

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

**ERIC WEINER, Individually and on
Behalf of All Others Similarly Situated,**

Plaintiff,

v.

TIVITY HEALTH, INC., *et al*

Defendants.

No.: 3:17-cv-01469

**ORDER ESTABLISHING PROGRAM
AND SCHEDULE FOR CLASS NOTICE**

On January 29, 2020, the Court certified a class, appointed a Lead Plaintiff as the Class Representative and Class Counsel. (Doc. No. 99).

Pending is the Class Representative's Unopposed Motion for an Order Establishing a Program and Schedule for Notice to the Class of Pending Class Action (Doc. No. 115). The Class Representative requests that the class definition be refined as follows: All persons who purchased or otherwise acquired Tivity Health, Inc. common stock between March 6, 2017 and November 7, 2017, inclusive, and who have been damaged thereby, excluding from the class Defendants Tivity Health, Inc., Donato Tramuto, Glenn Hargreaves, Adam Holland and the officers and directors of Tivity during the relevant period, as well as members of their immediate families, and their legal representatives, heirs, successors or assigns, and any entity in which Defendants have or had a controlling interest. The Court approves this nonsubstantive change in the class definition.

As requested by the Class Representative, the Court hereby establishes the following program and schedule for notice to the Class of this pending class action:

1. The Court approves the Postcard Notice of Pendency of Class Action, Long-Form

- Notice of Pendency of Class Action, and Summary Notice, attached hereto as Exhibits A, B and C, respectively;
2. Class Counsel shall cause to be mailed, by first class mail, the Postcard Notice of Pendency of Class Action, substantially in the forms annexed hereto as Exhibit A, to all Class members who can be identified through reasonable effort within twenty-one (21) calendar days after the issuance of this Order;
 3. Class Counsel shall cause copies of the Long Form Notice of Pendency of Class Action, substantially in the form annexed hereto as Exhibit B, to be posted on a website, www.TivitySecuritiesLitigation.com;
 4. Class Counsel may employ Epiq Class Action & Claims Solutions, Inc. (“Epiq”) as Notice Administrator, to assist in the providing of class notice;
 5. Class Counsel shall cause the published Summary Notice, substantially in the form annexed hereto as Exhibit C, to be disseminated via *Investor’s Business Weekly* and *PR Newswire* within ten (10) business day after the mailing of the Postcard Notice of Pendency of Class Action;
 6. The costs of notice shall be borne by Class Counsel and not by Defendants; and
 7. Class Counsel will direct the Notice Administrator, Epiq, to notify Defendants’ counsel of record, in writing, of the requests for exclusion it receives, including the name and address of the person or entity, the number of shares purchased and, if sold, the date those purchased shares were sold. The Notice Administrator will transmit this information to Defendants’ counsel no later than thirty (30) calendar days after the deadline for exclusion.

The Court finds the proposed form and content of the Notice meets the requirements of

Rule 23(c)(2)(B) of the Federal Rules of Civil Procedure, as the Notice clearly and concisely states in plain and easily understood language all of the following: (a) the nature of the action; (b) the definition of the certified Class; (c) the Class claims, issues, or defenses; (d) a Class member's right to enter an appearance through an attorney if the member so desires; (e) a Class member's right to be excluded from the Class; (f) the time and manner for requesting exclusion; and (g) the binding effect of a judgment on Class members under Fed. R. Civ. P. 23(c)(3).

The Court also finds that the dissemination of the Notice under the terms and in the format provided for in this Order satisfies the requirements of Federal Rule of Civil Procedure 23(c)(2) for notice in Rule 23(b)(3) class actions and constitutes the best notice practicable under the circumstances.

The Motion for an Order Establishing Program and Schedule for Class Notice (Doc. No. 115) is **GRANTED**.

IT IS SO ORDERED.



WAVERLY D. CRENSHAW, JR.
CHIEF UNITED STATES DISTRICT JUDGE

Exhibit A

Important Legal Notice authorized by the United States District Court for the Middle District of Tennessee about a Securities Class Action

If you purchased or otherwise acquired common stock of Tivity Health, Inc. between March 6, 2017 and November 6, 2017, inclusive, you may be affected by a class action lawsuit that is currently pending.

THIS NOTICE MAY AFFECT YOUR LEGAL RIGHTS. PLEASE READ IT CAREFULLY.

Court-Ordered Legal Notice

Tivity Securities Litigation

PO Box 3679
Portland, OR 97208-3679.

