

LUBYS INC
Form PRER14A
December 19, 2018

PRELIMINARY COPY - SUBJECT TO COMPLETION - DATED DECEMBER 19, 2018

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14A

**Proxy Statement pursuant to Section 14(a) of the
Securities Exchange Act of 1934
(Amendment No. 2)**

Filed by the Registrant Filed by a Party other than the Registrant

Check the appropriate box:

Preliminary Proxy Statement
Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
Definitive Proxy Statement
Definitive Additional Materials
Soliciting Material under Rule 14a-12

Luby's Inc.

(Name of Registrant as Specified in Its Charter)

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

Payment of Filing Fee (Check the appropriate box):

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(1) Amount Previously Paid:

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

(3) Filing Party:

(4) Date Filed:

Luby's, Inc.
13111 Northwest Freeway
Suite 600
Houston, Texas 77040
713-329-6800
www.lubysinc.com

December [], 2018

Dear Fellow Shareholder:

It is my pleasure to invite you to attend the Annual Meeting of Shareholders of Luby's, Inc. to be held on [], 2019, at [] a.m., Houston time, at [] (the "Annual Meeting"). All record holders of outstanding shares of Luby's, Inc. (the "Company") common stock at the close of business on [], [] are eligible to vote on matters brought before the Annual Meeting.

The Annual Meeting will be held for the following purposes:

- (1) Elect nine directors to serve until the 2020 Annual Meeting of Shareholders of the Company;
- (2) Ratify the appointment of Grant Thornton LLP as the Company's independent registered public accounting firm for the fiscal year ending August 28, 2019;
- (3) Conduct an advisory vote approving the compensation of the Company's Named Executive Officers;
- (4) Approve an amendment to the Company's Amended and Restated Certificate of Incorporation to eliminate the supermajority voting requirement for shareholders to remove directors; and
- (5) Act upon such other matters as may properly come before the meeting or any adjournment or postponement thereof.

As you may be aware, an affiliate of Bandera Partners LLC ("Bandera") has provided notice to the Company of its intent to nominate a slate of six candidates for election as directors at the Annual Meeting, and has filed proxy materials soliciting proxies for the election of four director nominees at the Annual Meeting in opposition to the nominees proposed by the Board of Directors of the Company. You may receive solicitation materials from Bandera, including proxy statements and proxy cards. **The Board of Directors does NOT endorse any of Bandera's nominees and unanimously recommends that you vote "FOR" the election of each of the nominees proposed by the Board on the WHITE proxy card.**

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It is important that your shares be represented at the Annual Meeting whether or not you are personally able to attend. Even if you plan to attend the Annual Meeting, we hope that you will read the enclosed Proxy Statement and we urge you to promptly vote by completing, signing and dating the WHITE proxy card and mailing it in the enclosed, postage pre-paid envelope. You may also vote by telephone or the Internet by following the instructions on the WHITE proxy card. Please note that if you hold your shares as a beneficial owner through a bank or broker and you do not indicate on your proxy card your preferences with respect to any given proposal, your bank or broker will not be permitted to vote on your behalf on such proposal.

Thank you for your support.

Sincerely,

/s/ CHRISTOPHER J. PAPPAS

Christopher J. Pappas

President and Chief Executive Officer

PRELIMINARY COPY - SUBJECT TO COMPLETION - DATED DECEMBER 19, 2018

LUBY'S, INC.

13111 Northwest Freeway, Suite 600

Houston, Texas 77040

NOTICE OF ANNUAL MEETING OF SHAREHOLDERS TO BE HELD

[], 2019

NOTICE IS HEREBY GIVEN that the Board of Directors (the "Board") of Luby's, Inc., a Delaware corporation (the "Company"), has called the 2019 Annual Meeting of Shareholders (the "Annual Meeting") of the Company, which will be held at [], on [], 2019, at [] a.m., Houston time, for the following purposes:

- (1) Elect nine directors to serve until the 2020 Annual Meeting of Shareholders of the Company;
- (2) Ratify the appointment of Grant Thornton LLP as the Company's independent registered public accounting firm for the fiscal year ending August 28, 2019;
- (3) Conduct an advisory vote approving the compensation of the Company's Named Executive Officers;
- (4) Approve an amendment of the Company's Amended and Restated Certificate of Incorporation to eliminate the supermajority voting requirement for shareholders to remove directors; and
- (5) Act upon such other matters as may properly come before the meeting or any adjournment or postponement thereof.

