, on September 18, 2018, Defendant Stollmeyer stated that the respective integrations were “going well,” and that MINDBODY was “positioned to grow [its] marketplace more quickly and to accelerate in all of [its] key markets.”

5. Unknown to investors at this time, however, was that in the latter half of 2018, Defendant Richard L. Stollmeyer (“Stollmeyer”), the Company’s Chief Executive Officer (“CEO”), had been in discussions with Vista concerning a potential sale of the Company. The MINDBODY Board of Directors only became aware of these discussions between Stollmeyer and Vista in late October 2018, when it convened to discuss Vista’s interest in the Company.

6. On November 6, 2018, Defendants intentionally issued disappointing guidance for the Company's upcoming fourth quarter 2018 in order to artificially depress the price of the Company's stock, attributing it to integration issues with MINDBODY's early 2018 acquisitions. The market, having previously been informed that the integrations in question were on track, reacted poorly, causing the price of MINDBODY Class A common stock to fall by approximately 20 percent on November 7, 2018.

7. Shortly thereafter, by press release dated December 24, 2018, Defendants informed investors that the Company's Board had approved a merger agreement with Vista. Pursuant to the agreement, holders of the Company's common stock would receive \$36.50 in exchange for their shares, with Vista taking MINDBODY private upon completion. Defendants touted this as a 68 percent premium to the Company's December 21, 2018 closing price, which price was still depressed by the surprising and suspiciously timed negative guidance issued on November 6, 2018.

8. Unknown to MINDBODY investors, however, is that by January 18, 2019, Defendants knew that the Company's fourth quarter 2018 results had materially exceeded not only current analyst estimates, but also those estimates issued prior to the disappointing November 6, 2018 guidance.

9. During January and February, Defendants issued proxy materials urging MINDBODY shareholders to vote "FOR" the transaction, touting the price of \$36.50 as a substantial premium for MINDBODY shareholders. These proxy materials, however, failed to disclose the "meaningful" fourth quarter 2018 results necessary for investors to make an informed decision whether to vote in favor of the proposed transaction.

10. Based, in part, on Defendants' failure to disclose MINDBODY's favorable fourth quarter 2018 financial results, which would have raised questions regarding whether the merger consideration was fair, MINDBODY shareholders approved the transaction on February 14, 2019. The following day, Defendants reported the closing of the transaction, and MINDBODY shareholders received \$36.50 in exchange for their shares.

11. As a result of these material misrepresentations and omissions, MINDBODY shareholders were misled into selling their shares for less than the fair value of those shares, which fair price was greater than \$36.50.

JURISDICTION AND VENUE

12. The claims asserted herein arise under Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC, 17 C.F.R. § 240.10b-5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1337, and Section 27 of the Exchange Act, 15 U.S.C. § 78aa.

13. Venue is proper in this District pursuant to Section 27 of the Exchange Act and 28 U.S.C. §1391(b). A significant portion of the Defendants' actions, and the subsequent damages, took place within this District. In addition, at all relevant times MINDBODY's stock traded in New York on the NASDAQ. In connection with the acts alleged in this complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications, and the facilities of the national securities markets.

PARTIES

14. Plaintiff, as set forth in the accompanying Certification, which is incorporated by reference herein, sold MINDBODY Class A common stock during the Class Period and was damaged as the result of Defendants' wrongdoing as alleged in this complaint.

15. Defendant MINDBODY is incorporated in Delaware and headquartered in San Luis Obispo, California. For all relevant times during the Class Period the Company's Class A common stock was listed on the NASDAQ under the ticker symbol "MB". The Company's Class B common stock is not publically traded, and predominately held by insiders.

16. Defendant Stollmeyer was at all relevant times the Chairman, CEO, and Founder of MINDBODY.

17. Defendant Brett White ("White") was at all relevant times the Chief Financial Officer ("CFO") and Chief Operating Officer ("COO") of MINDBODY.

