



GRANTED WITH MODIFICATIONS

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Case No. 2019-0442-KSJM



EXHIBIT

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE MINDBODY, INC.,
STOCKHOLDER LITIGATION

CONSOLIDATED
C.A. No. 2019-0442-KSJM

[PROPOSED] SCHEDULING ORDER

WHEREAS, a stockholder action is pending in this Court, entitled *In re Mindbody, Inc. Stockholder Litigation*, Consolidated C.A. No. 2019-0442-KSJM (the “Action”);

WHEREAS, by Order dated December 17, 2021, this Court certified the Action as a non-opt out class action pursuant to Court of Chancery Rules 23(a), 23(b)(1) and 23(b)(2) on behalf of a Class consisting of all holders of Mindbody common stock as of the closing of the merger with affiliates of Vista on February 15, 2019 (“Closing”), whether beneficial or of record, including their legal representatives, heirs, successors in interest, transferees and assignees of all such foregoing holders, but excluding (i) defendants in this Action, (ii) any person who is, or was at the time of Closing, an officer, director, or partner of Mindbody, Vista, or the IVP Entities, (iii) the immediate family members, meaning the parents, spouse, siblings, or children, of any of the foregoing, (iv) any trusts, estates, entities, or accounts that held Mindbody shares for the benefit of any of the foregoing, and

(v) the legal representatives, heirs, successors in interest, successors, transferees, and assigns of the foregoing.

WHEREAS, (i) Lead Plaintiffs Luxor Capital Partners, LP, Luxor Capital Partners Offshore Master Fund, LP, Luxor Wavefront, LP, and Lugard Road Capital Master Fund, LP (collectively, “Lead Plaintiffs” or “Luxor”), on behalf of themselves and the Class; and (ii) defendants Eric Liaw (“Liaw”) and Institutional Venture Partners XIII, L.P. and Institutional Venture Management XIII LLC (the “IVP Entities” and, together with Liaw, the “Settling Defendants”) (Lead Plaintiffs and Settling Defendants, together, the “Settling Parties”) have determined to settle all claims asserted against the Settling Defendants in the Action with prejudice on the terms and conditions set forth in the Stipulation and Agreement of Settlement, Compromise, and Release With Defendants Liaw and IVP Entities entered into by the Settling Parties, dated February 26, 2022 (the “Stipulation”) subject to the approval of this Court (the “Settlement”);

WHEREAS, the Stipulation (and the Settlement thereunder) does not release, resolve, compromise, settle, or discharge any claims or dissenter rights (including appraisal under Section 262 of the Delaware General Corporation Law (DGCL)) brought by Lead Plaintiffs against non-settling defendants Richard Stollmeyer, MINDBODY, Inc. (“Mindbody”), Vista Equity Partners Management, LLC (“Vista”), Torreys Parent, LLC, and Torreys Merger Sub, Inc. (together with their

parents, affiliates, subsidiaries, officers, directors (except for Settling Defendant Liaw), predecessors, successors, and assigns, the “Non-Settling Defendants”);

WHEREAS, in accordance with the Stipulation, Lead Plaintiffs and the Settling Defendants have made an application, pursuant to Court of Chancery Rule 23, for entry of a scheduling order in accordance with the Stipulation, approving the form and content of the notice of the Settlement to the Class, and scheduling the date and time for the Settlement Hearing; and

WHEREAS, the Court having read and considered the Stipulation and the exhibits attached thereto; the Stipulation being sufficient to warrant notice to the Class; and all Settling Parties having consented to the entry of this Order.

NOW THEREFORE, IT IS HEREBY ORDERED, this ___ day of _____, 2022, as follows:

1. **Definitions**: Unless otherwise defined herein, capitalized terms used herein shall have the same meanings given to them in the Stipulation.

2. **Jurisdiction**: The Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement, as well as personal jurisdiction over the Settling Parties and each of the Class Members.

3. **Settlement Hearing**: The Court will hold a hearing (the “Settlement Hearing”) on _____, 2022, at __:__.m., either in person at the Court of Chancery of the State of Delaware, New Castle County, Leonard L.

Williams Justice Center, 500 North King Street, Wilmington, Delaware 19801, or by telephone or videoconference (in the discretion of the Court), to determine, among other things: (i) whether the proposed Settlement on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate to the Class, and should be approved by the Court; (ii) whether a Judgment, substantially in the form attached as Exhibit D to the Stipulation, should be entered dismissing the Action with prejudice as against the Settling Defendants; (iii) whether the proposed Plan of Allocation of the Net Settlement Fund is fair and reasonable, and should therefore be approved; (iv) whether the application by Co-Lead Counsel for an award of attorneys' fees and Litigation Expenses in connection with the Settlement should be approved; and (v) any other matters that may properly be brought before the Court in connection with the Settlement. Notice of the Settlement and the Settlement Hearing shall be given to Class Members as set forth in paragraph 7 of this Order.

