

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

ROBERT STROUGO, Individually and on Behalf of) Civil Action No. 3:20-cv-00165
All Others Similarly Situated,)
) CLASS ACTION
Plaintiff,)
) Judge Waverly D. Crenshaw, Jr.
vs.) Magistrate Judge Jeffery S. Frensley
)
TIVITY HEALTH, INC., et al.,)
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Defendants.)
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NOTICE OF PENDENCY OF CLASS ACTION

If you purchased or otherwise acquired Tivity Health, Inc. common stock between March 8, 2019 and February 19, 2020, inclusive, a class action lawsuit may affect your rights.

A federal court has authorized this Notice.

It is not junk mail, an advertisement, or a solicitation from a lawyer.

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOU MAY BE A MEMBER OF THE CLASS DESCRIBED HERE. AS SUCH, YOUR RIGHTS MAY BE AFFECTED BY A CLASS ACTION LAWSUIT PENDING IN THIS COURT. THIS NOTICE ADVISES YOU OF YOUR OPTIONS REGARDING THE CLASS ACTION.

PLEASE DO NOT CALL OR WRITE THE COURT.

IF YOU HAVE ANY QUESTIONS AFTER READING THIS NOTICE, YOU SHOULD CONTACT CLASS COUNSEL OR THE NOTICE ADMINISTRATOR, AS DISCUSSED FURTHER BELOW.

This Notice is being sent 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 (the "Court") to inform you: (i) of a class action lawsuit that is now pending in the Court under the caption *Strougo v. Tivity Health, Inc., et al.*, Case No. 3:20-cv-00165 (M.D. Tenn.) (the "Action") against Tivity Health, Inc. ("Tivity Health"), Donato Tramuto, Adam C. Holland, and Dawn Zier (collectively, "Defendants"); and (ii) that the Action has been certified by the Court to proceed as a class action on behalf of a class of certain purchasers and acquirers of Tivity Health common stock.

1. The "Class," as certified by the Court, consists of:

All persons who purchased or otherwise acquired Tivity Health common stock between March 8, 2019, and February 19, 2020, inclusive ("Class Period").

Excluded from the Class by definition are Defendants, members of their immediate families, and any entity of which a Defendant has a controlling interest, and the legal representatives, heirs, predecessors, successors, or assigns of any excluded party.
2. This Notice is directed to you because you may be a member of the Class ("Class Member"). If you are a Class Member, your rights will be affected by this Action. If you do not meet the Class definition, this Notice does not apply to you. If you are uncertain whether you are a member of the Class, contact Class Counsel listed in paragraph 15 below or your own attorney.
3. This Notice is **not** an admission by Defendants or an expression of any opinion of the Court concerning the merits of the Action or a finding by the Court that the claims asserted by Class Representative¹ in this Action are valid. This Notice is intended solely to advise you of the pendency of the Action and of your rights in connection with it, including the right to request exclusion from the Class. Defendants have: (i) denied all claims and wrongdoing asserted in the Action and any liability arising out of the conduct alleged therein; and (ii) asserted various defenses. No trial has yet occurred in this Action and no findings of fact, fault, or liability have been made as to any of the parties.
4. The Class definition may be subject to change by the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure.

¹ The Court-appointed Lead Plaintiff, also referred to as the Class Representative, is Sheet Metal Workers Local No. 33, Cleveland District, Pension Fund.

OVERVIEW AND STATUS OF THIS ACTION

5. This is a securities class action against Defendants for alleged violations of the federal securities laws during the Class Period. The Class Representative alleges that during the Class Period, Defendants engaged in a scheme to defraud and made materially false and misleading statements and/or failed to disclose adverse information regarding Tivity Health's business and operations. Class Representative alleges that Defendants made materially false or misleading statements and omissions during the Class Period concerning Tivity Health's acquisition of Nutrisystem, Inc., which closed on March 8, 2019, Nutrisystem's performance, and the value of the Nutrisystem goodwill and tradename. Class Representative further alleges that as a result of the alleged fraud, Tivity Health common stock traded at artificially inflated prices during the Class Period. Defendants deny all allegations of wrongdoing asserted in this Action and deny any liability whatsoever to any members of the Class.
6. The Consolidated Complaint (the "Complaint") was filed on November 13, 2020. Defendants moved to dismiss the Complaint on December 4, 2020. On July 29, 2021, the Court denied Defendants' motion to dismiss. Thereafter, on August 27, 2021, Defendants filed an Answer denying all material allegations of the Complaint and asserting multiple defenses. Specifically, Defendants contend that they made no materially false or misleading statements, and that they disclosed all information required to be disclosed by the federal securities laws. Defendants also contend that Tivity Health's stock price declined for reasons other than the alleged corrective disclosure of the alleged false or misleading statements. Please note that this Notice does not describe all claims and defenses asserted by the parties. The section entitled "Where You Can Find Additional Information" describes the process by which you can obtain additional information about the Action and the claims and defenses asserted.
7. On October 26, 2021, Class Representative filed its motion for class certification, which the Defendants opposed on November 30, 2021. On June 7, 2022, the Court issued a Memorandum Opinion and accompanying order granting the motion in its entirety and certifying the Class as defined above. On June 22, 2022, Defendants filed a Petition with the Sixth Circuit Court of Appeals for Permission to File an Appeal of the Court's class certification order pursuant to Federal Rule of Civil Procedure 23(f). Class Representative filed its opposition on July 1, 2022, and Defendants filed their reply on July 8, 2022. On November 21, 2022, the Sixth Circuit granted Defendants' petition for permission to appeal and vacated the Court's order certifying the Class. On June 7, 2023, the Court issued a Memorandum Opinion and Order again certifying the proposed Class. On June 22, 2023, Defendants filed a Rule 23(f) petition for interlocutory review of the Court's June 7, 2023 Order. On September 10, 2024, Defendants' Rule 23(f) petition was denied. Thereafter, the stay of litigation was lifted.
8. The Court has not decided in favor of Class Representative or Defendants. The litigation is ongoing. To date, there has been no recovery of any money for the Class.