18. Defendants Stollmeyer and White are collectively referred to hereinafter as the "Individual Defendants." The Individual Defendants, because of their positions with the Company, possessed the power and authority to control the contents of MINDBODY's reports to the SEC, press releases, and presentations to securities analysts, money portfolio managers and institutional investors, *i.e.*, the market. The Individual Defendants were provided with copies of the Company's reports and press releases alleged herein to be misleading prior to, or shortly after, their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions and access to material non-public information available to them, the Individual Defendants knew that the adverse facts specified herein had not been disclosed to, and were being concealed from, the public, and that the positive representations which were being made were then materially false and/or misleading. The Individual Defendants are liable for the false statements pleaded herein, as those statements were each "group-published" information, the result of the collective actions of the Individual Defendants.

19. MINDBODY, and the Individual Defendants are referred to herein, collectively, as “Defendants.”

SUBSTANTIVE ALLEGATIONS

Background

20. Founded in 2001, MINDBODY is a provider of cloud-based business management software for the wellness services industry, *e.g.*, salons and spas, and a rapidly growing marketplace for wellness services. The Company offers integrated software and payment platforms to assist wellness business owners run, market, and build their businesses, while engaging consumers by aggregating available classes and appointments, and enabling rapid discovery, booking and payment. The Company conducted its initial public offering in June 2015.

21. In early 2018, the Company underwent several successful acquisitions. On February 19, 2018, MINDBODY acquired FitMetrix, Inc. (“FitMetrix”), a creator of performance tracking solutions designed to help wellness businesses increase retention, and provide wellness seekers with an engaging, more interactive fitness experience, for \$15.5 million. Additionally, on March 13, 2018, the Company acquired Booker Software (“Booker”), a leading cloud-based business management platform for salons and spas, and the provider of Frederick, a fast-growing, automated marketing software for wellness businesses, for \$150 million.

22. Following the acquisitions, Defendant Stollmeyer touted how the acquisitions of FitMetrix and Booker offered a substantial value proposition for MINDBODY. For example, on May 13, 2018, during the Company’s first quarter 2018 earnings call with analysts and investors, Stollmeyer stated that the “pivotal acquisitions” of FitMetrix and Booker were poised to “add substantial capabilities to [MINDBODY’s] platform.” On the same call, Stollmeyer

also congratulated the MINDBODY team for the efforts they were “putting forth to successfully integrate and accelerate Booker and FitMetrix under the MINDBODY platform.”

23. On September 18, 2018, at the MINDBODY Analyst Day Teleconference, Defendants made several positive statements regarding the FitMetrix and Booker acquisitions. Specifically, Defendant Stollmeyer again touted the value proposition of the FitMetrix and Booker acquisitions, and also indicated that the integration efforts to date had been successful, stating in pertinent part:

Right now, our acquisitions position us favorably for this, in fact, better than anyone else in the world. By acquiring Booker, Frederick, and FitMetrix in the last - well, in the first half of the year, we now are positioned to grow our marketplace more quickly and to accelerate in all of our key markets. We’re going to dive into our product innovations.

During the teleconference, Defendant Stollmeyer also assured analysts that the Booker integration was “going well.”

24. Unbeknownst to investors at this time, however, was that throughout the second half of 2018, Stollmeyer had begun discussions with Vista regarding the potential sale of the Company to Vista—seemingly without authorization from the Company’s Board of Directors. During this time, Stollmeyer was in continued contact with Vista, even attending an early October “meet and greet” conference hosted by Vista.

25. On October 16, 2018, Vista indicated to Stollmeyer that it was interested in pursuing strategic transaction discussions with MINDBODY. The Board of Directors for MINDBODY apparently only became involved in the proposed transaction with Vista on October 26, 2018. On that date, the Company’s Board of Directors convened to discuss Vista’s interest in the Company.