[Name]
[Address]
[City] [State] [Zip]
[Country]

Eric Weiner v. Tivity Health Inc, et al. – No. 3:17-CV-01469 (M.D. Tenn.)
THIS CARD ONLY PROVIDES LIMITED INFORMATION ABOUT THE ACTION.

VISIT www.TivitySecuritiesLitigation.com FOR MORE INFORMATION

There is a pending lawsuit on behalf of persons and entities who purchased or otherwise acquired common stock of Tivity Health, Inc. (“Tivity”) against Tivity and certain of its current and former officers (“Defendants”) for violations of federal securities laws, alleging that, between March 6, 2017 and November 6, 2017 (the “Class Period”), Defendants made false and misleading statements relating to the status of Tivity’s business relationship with a major customer, United Healthcare, which had begun in-sourcing certain services previously provided by Tivity. This notice is issued pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Middle District of Tennessee, entered January 29, 2020, certifying the above action as a Class Action.

Who’s Included? All persons and entities who purchased or otherwise acquired Tivity common stock during the Class Period are included, except for Defendants, the officers and directors of Tivity during the Class Period, as well as members of their immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which Defendants have or had a controlling interest. If you purchased or otherwise acquired shares of Tivity common stock during the Class Period for the beneficial interest of a Class member, you are required to forward this notice to the beneficial owners of Tivity common stock or provide their contact information to the Notice Administrator, Tivity Securities Litigation, PO Box 3679, Portland, OR 97208-3679.

Who represents me? The Court has appointed attorneys at Cohen Milstein Sellers & Toll PLLC as Class Counsel to represent the Class on a contingent fee basis. You may hire your own lawyer to represent you at your own expense. Oklahoma Firefighters Pension and Retirement System has been appointed by the Court to serve as the Class Representative.

What are my Rights & Options? You have a voice of whether to stay in the Class or exclude yourself from it by [60 days after postcard notice is mailed]. If you do nothing: (1) you are choosing to stay in the Class, and are allowing the Court-appointed class counsel and Class Representative to continue to represent you and the Class and move forward with the lawsuit on your behalf; (2) if the case settles or the Court enters a judgment in favor of the Class, you will get the benefit of that settlement or judgment; and (3) you will not be able to bring your own case against Defendants for legal claims included in this lawsuit. If you choose to exclude yourself, you will not be entitled to recover monetary benefits from Class Representative’s efforts, and you will be entitled to pursue any individual remedy which you may have at your own expense. To ask to be excluded, send a letter to the return address postmarked by [60 days after postcard notice is mailed] stating that you want to be excluded from *Weiner v. Tivity Health, Inc.*, 3:17-cv-01469. Include your name, address, telephone number, and signature, as well as the total number of Tivity shares purchased or acquired and the date the Tivity shares were purchased or acquired.

Want more information? Go to www.TivitySecuritiesLitigation.com or call 877-202-7202. Please do not contact the Court, Defendants or their counsel with questions.

Exhibit B

THIS IS AN IMPORTANT LEGAL NOTICE

**THE MATTERS DISCUSSED HEREIN MAY AFFECT
SUBSTANTIAL LEGAL RIGHTS THAT YOU MAY HAVE**

READ THIS NOTICE CAREFULLY

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

ERIC WEINER, Individually and on Behalf of
All Others Similarly Situated,

Plaintiff,

v.

TIVITY HEALTH, INC., *et al.*,

Defendants.

Case No.: 3:17-cv-01469

Chief Judge Crenshaw
Magistrate Judge Newbern

NOTICE OF PENDENCY OF CLASS ACTION

TO: ALL PERSONS AND ENTITIES WHO PURCHASED OR OTHERWISE ACQUIRED THE COMMON STOCK OF TIVITY HEALTH, INC. (“TIVITY”) BETWEEN MARCH 6, 2017 AND NOVEMBER 6, 2017, INCLUSIVE, AND WHO HAVE BEEN DAMAGED THEREBY (THE “CLASS” AND “CLASS PERIOD”).

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS MAY BE AFFECTED BY THIS LITIGATION.

PURPOSE OF THIS NOTICE

This Notice is being sent to advise Class Members of the pendency of the above-captioned action as a class action under Rule 23 of the Federal Rules of Civil Procedure and their rights with respect thereto. If you are and remain a Class Member, your rights will be affected by the lawsuit referred to as *Weiner v. Tivity Health, Inc.*, No. 3:17-cv-01469, which is now pending before the United States District Court for the Middle District of Tennessee, Nashville Division (the “Court”) (the “Action”), brought by Lead Plaintiff and Class Representative Oklahoma Firefighters Pension and Retirement System (“Class Representative” or “Oklahoma Firefighters”) on behalf of itself and others similarly situated against Tivity Health, Inc. (“Tivity”), and its senior executives, Donato Tramuto, Glenn Hargreaves, and Adam Holland (collectively, “Defendants”).