The Board has determined that shareholders of record at the close of business on [], [], will be entitled to vote at the Annual Meeting. A complete list of shareholders of record entitled to vote at the Annual Meeting will be on file at the Company's corporate office at 13111 Northwest Freeway, Suite 600, Houston, Texas, for a period of ten days prior to the Annual Meeting. During such time, the list will be open to the examination of any shareholder during ordinary business hours for any purpose germane to the Annual Meeting.

Your vote is important. You may vote in any one of the following ways:

**Use the toll-free telephone number [] from the U.S. or Canada;
Use the Internet website <https://www.proxyvoting.com/LUB>; or
Mark, sign, date and promptly return the enclosed **WHITE** proxy card in the postage-paid envelope.**

Shareholders who do not expect to attend the Annual Meeting in person are urged to review the enclosed proxy statement for specific voting instructions and to choose the method they prefer for casting their votes.

As you may be aware, an affiliate of Bandera Partners LLC (“Bandera”) has provided notice to the Company of its intent to nominate a slate of six nominees (the “Bandera Nominees”) for election as directors at the Annual Meeting, and has filed proxy materials soliciting proxies for the election of four director nominees at the Annual Meeting in opposition to the nominees proposed by the Board. You may receive solicitation materials from Bandera, including proxy statements and [gold] proxy cards. We urge you to disregard such materials. We are not responsible for the accuracy of any information provided by or relating to Bandera or its nominees contained in solicitation materials filed or disseminated by or on behalf of Bandera or any other statements Bandera or its representatives may make.

The Board does NOT endorse any Bandera Nominee and unanimously recommends that you vote “FOR” the election of each of the nominees proposed by the Board on the WHITE proxy card. The Board strongly urges you not to sign or return any proxy card sent to you by Bandera. If you have previously submitted a proxy card sent to you by Bandera, you can revoke that proxy by following the instructions on the enclosed **WHITE** proxy card to vote over the Internet or by telephone or by completing, signing and dating the enclosed **WHITE** proxy card and mailing it in the postage pre-paid envelope provided. Only your latest dated proxy will count. Any proxy may be revoked at any time prior to its exercise at the Annual Meeting as described in the accompanying Proxy Statement.

It is extremely important that your shares be represented and voted at the Annual Meeting.

Whether or not you plan to attend the Annual Meeting, please vote as soon as possible. We urge you to date, sign and return the WHITE proxy card in the envelope provided to you, or to use the telephone or Internet method of voting described on your WHITE proxy card, even if you plan to attend the Annual Meeting, so that if you are unable to attend the Annual Meeting, your shares can be voted. Voting now will not limit your right to change your vote or to attend the Annual Meeting. If you should be present at the meeting and desire to vote in person, you may withdraw your proxy. If your shares are held in the name of a broker, bank or other holder of record, follow the voting instructions you received from the holder of record in order to vote your shares.

We appreciate your continued interest in the Company. We look forward to greeting in person as many of our shareholders as possible at the Annual Meeting. If you have any questions or require any assistance with voting your shares, or if you need additional copies of the proxy materials, please contact our proxy solicitation firm, Morrow Sodali LLC, at:

Morrow Sodali LLC

509 Madison Avenue

Suite 1206

New York, NY 10022

Call Toll-Free (800) 662-5200

or

E-mail: LUB@morrowsodali.com

By Order of the Board of Directors of Luby's, Inc.

/s/ PETER TROPOLI

General Counsel and Corporate Secretary

Houston, Texas

December [], 2018

IMPORTANT NOTICE REGARDING THE AVAILABILITY OF PROXY MATERIALS:

The Notice of Annual Meeting of Shareholders, the Proxy Statement for the Annual Meeting, and the Company's Annual Report for the fiscal year ended August 29, 2018 are or will be available electronically at <http://www.lubysinc.com/investors/filings>.

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LUBY'S, INC.

13111 Northwest Freeway, Suite 600

Houston, Texas 77040

PROXY STATEMENT

This proxy statement (including all annexes attached hereto, this "Proxy Statement") and the accompanying **WHITE** proxy card are being provided to shareholders in connection with the solicitation of proxies by the Board of Directors (the "Board") of Luby's, Inc., a Delaware corporation (the "Company"), for use at the Annual Meeting of Shareholders of the Company to be held on [], [], 2019 (including any adjournment or postponement thereof (the "Annual Meeting")). This Proxy Statement is dated [] and the accompanying **WHITE** proxy card are first being mailed to shareholders on or about [], [].

We have elected to provide access to our proxy materials both by sending you this full set of proxy materials, including a Notice of Annual Meeting and a **WHITE** proxy card, and by notifying you of the availability of our proxy materials on the Internet. The Notice of Annual Meeting, Proxy Statement, **WHITE** proxy card and Annual Report to Shareholders for the Company's fiscal year ended August 29, 2018 are available at <http://www.lubysinc.com/investors/filings>.

The purposes of the Annual Meeting are:

- (1) Elect nine directors to serve until the 2020 Annual Meeting of Shareholders of the Company;
- (2) Ratify the appointment of Grant Thornton LLP as the Company's independent registered public accounting firm for the fiscal year ending August 28, 2019;
- (3) Conduct an advisory vote approving the compensation of the Company's Named Executive Officers;
- (4) Approve an amendment of the Company's Amended and Restated Certificate of Incorporation to eliminate the supermajority voting requirement for shareholders to remove directors; and

- (5) Act upon such other matters as may properly come before the meeting or any adjournment or postponement thereof.

Under our governing documents, no other business may be raised by shareholders at the Annual Meeting unless proper and timely notice has been given to us by the shareholders seeking to bring such business before the meeting. As of the date of this Proxy Statement, the Board knows of no business other than that set forth above to be transacted at the annual meeting, but if other matters requiring a vote do arise, it is the intention of the persons named in the WHITE proxy card, to whom you are granting your proxy and to whom such proxy confers discretionary authority to vote on any unanticipated matters, to vote in accordance with their best judgment on such matters.

YOUR VOTE IS VERY IMPORTANT. An affiliate of Bandera Partners LLC (“Bandera”) has provided notice to the Company of its intent to nominate a slate of six nominees (the “Bandera Nominees”) for election as directors at the Annual Meeting, and has filed proxy materials soliciting proxies for the election of four director nominees at the Annual Meeting in opposition to the nominees proposed by the Board. The Board does NOT endorse any Bandera Nominee and unanimously recommends that you vote “FOR” the election of each of the nominees proposed by the Board on the WHITE proxy card. The Board further urges you to discard any and all proxy cards provided to you by Bandera.

QUESTIONS AND ANSWERS RELATED TO THE SOLICITATION

Solicitation

Why am I receiving these materials?

The Board and the other participants in this proxy solicitation (as detailed elsewhere in this Proxy Statement) are soliciting proxies in connection with the Annual Meeting. You are receiving this Proxy Statement as a shareholder of the Company. We request that you promptly use the enclosed **WHITE** proxy card to vote, by telephone, Internet or mail, in the event you desire to express your support of or opposition to the proposals. Whether or not you plan to attend the Annual Meeting, please take the time to vote your shares as soon as possible.

THE BOARD UNANIMOUSLY RECOMMENDS VOTING “**FOR**” THE ELECTION OF THE BOARD’S NOMINEES UNDER PROPOSAL 1, “**FOR**” PROPOSAL 2, “**FOR**” PROPOSAL 3 AND “**FOR**” PROPOSAL 4 USING THE ENCLOSED **WHITE** PROXY CARD. THE BOARD URGES YOU NOT TO SIGN, RETURN OR VOTE ANY PROXY CARD THAT MAY BE SENT TO YOU BY BANDERA EVEN AS A PROTEST VOTE, AS ONLY YOUR LATEST DATED PROXY CARD WILL BE COUNTED.

What is a proxy?

A proxy is your legal designation of another person to vote on your behalf. You are giving the individual appointed by the Board as proxy the authority to vote your shares in the manner you indicate.

Why did I receive more than one notice?

You may receive multiple notices if you hold your shares in different ways (e.g., joint tenancy, trusts or custodial accounts) or in multiple accounts. If your shares are held by a broker (i.e., in “street name”), you will receive your notice or other voting information from your broker. In any case, you should vote for each notice you receive.

Voting Information

Who is qualified to vote?

Only record holders of the Company's common stock, par value \$0.32 per share ("Common Stock") at the close of business on [], [], which we refer to as the "record date", will be entitled to vote at the Annual Meeting or at adjournments or postponements thereof.

How many votes do I have?

You have one vote for each share of Common Stock that you owned at the close of business on the record date. These shares include shares held by you as a "shareholder of record" and as a "beneficial owner."

How many shares of Common Stock may vote at the Annual Meeting?

There were [] shares of the Common Stock outstanding as of the record date. Each share of Common Stock outstanding is entitled to one vote.

What "quorum" is required for the Annual Meeting?

The presence in person or by proxy of the holders of a majority of the shares of Common Stock outstanding on the record date will constitute a quorum at the Annual Meeting. Abstentions and broker non-votes, if any, will be included in determining the presence of a quorum at the Annual Meeting.

What is the difference between a "shareholder of record" and a "beneficial" holder?

If your shares are registered directly in your name with American Stock Transfer & Trust Company, LLC, the Company's transfer agent, you are a "shareholder of record." If your shares are held in the name of a brokerage, bank, trust or other nominee as a custodian, you are a "beneficial" holder.

How can I vote at the Annual Meeting?

Shareholders of Record. If your shares are held in your name, you may vote by proxy or you may vote in person by attending the Annual Meeting. If your shares are held in your name and you would like to vote your shares by proxy prior to the Annual Meeting, there are three ways for you to vote:

1. **By Telephone:** Call [] (toll charges may apply for calls made from outside the United States) and follow the instructions provided;
2. **By Internet:** Log on through the Internet at *www.proxyvoting.com/LUB* and follow the instructions at that site; or
3. **By Mail:** If you received a proxy card in the mail, complete, sign, and mail the proxy card in the return envelope provided to you.

Please note that telephone and Internet voting will close at 11:59 p.m. Eastern time on [], []. If you wish to vote by telephone or Internet, follow the instructions on your proxy card.

If you plan to attend the Annual Meeting and wish to vote in person, you will be given a ballot at the Annual Meeting. You are encouraged to complete, sign and date the **WHITE** proxy card and mail it in the enclosed postage pre-paid envelope regardless of whether or not you plan to attend the Annual Meeting.

Beneficial Holders. If your shares are held through a bank or broker, you can vote via the Internet or by telephone if your bank or broker offers these options. Please see the voting instructions provided by your bank or broker for use in instructing your bank or broker how to vote. Your bank or broker cannot vote your shares without instructions from you. You will not be able to vote in person at the Annual Meeting unless you obtain a legal proxy from the record holder giving you the right to vote the shares.

What are the Board's recommendations on how I should vote my shares?

The Board unanimously recommends that you vote your shares of Common Stock on the **WHITE** proxy card as follows:

- Proposal 1 “FOR” the election of each of the Board’s nine nominees for director with a one-year term expiring at the 2020 annual meeting of the Company’s shareholders.
- Proposal 2 “FOR” the ratification of the appointment of Grant Thornton LLP as the Company’s independent registered public accounting firm (independent auditors) for the fiscal year ending August 30, 2019.
- Proposal 3 “FOR” the resolution of an advisory vote approving the compensation of the Company’s Named Executive Officers.
- Proposal 4 “FOR” the approval of an amendment of the Company’s Amended and Restated Certificate of Incorporation to eliminate the supermajority voting requirement for shareholders to remove directors.

The Board knows of no other matters that may be presented for shareholder action at the Annual Meeting. If other matters are properly brought before the Annual Meeting, the persons named as proxies on the accompanying proxy card intend to vote the shares represented by them in accordance with their best judgment.

How will my shares be voted if I do not specify how they should be voted?

If you properly execute the enclosed **WHITE** proxy card without indicating how you want your shares to be voted, all shares represented will be voted as recommended by the Board.

Can I revoke my proxy?

Shareholders of Record. If your shares are held in your name, whether you vote by mail, the Internet, or by telephone, you may revoke your proxy by delivering a written statement to that effect to the Secretary of the Company at 13111 Northwest Freeway, Suite 600 Houston, Texas prior to the date of the Annual Meeting, by a later-dated electronic vote via the Internet, by telephone, by submitting a properly signed proxy with a later date, or by voting in person at the Annual Meeting.

Beneficial Holders. If you hold your shares through a bank or broker, the methods available to you to revoke your proxy are determined by your bank or broker, so please see the instructions provided by your bank or broker.

What vote will be required to approve each proposal?

A majority of the votes cast by the shares present in person or represented by proxy at the Annual Meeting and entitled to vote on the election of directors at the Annual Meeting is required for the election of a director nominee. Shareholders do not have cumulative voting rights.

Ratification of the appointment of Grant Thornton LLP as the Company's independent registered public accounting firm and the approval of the compensation of our Named Executive Officers (as defined in "Executive Compensation-Compensation Tables and Information-Summary Compensation Table") on a non-binding basis each require the affirmative vote of a majority of the votes cast by the shares present or represented by proxy and entitled to vote on each such matter at the Annual Meeting.

Approval of the amendment to the Company's Amended and Restated Certificate of Incorporation to eliminate the supermajority voting requirement for shareholders to remove directors requires the affirmative vote of the holders of 80% or more of the voting power of the outstanding shares.

Abstentions and broker-non votes, if any, will have the same effect as a vote "against" the proposal to approve the amendment to the Company's Amended and Restated Certificate of Incorporation and will have no effect on any of the other proposals.

What are broker non-votes?

A "broker non-vote" occurs when a beneficial holder does not provide instructions to a broker, bank or other nominee and such broker, bank or other nominee lacks discretionary voting power to vote shares with respect to a particular proposal. In uncontested situations, under NYSE rules, brokers are permitted to exercise discretionary voting authority on "routine" matters, but beneficial shareholders must provide voting instructions with respect to non-routine matters. However, the rules of the NYSE governing brokers' discretionary authority do not permit brokers to exercise discretionary authority regarding any of the proposals to be voted on at a shareholder meeting involving a contested election where brokers receive competing proxy materials. As a result, given that we expect a contested election at the Annual Meeting, we do not expect there to be any broker non-votes at the Annual Meeting. In the event that the election of directors becomes uncontested, brokers may be permitted to exercise voting authority on "routine" matters.

Under Delaware law, shareholders are not entitled to appraisal or dissenters' rights with respect to the proposals presented in this Proxy Statement.

Who will count the votes?

[] will serve as inspector of election. It is the Company's policy that the inspector of election at any shareholder meeting will be independent and unaffiliated with the Company. The inspector of election will be present at the Annual Meeting.

General

Who will pay the cost of this proxy solicitation?

The Company will pay the costs of soliciting proxies. Upon request, the Company will reimburse brokers, dealers, banks and trustees, or their nominees, for reasonable expenses incurred by them in forwarding proxy materials to beneficial owners of shares of the Common Stock.

Has the Company received notice from one or more shareholders that they intend to nominate director candidates at the Annual Meeting?

Bandera has nominated a slate of six candidates for election as directors at the Annual Meeting, and has filed proxy materials soliciting proxies for the election of four director nominees at the Annual Meeting. The Board **DOES NOT** endorse the Bandera Nominees and unanimously recommends that you vote **FOR** the election of each of the nominees proposed by the Board by marking, signing, dating and promptly returning the enclosed **WHITE** proxy card. The Bandera Nominees are **NOT** endorsed by the Board.

You may receive proxy solicitation materials from Bandera, including an opposition proxy statement and proxy card. **The Board recommends that you disregard them along with any [gold] proxy card you may receive.** We are not responsible for the accuracy of any information provided by or relating to Bandera or their nominees contained in any proxy solicitation materials filed or disseminated by, or on behalf of, Bandera or any other statements that Bandera may otherwise make. If you have already voted using the proxy card provided by Bandera, you have the right to change your vote by completing, signing and dating the enclosed **WHITE** proxy card and mailing it in the postage pre-paid envelope provided, or by voting by telephone or via the Internet by following the instructions provided on the enclosed **WHITE** proxy card. Only the latest dated proxy card you submit will be counted. If you vote “withhold” on the Bandera Nominees using the proxy card provided by the Bandera, your vote will not be counted as a vote for the Board’s nominees, but will result in the revocation of any previous vote you may have cast on the Company’s **WHITE** proxy card. If you wish to vote pursuant to the recommendation of the Board, you should disregard any [gold] proxy card that you receive and vote the **WHITE** proxy card. **If you have any questions or need assistance voting, please call Morrow Sodali LLC, our proxy solicitor, at (203) 658-9400 or toll-free at (800) 662-5200.**

If you receive multiple Proxy Statements or **WHITE** proxy cards, your shares are likely registered differently or are in more than one account, such as individually and also jointly with your spouse. Please vote each and every **WHITE** proxy card or **WHITE** voting instruction form you receive. Since Bandera has submitted an opposing slate of directors, we will likely conduct multiple mailings prior to the Annual Meeting date to ensure shareholders have our latest proxy information and materials to vote. We will send you a new **WHITE** proxy card with each mailing, regardless of whether you have previously voted. Only the latest dated proxy you submit will be counted. **If you wish to vote as recommended by the Board, then you should only submit WHITE proxy cards.**

Whom should I call if I have questions about the Annual Meeting?

If you have any questions or require any assistance with voting your shares, or if you need additional copies of the proxy materials, please contact:

Morrow Sodali LLC

509 Madison Avenue

Suite 1206

New York, NY 10022

Call Toll-Free (800) 662-5200

or

E-mail: LUB@morrowsodali.com

Background of the Solicitation

On November 17, 2017, Bandera filed a Schedule 13D (as amended, the “Schedule 13D”) with the Securities and Exchange Commission (the “SEC”) disclosing ownership of 5.2% of the Common Stock.

On Tuesday, October 30, 2018, following almost a year with no communication, Bandera filed Amendment No. 1 to its Schedule 13D with the SEC disclosing ownership of 6.9% of the Common Stock. On the same day, unknown to the Company at the time, Bandera initiated the process of moving 1,000 shares into record name, a technical requirement to initiate a proxy contest under Delaware law and the Company’s Bylaws, as amended (the “Bylaws”).

On Friday, November 2, 2018, only nine days prior to the Company’s director nomination deadline of November 11, 2018, Bandera called Peter Tropoli, the Company’s General Counsel and Corporate Secretary, and demanded three seats on the Board. Although it did not disclose any particular candidates, Bandera threatened to nominate an opposing slate of directors if its demands were not met within five days by Wednesday, November 7, 2018. This was the first time Bandera ever demanded seats on the Board or even criticized the composition of the Board.

On Monday, November 5, 2018, the Company convened a special meeting of the Board to consider Bandera’s demand. After extensive discussions, the Board decided it needed more information before it could proceed. Therefore, the Board directed the Company’s outside legal counsel, Sidley Austin LLC (“Sidley”) to provide more information about Bandera, its proposed candidates and the overall situation. To give the Board more time, the Board determined to reconvene on November 14, 2018 and decided to extend the director nomination deadline for Bandera until November 19, 2018. The Board also designated Mr. Tropoli as spokesperson of the Board since Bandera had originally contacted him.

On Wednesday, November 7, 2018, in response to Bandera’s demand, on behalf of the Board, Peter Tropoli called Jeff Gramm and informed Mr. Gramm about the extension of the nomination deadline for Bandera until November 19, 2018. Following the call, Mr. Tropoli sent a formal letter to Mr. Gramm reaffirming the extension of the nomination deadline for Bandera.

On Wednesday, November 7, 2018, unknown to the Company at the time, Bandera privately proceeded with obtaining written consents from all six of its director candidates to participate in a proxy contest against the Company.

On Thursday, November 8 and Friday, November 9, 2018, Mr. Christopher Davis of Kleinberg, Kaplan, Wolff & Cohen, P.C. (“Kleinberg Kaplan”), counsel to Bandera, and Mr. Kai Haakon Liekefett of Sidley exchanged emails concerning the extension of the nomination deadline for Bandera. Since the Company was in the process of refinancing its credit facility, Mr. Liekefett stressed to Mr. Davis that confidentiality was paramount for the Company.