Defendants' Materially False and Misleading Statements and Omissions

26. On November 6, 2018, after the close of trading, MINDBODY shocked the market by reporting disappointing earnings guidance for the Company's upcoming fourth quarter 2018. Specifically, the Company reported downward guidance of \$65 to \$67 million in revenue, which was lower than the \$68.1 million expected by analysts. The disappointing guidance, according to the Company, "reflect[ed] the acquisition of FitMetrix and Booker." Stollmeyer was quoted in the accompanying press release stating that the "recent acquisitions have introduced greater operational challenges than expected in the back half of the year." On this news, MINDBODY stock fell \$6.45 from its November 6, 2018 closing price, to close at \$26.18 on November 7, 2018, a decline of approximately 20 percent.

27. MINDBODY's disappointing fourth quarter 2018 guidance, however, was in stark contrast to the positive statements made by Defendants during the September 18, 2018 Analyst Day Teleconference—less than two months prior to the November 6, 2018 announcement and nearly three weeks into MINDBODY's fourth quarter 2018.

28. Unsurprisingly, analysts were quick to voice their confusion at the abrupt change in the Company's outlook. For example, an analyst at Jeffries noted that the "Market disappointment is understandable after: 1) *unclear signals after Booker acquis. was first announced*; 2) \$1M lower FY18 rev guide after Q2; and 3) low Q4 rev guide after Q3." The Jeffries analyst, however believed that the market's reaction seemed "excessive," and that MINDBODY's "valuation appears excessive (low)" when compared to similar companies. In addition, analysts at JP Morgan stated that the integration issues were "*much bigger than [they had] anticipated at the time of the deal.*"¹

¹ Emphasis added throughout, unless otherwise noted.

29. On December 17, 2018, MINDBODY issued a press release announcing that Kimberly Lytikainen, the Company's Chief Legal Officer, had announced her resignation. Her resignation was to be effective January 18, 2019.

30. On December 18, 2018, Vista made an offer to the Company's Board to acquire all of MINDBODY's common stock for \$35 per share. This offer, based off the current share price of the Company's Class A common stock, came during the period where the price of the Company's shares were still depressed from the disappointing fourth quarter 2019 guidance.

31. Following an extremely brief negotiation period, the merger was approved by the Company's Board on December 23, 2018 for \$36.50 per share, representing a total value of \$1.9 billion (the "Merger"). In order to effectuate the Merger, MINDBODY would merge with Torreys Merger Sub, Inc. ("Merger Sub"), and continue on as a surviving corporation and wholly owned direct subsidiary of Torreys Parent LLC ("Merger Parent"). Both Merger Parent and Merger Sub were created by Vista for the sole purpose of completing the merger. Upon completion of the Merger, MINDBODY's Class A common stock would cease to be publically traded and be deregistered under the Exchange Act. Finally the merger was contingent on a vote of MINDBODY shareholders who held as of the upcoming record date on January 18, 2019 (the "Record Date").

32. In addition, the Acquisition contained a 30 day "go-shop" provision, whereby the Company was supposedly charged with soliciting a superior offer. For several reasons, however, this "go-shop" period appears to have been illusory. As a preliminary matter, 30 days is on the low end for the customary length of a "go-shop" period. Secondly, the go-shop period commenced the day before Christmas Eve and ran through the holiday season, and was therefore during a time of year when many potential purchasers lacked the adequate resources to

enter into, let alone investigate, a transaction valued at nearly two billion dollars. Finally, the provision provided for a lower termination fee only if MINDBODY *entered into* a superior transaction during the period, as opposed to the regular practice of providing for a lower fee if a superior offer is *made* during the period.

33. On December 24, 2018, MINDBODY issued a press release announcing that the Company's Board of Directors had unanimously approved the Acquisition. The press release touted the Acquisition as "***representing a 68% premium to the unaffected closing price as of December 21, 2018.***" In addition, Stollmeyer was quoted in the press release lauding the benefit of the deal to current MINDBODY shareholders, stating in pertinent part: "***We are thrilled to provide immediate liquidity to our shareholders at a significant premium to market prices***"

34. The Merger's offering price of \$36.50 per share, however, was only approximately a 5 to 10 percent premium to the Company's share price during the time in which Stollmeyer and Vista began their preliminary discussions—which discussions still unknown to MINDBODY shareholders at this time. In addition, the Merger consideration represented an approximately ***20 percent discount*** to the Company's 52-week high of \$44.60 per share on May 7, 2018.