NO JUDGMENT OR SETTLEMENT HAS OCCURRED IN THE ACTION AND YOU ARE NOT CURRENTLY ENTITLED TO RECEIVE A PAYMENT FROM THIS ACTION. THIS NOTICE IS TO INFORM YOU THAT THE ACTION IS PROCEEDING AND THAT YOU MAY BE A MEMBER OF THE CLASS.

By Order dated January 29, 2020, the Court determined that this lawsuit may proceed as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure. You received this notice because you were identified as a potential member of the Class. This Notice only advises you of the existence of the Action and of your rights if you are a member of the Class. If you received this Notice in error and you are not a member of the Class, you do not need to take any action and your rights will not be affected.

The Class

The Class is defined as:

All persons and entities who purchased or otherwise acquired the common stock of Tivity Health, Inc. (“Tivity”) between March 6, 2017 and November 6, 2017, inclusive (the “Class”), and who have been damaged thereby.

Excluded from the Class are Defendants Tivity Health, Inc., Donato Tramuto, Glenn Hargreaves, Adam Holland, the officers and directors of Tivity during the relevant period, members of their immediate families and their legal representatives, heirs, successors or assigns, and any entity in which Defendants have or had a controlling interest. Additionally, any person or entity that timely and validly requests exclusion, as explained in this Notice, will be excluded from the Class.

The ruling by the Court certifying the Class does not in any way address the merits of the litigation. Rather, the certification of the Class means only that the ultimate outcome of the Action – whether favorable or unfavorable to the Plaintiff or Defendants – will apply in like manner to each Class member who does not timely elect to be excluded from the Class.

DESCRIPTION OF THE CLASS ACTION

Plaintiff’s Claims

Class Representative, on behalf of the Class, alleges that the Defendants made false and misleading statements regarding the status of Tivity’s business relationship with its major customer, United Healthcare (“UHC”), which, unbeknownst to the market, had begun in-sourcing certain services previously provided by Tivity, causing Tivity to lose market share in certain states. In particular, the Class has alleged that Defendants violated the Securities Exchange Act of 1934, and Rule 10b-5 promulgated thereunder by the Securities and Exchange Commission, by knowingly or recklessly making false and misleading statements and omissions in several public statements during the period between March 6, 2017 and November 6, 2017. Class Representative further alleges that the false and misleading statements and omissions

artificially inflated the price of Tivity's common stock and that, when UHC later disclosed the truth that it was introducing a product to replace Tivity's flagship fitness program in certain markets, Tivity's stock price dropped. The particular false and misleading statements are set forth in Class Representative's First Amended Complaint (the "Complaint"). You may review a copy of the Complaint and other court filings and orders from this Action by visiting www.TivitySecuritiesLitigation.com.

Defendants' Denial of Liability

Defendants deny any wrongdoing or liability for the claims alleged. Defendants deny that they made any false or misleading statements regarding Tivity's business relationship with UHC.

Status of the Litigation

The initial complaint in this Action was filed on November 20, 2017. On April 3, 2018, the Court appointed Oklahoma Firefighters as Lead Plaintiff. On June 4, 2018, Oklahoma Firefighters filed the Complaint, which sets forth the claims of the Class. Defendants filed a motion to dismiss the Complaint on August 3, 2018. The motion to dismiss was denied in full on March 18, 2019, and Defendants' motion for reconsideration of that ruling was denied on May 22, 2019.

On April 14, 2019, Defendants filed an answer to the Complaint, denying Oklahoma Firefighter's claims and asserting various affirmative defenses.

On July 1, 2019, Oklahoma Firefighters filed a motion for class certification, and on January 29, 2020, the Court granted that motion, certifying the case as a class action and appointing Oklahoma Firefighters as Class Representative and appointing Cohen Milstein Sellers & Toll as Class Counsel.

On February 12, 2020, Defendants filed a petition with the Court of Appeals for the Sixth Circuit ("Sixth Circuit") seeking permission to appeal the Court's order granting class certification. Class Representative opposed the petition. The Sixth Circuit denied the petition on July 23, 2020.

The parties have been conducting extensive discovery, including the production of documents by all parties and the deposing of numerous witnesses. Discovery is ongoing, and the Court has ordered that fact discovery be completed by October 2, 2020 and discovery of expert witnesses be completed by November 6, 2020. The Court has identified May 18, 2021 as a target trial date.

