

MINDBODY, Inc.
Form DEFA14A
January 29, 2019

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT

**Pursuant to Section 13 or 15(d) of
the Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported)

January 24, 2019

MINDBODY, Inc.

(Exact name of registrant as specified in its charter)

Delaware
**(State or other jurisdiction of
incorporation)**

001-37453
(Commission File Number)

20-1898451
(IRS Employer Identification No.)

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4051 Broad Street, Suite 220

San Luis Obispo, California 93401

(Address of principal executive offices, including zip code)

(877) 755-4279

(Registrant's telephone number, including area code)

Not Applicable

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 8.01 Other Events.

As previously announced, on December 23, 2018, MINDBODY, Inc., a Delaware corporation (the *Company* or *MINDBODY*), entered into an Agreement and Plan of Merger (the *Merger Agreement*) with Torreys Parent, LLC, a Delaware limited liability company (*Parent*), and Torreys Merger Sub, Inc., a Delaware corporation and wholly owned subsidiary of Parent (*Merger Sub*), providing for the merger of Merger Sub with and into the Company (the *Merger*), with the Company surviving the Merger as a wholly owned subsidiary of Parent. On January 23, 2019, the Company filed with the Securities and Exchange Commission (the *SEC*) a definitive proxy statement (the *Definitive Proxy Statement*) with respect to the special meeting of MINDBODY stockholders scheduled to be held on February 14, 2019 in connection with the Merger (the *Special Meeting*).

Litigation Related to the Merger

In connection with the Merger, after the Definitive Proxy Statement was filed, four stockholder class action lawsuits have been filed:

- (i) in the United States District Court of Delaware, captioned *Sabatini v. MINDBODY, Inc. et al.*, Case No. 1:19-cv-00138-UNA (the *Sabatini Complaint*);
- (ii) in California Superior Court of San Luis Obispo County, captioned *Schmit v. MINDBODY, Inc. et al.*, Case No. 19CV-0043 (the *Schmit Complaint*);
- (iii) in the United States District Court of Central District of California, captioned *Tran v. MINDBODY, Inc. et al.*, Case No. 2:19-cv-00638 (the *Tran Complaint*); and
- (iv) in the Court of Chancery of Delaware, captioned *Ryan v. MINDBODY, Inc. et al.*, Case No. 2019-0061 (the *Ryan Complaint*, and together with the Sabatini Complaint, Schmit Complaint, and Tran Complaint, the *Complaints*)

The Complaints generally allege, among other things, that MINDBODY and the members of its Board of Directors purportedly omitted material information from the Proxy Statement and that the Merger and the process that led to it was procedurally and substantively flawed. The Complaints also allege claims against the members of the Company's Board of Directors and, in the case of the Ryan Complaint, Vista Equity Partners Management, LLC. The Complaints seek, among other things, additional disclosure of facts relating to the Merger and/or injunctive relief. Additional similar lawsuits may be filed in the future. The Company believes that the plaintiffs' allegations in the Complaints lack merit and will vigorously defend against these and any subsequently filed similar actions. If additional similar complaints are filed, absent new or different allegations that are material, the Company will not necessarily disclose such additional filings. The foregoing description is qualified in its entirety by reference to the Complaints which are attached hereto as Exhibits 99.1, 99.2, 99.3 and 99.4 and incorporated by reference herein.

Additional Information and Where to Find It

In connection with the proposed Merger, MINDBODY has filed with the Securities and Exchange Commission (the *SEC*) and furnished to its stockholders a definitive proxy statement on Schedule 14A, as well as other relevant documents concerning the proposed transaction. Promptly after filing its definitive proxy statement with the SEC, MINDBODY mailed the definitive proxy statement and a proxy card to each stockholder of MINDBODY entitled to vote at the special meeting relating to the proposed transaction. The proxy statement contains important information

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

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

Participants in the Solicitation

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

Notice Regarding Forward-Looking Statements

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

Item 9.01. Financial Statements and Exhibits.

Exhibit No.	Description
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- 99.1 Complaint, Sabatini v. MINDBODY, Inc. et al., Case No. 1:19-cv-00138-UNA, filed on January 24, 2019
- 99.2 Complaint, Schmit v. MINDBODY, Inc. et al., Case No. 19CV-0043, filed on January 24, 2019
- 99.3 Complaint, Tran v. MINDBODY, Inc. et al., Case No. 2:19-cv-00638, filed on January 28, 2019
- 99.4 Complaint, Ryan v. MINDBODY, Inc. et al., Case No. 2019-0061, filed on January 29, 2019

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

MINDBODY, INC.

By: /s/ Brett White
Brett White

**Chief Financial Officer and Chief
Operating Officer**

Date: January 29, 2019