35. On December 26, 2018, Defendants filed proxy materials with the SEC. In the proxy materials, Defendant Stollmeyer was again quoted touting the deal as a "***68% premium compared to the closing price of [MINDBODY] stock as of December 21, 2018.***"

36. On January 2, 2019, Defendants filed additional proxy materials with the SEC, in the proxy, Defendant Stollmeyer was quoting falsely stating that the Company had only begun

to contemplate taking MINDBODY private in October, and only *afterwards* begun discussions with Vista, stating in pertinent part:

In October, our Board of Directors and I agreed to explore of the possibility of taking MINDBODY private, because we realized that the right acquirer could enable us to be even more successful in the years ahead. Since then, through conversations with multiple interested acquirers and CEOs, I became convinced that going private now is our best path forward, and that Vista is an ideal partner.

37. On January 9, 2019, Defendants filed a preliminary proxy with the SEC. The preliminary proxy touted the Merger as “in the best interest of the Company and its stockholders,” representing: “(1) 68% to the closing price of MINDBODY’s Class A common stock on December 21, 2018, the last full trading day prior to public announcement of MINDBODY’s entry into the Merger Agreement; and (2) 42% to the 30-day volume weighted average price, ending on December 21, 2018.”

38. This 42 percent premium touted in the preliminary proxy, however, still failed to include the price of MINDBODY shares prior to the suspiciously timed November 6, 2018 guidance which materially depressed the price of Company shares, as well as the price of MINDBODY shares during the time Defendant Stollmeyer had begun discussions with Vista in the latter half of 2018.

Defendants Withhold Positive Financial Results

39. Based on the discovery in an action pending in the Delaware Court of Chancery captioned *Ryan v. MINDBODY, Inc.*, C.A. No. 2019-0061-AGB (the “Delaware Action”), which has included deposition testimony and document retrieval from the Individual Defendants, by January 18, 2019 Defendants were aware, yet failed to disclose, that MINDBODY’s fourth quarter 2018 results were largely better than projected. Specifically, MINDBODY’s fourth quarter 2018 revenues were \$68.3 million. These results not only

surpassed *current* consensus estimates of \$66 million, but were also greater than the previous consensus estimates of \$68.1 million issued prior to the November 6, 2018 disclosure.

40. As further revealed in the Delaware Action, in a January 24, 2019, letter to the Company's Audit Committee, Defendant White stated that because the fourth quarter results "meaningfully" exceeded estimates, that "*the right thin[g] to do is to publically release this information via 8K no later than Feb 7th so the shareholders have the information before they vote.*"

41. According to discovery in the Delaware Action, however, the decision of whether to release the fourth quarter results was also relayed to Vista by Cooley LLP, MINDBODY's outside legal counsel, to see if it "*ha[d] different views on the approach.*" Vista apparently did have "different views," as the "meaningful" positive fourth quarter 2018 results were not only never given to shareholders, but also never provided to the independent proxy advisory firms contracted to issue an opinion on whether the Merger was fair.

42. Following the Board's approval of the Merger. MINDBODY issued a definitive proxy statement on January 23, 2019, where the Company's Board unanimously recommended Company shareholders to vote "FOR" the Acquisition, again touting the consideration price as "*a premium of approximately: (1) 68% to the closing price of MINDBODY's Class A common stock on December 21, 2018, the last full trading day prior to public announcement of MINDBODY's entry into the Merger Agreement; and (2) 42% to the 30-day volume weighted average price, ending on December 21, 2018.*" The proxy not only failed to disclose the vast majority of discussions between Stollmeyer and Vista during the period August through October 2018, but also failed to include any information concerning the Company's positive fourth quarter 2018 results.

43. One week prior to the shareholder vote, Defendants issued a supplemental proxy on February 7, 2019. This supplemental proxy *for the first time* disclosed in full the interactions between Stollmeyer and Vista during August through October 2018:

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.

* * *

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 supplemental proxy also disclosed that certain MINDBODY senior executives had been engaging in discussions to secure post-Acquisition employment and equity participation once the Company was taken private:

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.

Finally, the supplemental proxy *still failed to inform* MINDBODY shareholders that the Company's fourth quarter results had "meaningfully" exceeded estimates.

**MINDBODY Shareholders Approve the Merger
Without Learning of the Company's Positive Fourth Quarter 2018 Results**

44. Based, in part, on Defendants' failure to disclose MINDBODY's favorable fourth quarter 2018 financial results, which would have raised questions regarding whether the Merger consideration was fair, MINDBODY shareholders as of the Record Date approved the take private transaction on February 14, 2019. The Company reported that the Merger had closed on February 15, 2019, and all MINDBODY shareholders received \$36.50 in exchange for their shares. Finally, on February 26, 2019, MINDBODY Class A common stock was deregistered pursuant to the Exchange Act and ceased to be publically traded.

45. Therefore, during the Class Period Defendants misstated and/or omitted material information concerning MINDBODY's financial results. Specifically, that: (1) Defendants had put scheme in place to depress the value of MINDBODY stock directly preceding the Merger offer manufactured through the negative guidance issued on November 6, 2018; (2), the "go-shop" provision in the Merger offer was designed to prevent any superior offers by other

potential purchasers; (3) at the behest of Vista, Defendants never released the Company's favorable fourth quarter 2018 results; and (4) as a result of the following, the Merger consideration was not fair, and any fairness opinions rendered by the independent proxy advisory firms were based off of incomplete information. Thus, MINDBODY shareholders were not paid the fair value of their shares in connection with the Merger, and suffered harm as a result of this alleged conduct in violation of the federal securities laws.

UNDISCLOSED ADVERSE FACTS

46. At all relevant times, the market for MINDBODY Class A common stock was open, well-developed and efficient. As a result of these materially false and/or misleading statements, and/or failures to disclose, MINDBODY's Class A common stock traded at artificially deflated prices during the Class Period. Plaintiff and other members of the Class sold the Company's Class A common stock stock relying upon the integrity of the market price of the Company's Class A common stock and market information relating to MINDBODY, and have been damaged thereby.

47. During the Class Period, Defendants materially misled the investing public, thereby purposely deflating the price of MINDBODY's Class A common stock, by publicly issuing false and/or misleading statements and/or omitting to disclose material facts necessary to make Defendants' statements, as set forth herein, not false and/or misleading. These statements and omissions were materially false and/or misleading in that they failed to disclose material adverse information and/or misrepresented the truth about MINDBODY's business, operations, and prospects as alleged herein.

48. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused, or were a substantial contributing cause, of the damages sustained by Plaintiff and other members of the Class. As

described herein, during the Class Period, Defendants made, or caused to be made a series of materially false and/or misleading statements about MINDBODY's financial well-being and prospects. These material misstatements and/or omissions had the cause and effect of creating in the market an unrealistically negative assessment of the Company and its financial well-being and prospects, thus causing the Company's Class A common stock to be undervalued and artificially deflated at all relevant times. Defendants' materially false and/or misleading statements during the Class Period resulted in Plaintiff and other members of the Class selling the Company's Class A common stock at artificially deflated prices, thus causing the damages complained of herein.

ADDITIONAL SCIENTER ALLEGATIONS

49. During the Class Period, as alleged herein, the Individual Defendants acted with scienter in that the Individual Defendants knew or were reckless as to whether the public documents and statements issued or disseminated in the name of the Company during the Class Period were materially false and misleading; knew or were reckless as to whether such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws.

50. The Individual Defendants permitted MINDBODY to release these false and misleading statements and failed to file the necessary corrective disclosures, which artificially deflated the value of the Company's Class A common stock.

51. As set forth herein, the Individual Defendants, by virtue of their receipt of information reflecting the true facts regarding MINDBODY, their control over, receipt, and/or modification of MINDBODY's allegedly materially misleading statements and omissions,

and/or their positions with the Company that made them privy to confidential information concerning MINDBODY, participated in the fraudulent scheme alleged herein.

52. The Individual Defendants are liable as participants in a fraudulent scheme and course of conduct that operated as a fraud or deceit on those who sold MINDBODY Class A common stock by disseminating materially false and misleading statements and/or concealing material adverse facts. The scheme deceived the investing public regarding MINDBODY's business, operations, and management and the intrinsic value of MINDBODY Class A common stock and caused Plaintiff and members of the Class to sell MINDBODY Class A common stock at artificially deflated prices.

LOSS CAUSATION/ECONOMIC LOSS

53. During the Class Period, as detailed herein, Defendants engaged in a scheme to deceive the market and a course of conduct that artificially deflated the price of MINDBODY's Class A common stock and operated a fraud or deceit on Class members by failing to disclose and misrepresenting the facts detailed herein. This course of conduct misled the Class members and caused them, in reliance on the misrepresentations and on the market price of MINDBODY's Class A common stock during the Class Period, to sell their shares at a depressed price. As a result of their sale of MINDBODY Class A common stock during the Class Period, Plaintiff and other members of the Class suffered economic loss, *i.e.*, damages, under the federal securities laws.

APPLICABILITY OF PRESUMPTION OF RELIANCE: FRAUD ON THE MARKET

54. To the extent that Defendants concealed or improperly failed to disclose material facts with regard to the Company, Plaintiff is entitled to a presumption of reliance in accordance with *Affiliated Ute Citizens v. United States*, 406 U.S. 128, 153 (1972).

55. Plaintiff is further entitled to rely upon the presumption of reliance established by the fraud-on-the-market doctrine in that, among other things:

- (a) Defendants made public misrepresentations or failed to disclose material facts during the Class Period;
- (b) the omissions and misrepresentations were material;
- (c) the Company's Class A common stock traded in an efficient market;
- (d) the misrepresentations alleged would tend to induce a reasonable investor to misjudge the value of the Company's Class A common stock; and
- (e) Plaintiff and other members of the Class transacted in MINDBODY Class A common stock between the time Defendants misrepresented or failed to disclose material facts and the time the true facts were disclosed, without knowledge of the misrepresented or omitted facts.

56. At all relevant times, the markets for MINDBODY Class A common stock were efficient for the following reasons, among others:

- (a) as a regulated issuer, MINDBODY filed periodic public reports with the SEC;
- (b) MINDBODY regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases on the major news wire services and through other wide-ranging public disclosures, such as communications with the financial press, securities analysts, and other similar reporting services;
- (c) MINDBODY was followed by several securities analysts employed by major brokerage firm(s) who wrote reports that were distributed to the sales force and certain

customers of their respective brokerage firm(s) and that were publicly available and entered the public marketplace; and

(d) MINDBODY Class A common stock was actively traded in an efficient market, namely the NASDAQ, under the ticker symbol “MB.”

57. As a result of the foregoing, the market for MINDBODY Class A common stock promptly digested current information regarding MINDBODY from all publicly available sources and reflected such information in MINDBODY’s stock price. Under these circumstances, all those who purchased or otherwise acquired MINDBODY Class A common stock during the Class Period suffered similar injury through sales of MINDBODY’s Class A common stock at artificially deflated prices and the presumption of reliance applies.