4. The Court reserves the right to adjourn and reconvene the Settlement Hearing, including consideration of the proposed Plan of Allocation and Co-Lead Counsel's fee and expense application, without further notice to the Class other than by announcement at the Settlement Hearing or any adjournment thereof.

5. The Court reserves the right to approve the Settlement at or after the Settlement Hearing with such modifications as may be consented to by the Settling Parties and without further notice to the Class.

6. The Court may decide to hold the Settlement Hearing by telephone or video conference without further notice to the Class. Any Class Member (or his, her, or its counsel) who wishes to appear at the Settlement Hearing should consult the Court's docket and/or the Settlement website for any change in date, time, or format of the hearing.

7. **Retention of Settlement Administrator and Manner of Giving**

Notice: Co-Lead Counsel are hereby authorized to retain JND Legal Administration as the settlement administrator (the "Settlement Administrator") to provide notice to the Class and administer the Settlement, including the allocation and distribution of the Settlement Fund. Notice of the Settlement and the Settlement Hearing shall be given as follows:

(a) Co-Lead Counsel shall make reasonable efforts to obtain from Mindbody, in an electronically-searchable form, such as Excel, the stockholder register from Mindbody's transfer agent containing the names, mailing addresses, and, if available, email addresses for all registered holders of Mindbody common stock as of the Closing of the Merger on February 15, 2019 (the "Record Holder List");

(b) Beginning not later than fifteen (15) business days after the later of (i) the date of entry of this Scheduling Order and (ii) the date of Co-Lead Counsel's receipt of the Record Holder List (such date that is fifteen (15) business

days after the later of those dates, the “Notice Date”), the Settlement Administrator shall cause a copy of the Notice, substantially in the form attached to the Stipulation as Exhibit B, to be mailed by First-Class U.S. Mail, or emailed, to potential Class Members at the addresses set forth in the Record Holder List, or who otherwise may be identified through further reasonable effort;

(c) Not later than the Notice Date, the Settlement Administrator shall post a copy of the Notice on the website established for the Settlement;

(d) Not later than ten (10) business days after the Notice Date, the Settlement Administrator shall cause the Summary Notice, substantially in the form attached to the Stipulation as Exhibit C, to be published once in *Investor’s Business Daily*; and

(e) Not later than seven (7) calendar days prior to the Settlement Hearing, Co-Lead Counsel shall serve on Settling Defendants’ Counsel and file with the Court proof, by affidavit or declaration, of such mailing and publication.

8. **Approval of Form and Content of Notice:** The Court: (a) approves, as to form and content, the Notice, attached to the Stipulation as Exhibit B, and the Summary Notice, attached to the Stipulation as Exhibit C, and (b) finds that the mailing of the Notice and publication of the Summary Notice in the manner and form set forth in paragraph 7 of this Order: (i) is the best notice practicable under the circumstances; (ii) constitutes notice that is reasonably calculated, under the

circumstances, to apprise Class Members of the pendency of the Action, the effect of the proposed Settlement (including the Releases to be provided thereunder), proposed Plan of Allocation, Co-Lead Counsel's application for an award of attorneys' fees and Litigation Expenses in connection with the Settlement, and Class Members' rights to object to any aspect of the Settlement, the Plan of Allocation, and/or Co-Lead Counsel's fee and expense application, and to appear at the Settlement Hearing; (iii) constitutes due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (iv) satisfies the requirements of Court of Chancery Rule 23, the United States Constitution (including the Due Process Clause), and all other applicable law and rules. The date and time of the Settlement Hearing shall be included in the Notice and Summary Notice before they are mailed and published, respectively.

9. **Nominees Procedures:** Brokers and other nominees that held shares of Mindbody common stock as of the Closing of the Merger on February 15, 2019 as record holders for the benefit of another person or entity shall be requested to either: (i) within seven (7) calendar days of receipt of the Notice, request from the Settlement Administrator sufficient copies of the Notice to forward to all such beneficial owners and within seven (7) calendar days of receipt of those Notices forward them to all such beneficial owners; or (ii) within seven (7) calendar days of receipt of the Notice, provide a list of the names, addresses, and, if available, email

addresses of all such beneficial owners to the Settlement Administrator, in which event the Settlement Administrator shall promptly mail the Notice to such beneficial owners. Upon full compliance with this Order, such nominees may seek reimbursement of their reasonable expenses actually incurred in complying with this Order by providing the Settlement Administrator with proper documentation supporting the expenses for which reimbursement is sought.

10. Brokers and other nominees that hold securities in their name on behalf of a beneficial owner are hereby ordered to provide information deemed necessary by the Settlement Administrator to assist eligible Class Members in connection with determining their entitlement to the Net Settlement Fund and to distribute the Net Settlement Fund consistent with the terms of the Plan of Allocation (or such other plan of allocation approved by the Court).