YOUR RIGHTS AS A CLASS MEMBER

9. A class action is a type of lawsuit in which one or several individuals or entities prosecute claims on behalf of all members of a group of similarly-situated persons and entities (*i.e.*, the class) to obtain monetary or other relief for the benefit of the entire group. Class actions avoid the necessity of each member of a class having to file his, her, or its own separate lawsuit to obtain relief. Class actions are used to decide legal and factual issues that are common to all members of a class. Importantly, class members are **NOT** individually responsible for the attorneys' fees or litigation expenses. In a class action, attorneys' fees and litigation expenses are paid from the settlement fund (or the court judgment amount), if any, and must be approved by the Court. If there is no recovery, the attorneys representing the Class do not get paid.
10. If you purchased or otherwise acquired Tivity Health common stock between March 8, 2019 up through and including February 19, 2020, and you are not excluded from the Class by definition, you are a member of the Class. If you are a member of the Class, you have the right to decide whether to remain a member of the Class. ***If you choose to remain a member of the Class, you do not need to do anything at this time other than to retain your documentation reflecting your transactions and holdings in Tivity Health common stock as discussed below in paragraph 11.*** If you are a member of the Class and wish to be excluded from the Class, you must request exclusion in accordance with the procedure set forth in paragraph 12 below. Your decision is important for the following reasons:
 - a. If you choose to remain a member of the Class, you will be bound by all past, present, and future orders and judgments in the Action, whether favorable or unfavorable. If any money is awarded to the Class, either through a settlement with Defendants or a judgment of the Court, you may be eligible to receive a share of that award. If, however, Defendants prevail, you may not pursue a lawsuit on your own behalf with regard to any of the issues decided in this Action.

Unless otherwise allowed by the Court, Class Members will not have another opportunity to exclude themselves or otherwise opt out of the Action.

Please note that if you remain a member of the Class, you will not be personally responsible for Class Counsel's attorneys' fees or costs. Class Counsel has agreed to represent the Class on a contingent fee basis, which means that they will be awarded fees and costs only if they succeed in obtaining a recovery from one or more Defendants. Any attorneys' fees for Class Counsel will be awarded by the Court from the settlement or judgment, if any, obtained on behalf of the Class. As a member of the Class, you will be represented by Class Counsel. You may remain a member of the Class and elect to be represented by counsel of your own choosing. If you do retain separate counsel, you will be responsible for that counsel's fees and expenses and such counsel must enter an appearance on your behalf by filing a Notice of Appearance with the Court and mailing it to Class Counsel at the address set forth in paragraph 15 below on or before December 2, 2024.

- b. **If you choose to be excluded from the Class**, you will not be bound by any judgment in this Action, nor will you be eligible to share in any recovery that might be obtained in this Action. However, you may be able to retain the right to individually pursue any legal rights that you may have against any Defendants with respect to the claims asserted in the Action, although such claims may be time-barred. Please refer to paragraphs 12-14 below if you would like to be excluded from the Class.

- 11. Members of the Class will be eligible to participate in any recovery that might be obtained in the Action. While this Notice is not intended to suggest any likelihood that Class Representative or members of the Class will recover any such damages, should there be a recovery, members of the Class will be required to support their requests to participate in the distribution of any such recovery by demonstrating their membership in the Class and documenting their purchases, sales, and/or holdings of Tivity Health common stock. **For this reason, please be sure to keep all records of your transactions in these securities.** No money or benefits are available now and there is no guarantee that money or benefits will be obtained. If they are, you will be notified regarding how to obtain a share.

HOW TO EXCLUDE YOURSELF FROM THE CLASS

- 12. If you wish to be excluded from the Class, you must specifically request exclusion in accordance with the following procedures. You must send a letter by first-class mail stating that you "request exclusion from the Class in *Strougo v. Tivity Health, Inc., et al.*, Civil Action No. 3:20-cv-00165 (M.D. Tenn.)." Your request must: (i) state the name, address, email address, and telephone number of the person or entity requesting exclusion; (ii) identify all of your transactions in Tivity Health common stock during the period March 8, 2019 up through and including February 19, 2020; and (iii) be signed by the person or entity requesting exclusion or an authorized representative, accompanied by proof of authorization. You must mail your exclusion request, postmarked by no later than **December 2, 2024**, to:

Tivity Health Securities Litigation
EXCLUSIONS
P.O. Box 5100
Larkspur, CA 94977-5100

You cannot exclude yourself from the Class by telephone or by email, and a request for exclusion shall not be effective unless it contains all the information called for by this paragraph and is postmarked by the date stated above or is otherwise accepted by the Court.

- 13. Do not request exclusion if you wish to participate in this Action as a member of the Class.
- 14. If you choose to be excluded from the Class, you will not be bound by any judgment in this Action; nor will you be eligible to share in any recovery that might be obtained in this Action. If you properly request exclusion, you may be entitled to pursue an individual lawsuit, claim, or remedy, if available, at your own expense. Please note, if you decide to exclude yourself from the Class, you may be time-barred from asserting the claims covered by the Action by a statute of repose.

CLASS COUNSEL

15. As a member of the Class, you will be represented by Class Counsel, who is:

Christopher M. Wood, Esq.
**ROBBINS GELLER RUDMAN
& DOWD LLP**
200 31st Avenue North
Nashville, TN 37203
Telephone: (615) 244-2203

16. If you want to be represented by your own lawyer, you may hire one at your own expense. If you do retain your own lawyer, such counsel must enter an appearance on your behalf by filing a Notice of Appearance with the Court and mailing it to Class Counsel at the address set forth in paragraph 15 above on or before **December 2, 2024**.

PLEASE KEEP YOUR ADDRESS CURRENT

17. In order to make sure that you receive any further notices in this Action, you are requested to mail notice of any changes in your address to:

Tivity Health Securities Litigation
c/o Gilardi & Co. LLC
P.O. Box 301171
Los Angeles, CA 90030-1171

18. If this Notice was forwarded to you by the postal service, or if it was otherwise sent to you at an address that is not current, you should immediately contact the Notice Administrator, Gilardi & Co. LLC, and provide them with your correct address. If the Notice Administrator does not have your correct address, you may not receive any future notices that may be disseminated in this Action.

WHERE YOU CAN FIND ADDITIONAL INFORMATION

19. This Notice only provides a summary of the lawsuit and the claims asserted by Class Representative. For more detailed information regarding the Action, you may contact Class Counsel or visit www.TivityHealthSecuritiesLitigation.com. Complete copies of public pleadings, Court rulings, and other filings are available for review at <http://www.pacer.gov> or at the office of the Clerk of Court, United States District Court for the Middle District of Tennessee, Fred D. Thompson U.S. Courthouse and Federal Building, 719 Church Street, Nashville, TN 37203 under Civil Action No. 3:20-cv-00165.

PLEASE DO NOT CALL OR WRITE THE DEFENDANTS OR THE COURT.

NOTICE TO SECURITIES BROKERS AND OTHER NOMINEES

20. If, for the beneficial interest of any person or entity other than yourself, you (i) purchased or otherwise acquired the common stock of Tivity Health during the period March 8, 2019 up through and including February 19, 2020, you must either (a) within seven (7) calendar days of receipt of this Notice, request from the Notice Administrator sufficient copies of the Notice to forward via First Class Mail to all such beneficial owners and within seven (7) calendar days of receipt of those Notices forward them to all such beneficial owners; or (b) within seven (7) calendar days of receipt of this Notice, provide a list of the names and addresses, and emails, where available, of all such beneficial owners to the Notice Administrator at notifications@gilardi.com or *Tivity Health Securities Litigation*, c/o Gilardi & Co. LLC, P.O. Box 301171, Los Angeles, CA 90030-1171. If you choose the first option, you must send a statement to the Notice Administrator confirming that the mailing was made, and **you must retain your mailing records for use in connection with any further notices that may be provided in the Action**. If you choose the second option, the Notice Administrator will send a copy of the Notice to the beneficial owners. Upon full compliance with these directions, such nominees may seek reimbursement of their reasonable expenses actually incurred by providing the Notice Administrator with proper documentation supporting the expenses for which reimbursement is sought, not to exceed \$0.03 per name, address or email address; up to a maximum of \$0.03 per Summary Notice emailed or mailed, plus postage at the rate used by the Notice Administrator.

Dated: September 26, 2024

BY THE ORDER OF THE COURT:
United States District Court
for the Middle District of Tennessee