NO SAFE HARBOR

58. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this Complaint. The statements alleged to be false and misleading herein all relate to then-existing facts and conditions. In addition, to the extent certain of the statements alleged to be false may be characterized as forward looking, they were not identified as “forward-looking statements” when made and there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. In the alternative, to the extent that the statutory safe harbor is determined to apply to any forward-looking statements pleaded herein, Defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements were made, the speaker had actual knowledge that the forward-looking statement was materially false or misleading, and/or the forward-looking statement was authorized or approved by an executive officer of MINDBODY who knew that the statement was false when made.

CLASS ACTION ALLEGATIONS

59. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all former owners of MINDBODY Class A common stock who sold shares, and were damaged thereby, during the period from November 7, 2018 through February 15, 2019, both dates inclusive (the “Class”). Excluded from the Class are: Defendants; the Excluded D&Os; members of Defendants’ and the Excluded D&Os’ immediate families; the subsidiaries and affiliates of the Company, including the Company’s employee retirement and benefit plan(s) and their participants or beneficiaries, to the extent they made purchases through such plan(s); any entity in which Defendants or the Excluded D&Os have or had a controlling interest; and the legal representatives, heirs, successors or assigns of any excluded person or entity; and anyone who filed a petition or pursued appraisal rights of their MINDBODY Class A common stock pursuant to Delaware law.

60. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class which predominate over questions which may affect individual Class members include:

- (a) Whether the Exchange Act was violated by Defendants;
- (b) Whether Defendants omitted and/or misrepresented material facts;
- (c) Whether Defendants’ statements omitted material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;
- (d) Whether Defendants knew or recklessly disregarded that their statements were false and misleading;
- (e) Whether the price of MINDBODY Class A common stock was artificially deflated; and

(f) The extent of the damage sustained by Class members and the appropriate measure of damages.

61. Plaintiff's claims are typical of those of the Class because Plaintiff and the Class sustained damages from Defendants' wrongful conduct.

62. Plaintiff will adequately protect the interests of the Class and has retained counsel experienced in securities class action litigation. Plaintiff has no interests that conflict with those of the Class.

63. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

COUNT I

For Violation of Section 10(b) of the Exchange Act and Rule 10b-5 Against All Defendants

64. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

65. During the Class Period, Defendants disseminated or approved the false statements specified above, which they knew or recklessly disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

66. Defendants violated Section 10(b) of the Exchange Act and Rule 10b-5 in that they:

(a) Employed devices, schemes, and artifices to defraud;

(b) Made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) Engaged in acts, practices, and a course of business that operated as a fraud or deceit upon Plaintiff and others similarly situated in connection with their transactions in MINDBODY Class A common stock during the Class Period.

67. Plaintiff and the Class have suffered damages in that, as a result of Defendants' wrongful conduct alleged herein, they sold MINDBODY Class A common stock at artificially deflated prices. Plaintiff and the Class would not have sold MINDBODY Class A common stock at the prices they did, or at all, if they had been aware that the market prices had been artificially and falsely deflated by Defendants' misleading statements.

68. As a direct and proximate result of these Defendants' wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their sales of MINDBODY Class A common stock during the Class Period.

COUNT II

For Violation of Section 20(a) of the Exchange Act Against the Individual Defendants

69. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

70. The Individual Defendants acted as controlling persons of MINDBODY within the meaning of Section 20(a) of the Exchange Act. By virtue of their positions and their power to control public statements about MINDBODY, the Individual Defendants, as culpability participants, had the power and ability to control the actions of MINDBODY and its employees. By reason of such conduct, Defendants are liable pursuant to Section 20(a) of the Exchange Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- A. Determining that this action is a proper class action, designating Plaintiff as Lead Plaintiff and certifying Plaintiff as a Class representative under Rule 23 of the Federal Rules of Civil Procedure and Plaintiff's counsel as Lead Counsel;
- B. Awarding compensatory damages in favor of Plaintiff and the other Class members against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;
- C. Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and
- D. Awarding such equitable/injunctive or other relief as deemed appropriate by the Court.

JURY DEMAND

Plaintiff demands a trial by jury.

DATED: September 6, 2019

Respectfully submitted,

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