11. **Appearance at Settlement Hearing and Objections:** Unless the Court orders otherwise, any Class Member may enter an appearance in the Action, at his, her, or its own expense, individually or through counsel of his, her, or its own choice, by filing with the Register in Chancery and delivering a notice of appearance to Co-Lead Counsel and Settling Defendants' Counsel, at the addresses set forth in paragraph 12 below, such that it is received no later than fourteen (14) calendar days prior to the Settlement Hearing, or as the Court may otherwise direct. Any Class Member who does not enter an appearance will be represented by Co-Lead Counsel,

and shall be deemed to have waived and forfeited any and all rights he, she, or it may otherwise have to appear separately at the Settlement Hearing.

12. Any Class Member may file a written objection to the proposed Settlement, Plan of Allocation, and/or Co-Lead Counsel’s application for an award of attorneys’ fees and Litigation Expenses in connection with the Settlement (“Objector”), if he, she, or it has any cause, why the proposed Settlement, Plan of Allocation, and/or the application for an award of attorneys’ fees and Litigation Expenses should not be approved; *provided, however*, that, unless otherwise directed by the Court for good cause shown, no Objector shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement, Plan of Allocation, and/or the application for an award of attorneys’ fees and Litigation Expenses unless that person or entity has filed a written objection with the Register in Chancery, Court of Chancery of the State of Delaware, New Castle County, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, Delaware 19801 (electronically by File & Serve*Xpress*, by hand, by first-class U.S. Mail, or by express service) and serves copies of the objection upon each of the following counsel at the following addresses such that they are received no later than fourteen (14) calendar days prior to the Settlement Hearing, with copies also emailed to christopher.orrigo@blbglaw.com, cfoulds@friedlandergorris.com, and slightdale@cooley.com:

Co-Lead Counsel: Christopher J. Orrico, Bernstein Litowitz Berger & Grossmann LLP, 1251 Avenue of the Americas, New York, New York 10020; and Christopher M. Foulds, Friedlander & Gorris, P.A., 1201 N. Market St., Suite 2200, Wilmington, Delaware 19801.

Settling Defendants' Counsel: Sarah Lightdale, Cooley LLP, 55 Hudson Yards, New York, New York 10001-2157.

13. Any objections must: (i) identify the case name and civil action number, “*In re Mindbody, Inc. Stockholder Litigation*, Consolidated C.A. No. 2019-0442-KSJM”; (ii) state the name, address, and telephone number of the Objector and, if represented by counsel, the name, address, and telephone number of the Objector’s counsel; (iii) be signed by the Objector; (iv) contain a specific, written statement of the objection(s) and the specific reason(s) for the objection(s), including any legal and evidentiary support the Objector wishes to bring to the Court’s attention, and if the Objector has indicated that he, she, or it intends to appear at the Settlement Hearing, the identity of any witnesses the Objector may call to testify and any exhibits the Objector intends to introduce into evidence at the hearing; and (v) include documentation sufficient to prove that the Objector is a member of the Class (i.e., held shares of Mindbody common stock as of the Closing of the Merger on February 15, 2019). Documentation establishing that an Objector is a member of the Class must consist of copies of monthly brokerage account statements or an

authorized statement from the Objector's broker containing the transactional and holding information found in an account statement.

14. Unless the Court orders otherwise, any Class Member who or which does not make his, her, or its objection in the manner provided herein shall: (i) be deemed to have waived and forfeited his, her, or its right to object to any aspect of the proposed Settlement, Plan of Allocation, or Co-Lead Counsel's application for an award of attorneys' fees and Litigation Expenses in connection with the Settlement; (ii) be forever barred and foreclosed from objecting to the fairness, reasonableness, or adequacy of the Settlement, the Judgment to be entered approving the Settlement, the Plan of Allocation, or Co-Lead Counsel's application for an award of attorneys' fees and Litigation Expenses; and (iii) be deemed to have waived and forever barred and foreclosed from being heard, in this or any other proceeding, with respect to any matters concerning the Settlement, the Plan of Allocation, or the requested or awarded attorneys' fees or Litigation Expenses.

15. **Stay and Temporary Injunction:** Pursuant to the Court's February 8, 2022 Order, Lead Plaintiffs' claims against the Settling Defendants were severed from the claims asserted by Lead Plaintiffs against the Non-Settling Defendants, and Lead Plaintiffs' claims against the Settling Defendants were stayed pending final disposition of an application to approve the proposed Settlement.

16. Pending the Effective Date, (i) Plaintiffs and all other Class Members are barred and enjoined from commencing, maintaining, prosecuting, instigating, or in any way participating in the commencement, continuation, or prosecution of any action asserting any Released Plaintiffs' Claims against the Released Settling Defendants' Persons; and (ii) the Settling Defendants are barred and enjoined from commencing, maintaining, prosecuting, instigating, or in any way participating in the commencement, continuation, or prosecution of any action asserting any Released Settling Defendants' Claims against the Released Plaintiffs' Persons.