Selection of Lead Counsel

By Order dated January 29, 2020, the Court appointed the following law firm to serve as Lead Counsel on behalf of Class Representative and the Class in this litigation:

COHEN MILSTEIN SELLERS & TOLL PLLC

Daniel S. Sommers
Christina D. Saler
Jessica (Ji Eun) Kim
Joshua Handelsman
1100 New York Avenue, N.W.
West Tower, Suite 500
Washington, D.C. 20005-3934
Telephone: (202) 408-4600
Fax: (202) 408-4699
TivityClassCounsel@cohenmilstein.com

HOW TO PARTICIPATE IN THIS CLASS ACTION

If you fall within the definition of the Class set forth above, you are a member of the Class. **IF YOU WISH TO REMAIN A MEMBER OF THE CLASS, YOU DO NOT NEED TO DO ANYTHING AT THIS TIME.** As a Class Member, you will be bound by any judgment or settlement, whether favorable or unfavorable, in this Action. Thus, you will have the opportunity to participate in any monetary settlement or judgment rendered in favor of the Class and will receive notice of such a settlement or judgment and may submit a Proof of Claim at that time. **No judgment or settlement has occurred at this time.** You will also be bound by any unfavorable judgment which may be rendered in favor of Defendants. As set forth below, you have the right to exclude yourself from the Class at this time. However, you may not have the right to seek exclusion from the Class at the time of settlement or judgment.

The class representative appointed by the Court will represent the Class on behalf of all Class members. Class Counsel has agreed to pursue this Action on a contingent fee basis. All attorneys' fees and expenses will be payable only out of the recovery by the Class, if any. Class members will not have to separately pay lawyers any additional amounts and in no event will individual Class members be obligated to pay any judgment, court costs, or lawyers' fees for participating in this class action.

Any Class member who does not request exclusion from the Class may also enter an appearance through their own counsel at their own expense.

HOW TO BE EXCLUDED FROM THE CLASS

If you wish to be excluded from the Class, you must submit a request for exclusion in accordance with the instructions in the next paragraph. If you choose to be excluded: **(1) you will NOT be entitled to share in any recovery from any settlement or judgment, if any, that may be paid to members of the Class as a result of a trial or settlement of this lawsuit;** (2) you will **NOT** be bound by any judgment or release entered in this lawsuit; and (3) at your own expense, you **MAY** pursue any claims that you may have by filing your own lawsuit or taking other action.

To be excluded, a person shall mail, by first class mail, a written request for exclusion from the Class, **postmarked no later than [60 days after the Postcard Notice is mailed]**, addressed to the Notice Administrator at:

**Tivity Securities Litigation
PO Box 3679
Portland, OR 97208-3679**

In order to be valid, any request for exclusion must set forth the name and address of the person or entity requesting exclusion, and must contain the following statement that such person or entity “requests exclusion from the Class in the *Weiner v. Tivity Health, Inc.*, 3:17-cv-01469” and must (i) state the name, address, and telephone number of the person or entity requesting exclusion; (ii) state the number of shares of Tivity common stock that the person or entity purchased, acquired, and sold during the Class Period, as well as the dates and prices of each such purchase, acquisition, and sale; and (iii) be signed by the person or entity requesting exclusion or an authorized representative. **Only request exclusion if you do NOT wish to participate in this Action and do not wish to share in any potential recovery that the Class may obtain.**

EXAMINATION OF PAPERS AND INQUIRIES

This Notice contains only a summary of the litigation and your rights as a potential Class member. For more detailed information regarding the matters involved in this litigation, you may contact Class Counsel at the address above or consult the papers on file in this litigation at the Office of the Clerk of Court, Estes Kefauver Federal Building & Courthouse, 801 Broadway, Room 800, Nashville, TN 37203, during business hours of each business day. If you have an account with PACER, you may consult the pleadings and other papers via Electronic Case Filing at the website of the Middle District of Tennessee, <https://ecf.tnmd.uscourts.gov>.

If you have any questions concerning this case or your membership in the Class please contact the Notice Administrator at:

Tivity Securities Litigation
PO Box 3679
Portland, OR 97208-3679
www.TivitySecuritiesLitigation.com
Telephone: 877-202-7202

NOTICE TO BROKERS AND CUSTODIANS

If you hold or held securities covered by the Action on behalf of a beneficial owner or in “street name,” you are directed by the Court to provide this Notice to the beneficial owner. You may obtain additional copies of this Notice by contacting the Notice Administrator in writing, by mail at: Tivity Securities Litigation, c/o Epiq Class Action & Claims Solutions, Inc., PO Box 3679, Portland, OR 97208-3679. As an alternative, you may provide the Notice Administrator

with mailing lists of beneficial owners, electronically in MS Word or WordPerfect files or in an MS Excel data table setting forth (a) title/registration, (b) street address, and (c) city/state/zip. Please contact the Notice Administrator immediately upon receipt of this Notice.