17. **Use of this Order:** Neither this Order, the Term Sheet, the Stipulation (whether or not consummated), including the Exhibits thereto and the Plan of Allocation contained therein (or any other plan of allocation that may be approved by the Court), the negotiations leading to the execution of the Term Sheet and the Stipulation, nor any proceedings taken pursuant to or in connection with the Term Sheet, the Stipulation, and/or approval of the Settlement (including any arguments proffered in connection therewith): (i) shall be offered against any of the Released Settling Defendants' Persons as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Released Defendants' Persons with respect to the truth of any fact alleged by Lead Plaintiffs or the validity of any claim that was or could have been asserted or the deficiency of any defense that has been or could have been asserted in this Action or in any other

litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Released Settling Defendants' Persons or in any way referred to for any other reason as against any of the Released Settling Defendants' Persons, in any arbitration proceeding or other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation; (ii) shall be offered against any of the Released Plaintiffs' Persons, as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Released Plaintiffs' Persons that any of their claims are without merit, that any of the Released Settling Defendants' Persons had meritorious defenses, or that damages recoverable under the Complaint would not have exceeded the Settlement Amount or with respect to any liability, negligence, fault, or wrongdoing of any kind, or in any way referred to for any other reason as against any of the Released Plaintiffs' Persons, in any arbitration proceeding or other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation; or (iii) shall be construed against any of the Released Persons as an admission, concession, or presumption that the consideration to be given under the Stipulation represents the amount which could be or would have been recovered after trial; *provided, however*, that if the Stipulation is approved by the Court, the Settling Parties and the Released Persons and their respective counsel

may refer to the Stipulation to effectuate the protections from liability granted thereunder or otherwise to enforce the terms of the Settlement.

18. **Settlement Fund:** The contents of the Settlement Fund that will be held in the Escrow Account shall be deemed and considered to be *in custodia legis* of the Court, and shall remain subject to the exclusive jurisdiction of the Court, until such time as they shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

19. **Notice and Administration Costs:** All Notice and Administration Costs shall be paid or reimbursed out of the Settlement Fund in accordance with the terms of the Stipulation without further order of the Court.

20. **Taxes:** Co-Lead Counsel are authorized and directed to prepare any tax returns and any other tax reporting form for or in respect to the Settlement Fund, to pay from the Settlement Fund any Taxes owed with respect to the Settlement Fund, and to otherwise perform all obligations with respect to Taxes and any reporting or filings in respect thereof without further order of the Court in a manner consistent with the provisions of the Stipulation.

21. **Termination of Settlement:** If the Settlement is terminated as provided in the Stipulation or the Effective Date of the Settlement otherwise fails to occur, this Order shall be vacated, rendered null and void, and be of no further force and effect, except as otherwise provided by the Stipulation; this Order shall be

without prejudice to the rights of the Settling Parties or the Class; and Lead Plaintiffs and Settling Defendants shall revert to their respective positions in the Action as of immediately prior to the execution of the Term Sheet on January 18, 2022.

22. **Supporting Papers:** Co-Lead Counsel shall file and serve the opening papers in support of the proposed Settlement, Plan of Allocation, and Co-Lead Counsel's application for an award of attorneys' fees and Litigation Expenses in connection with the Settlement no later than twenty-one (21) calendar days prior to the Settlement Hearing. Any objections to the Settlement, the Plan of Allocation, and/or the application for an award of attorneys' fees and Litigation Expenses shall be filed and served no later than fourteen (14) calendar days prior to the Settlement Hearing. If reply and/or response papers are necessary, they are to be filed and served by the Settling Parties no later than seven (7) calendar days prior to the Settlement Hearing.

23. **Retention of Jurisdiction:** The Court retains exclusive jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

24. **Extension of Deadlines:** The Court may, for good cause shown, extend any of the deadlines set forth in this Order without further notice to the Class.

Chancellor Kathaleen St. J. McCormick

This document constitutes a ruling of the court and should be treated as such.

Court: DE Court of Chancery Civil Action

Judge: Kathaleen St Jude McCormick

File & Serve

Transaction ID: 67349508

Current Date: Mar 28, 2022

Case Number: 2019-0442-KSJM

Case Name: STAYED/CONF ORD - CONS W/ 2019-0061-KSJM - IN RE MINDBODY, INC.,
STOCKHOLDERS LITIGATION

Court Authorizer: Kathaleen St Jude McCormick

Court Authorizer

Comments:

The settlement hearing will be held in-person on June 8, 2022, at 1:30 p.m.

/s/ Judge Kathaleen St Jude McCormick