If this Notice was mailed to you at an old address, or if you move, please advise the Notice Administrator of your current address by mail at: Tivity Securities Litigation, c/o Epiq Class Action & Claims Solutions, Inc., PO Box 3679, Portland, OR 97208-3679, so that you can receive any future Notice and/or Proof of Claim forms.

PLEASE DO NOT CALL THE COURT OR THE DISTRICT CLERK'S OFFICE REGARDING THIS NOTICE.

Dated: _____, 2020

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

Exhibit C

LEGAL NOTICE

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

ERIC WEINER, Individually and on Behalf of
All Others Similarly Situated,

Plaintiff,

v.

TIVITY HEALTH, INC., *et al.*,

Defendants.

Case No.: 3:17-cv-01469

Chief Judge Crenshaw
Magistrate Judge Newbern

**ATTENTION PURCHASERS OF TIVITY COMMON STOCK
BETWEEN MARCH 6, 2017 AND NOVEMBER 6, 2017**

SUMMARY NOTICE OF PENDENCY OF CLASS ACTION

TO: ALL PERSONS AND ENTITIES WHO PURCHASED OR OTHERWISE ACQUIRED THE COMMON STOCK OF TIVITY HEALTH, INC. (“TIVITY”) **BETWEEN MARCH 6, 2017 AND NOVEMBER 6, 2017**, INCLUSIVE, AND WHO HAVE BEEN DAMAGED THEREBY (THE “CLASS” and “CLASS PERIOD”).

YOU ARE HEREBY NOTIFIED THAT A CLASS HAS BEEN CERTIFIED IN PENDING LITIGATION THAT MAY AFFECT YOUR RIGHTS.

If you are a member of the Class described above, your rights may be affected by the lawsuit referred to as *Weiner v. Tivity Health, Inc.*, No. 3:17-cv-01469, which is now pending before the United States District Court for the Middle District of Tennessee, Nashville Division (the “Court”) (the “Action”), brought by Lead Plaintiff and Class Representative Oklahoma Firefighters Pension and Retirement System on behalf of itself and others similarly situated against Tivity and its current or former officers, Donato Tramuto, Glenn Hargreaves, and Adam Holland (collectively, “Defendants”).

The Court determined that the Action may proceed as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure. You may be a member of the Class. Excluded from the Class are Defendants Tivity, Donato Tramuto, Glenn Hargreaves, Adam Holland, the officers and directors of Tivity during the relevant period, as well as member of their immediate families and their legal representatives, heirs, successors or assigns, and any entity in which Defendants have or had a controlling interest.

This Summary Notice is not an expression of any opinion by the Court with respect to the merits of the claims or the defenses asserted in the Action. This Summary Notice is to advise you of the pendency of this Action and of your rights therein.

If you have not yet received a Postcard Notice by mail, please contact us in writing:

Tivity Securities Litigation
c/o Epiq Class Action & Claims Solutions, Inc.
PO Box 3679
Portland, OR 97208-3679
www.TivitySecuritiesLitigation.com
1 (877) 202-7202

If you fall within the definition of the Class set forth above, you are a member of the Class. **IF YOU WISH TO REMAIN A MEMBER OF THE CLASS, YOU DO NOT NEED TO DO ANYTHING AT THIS TIME.**

If you wish to be excluded from the Class, you must send a request for exclusion to Tivity Securities Litigation, c/o Epiq Class Action & Claims Solutions, Inc., PO Box 3679, Portland, OR 97208-3679 postmarked no later than [60 days after the Postcard Notice is mailed]. There are specific requirements for requesting exclusion that are set forth in the detailed Notice of Pendency of Class Action, which is available at www.TivitySecuritiesLitigation.com.

In addition, inquiries regarding this litigation may be addressed to counsel for the Class:

Daniel S. Sommers
Christina D. Saler
Jessica (Ji Eun) Kim
Joshua Handelsman
1100 New York Avenue, N.W.
West Tower, Suite 500
Washington, D.C. 20005-3934
Telephone: (202) 408-4600
Fax: (202) 408-4699
TivityClassCounsel@cohenmilstein.com

PLEASE DO NOT CALL THE COURT OR THE CLERK'S OFFICE REGARDING THIS NOTICE.

Dated: _____, 2020

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE