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SHIVA STEIN,

Plaintiff,

v.

TIVITY HEALTH, INC., RICHARD  
ASHWORTH, ANTHONY M. SANFILIPPO,  
SARA J. FINLEY, ROBERT J. GRECZYN,  
JR., BETH M. JACOB, BRADLEY S.  
KARRO, STEPHANIE DAVIS  
MICHELMAN, and ERIN L. RUSSELL,

Defendants.

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: Civil Action No. 22-cv-3832

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: **COMPLAINT FOR VIOLATIONS OF**

: **SECTIONS 14(a) AND 20(a) OF THE**

: **SECURITIES EXCHANGE ACT OF**

: **1934**

: **JURY TRIAL DEMANDED**

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1. This is an action brought by Plaintiff against Tivity Health, Inc. (“Tivity Health or the “Company”) and the members Tivity Health’s board of directors (the “Board” or the “Individual Defendants” and collectively with the Company, the “Defendants”) for their violations of Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. §§ 78n(a), 78t(a), and SEC Rule 14a-9, 17 C.F.R. 240.14a-9 and 17 C.F.R. § 244.100, in connection with the proposed acquisition of Tivity Health by affiliates of Stone Point Capital LLC (“Stone Point”).

2. Defendants have violated the above-referenced sections of the Exchange Act by causing a materially incomplete and misleading Preliminary Proxy Statement on Schedule 14A

(the “Proxy Statement”) to be filed on May 10, 2022 with the United States Securities and Exchange Commission (“SEC”) and disseminated to Company stockholders. The Proxy Statement recommends that Company stockholders vote in favor of a proposed transaction whereby Titan-Atlas Merger Sub, Inc. (“Merger Sub”), a wholly-owned subsidiary of Titan-Atlas Parent, Inc., an affiliate of Stone Point, will merge with and into Tivity Health, with Tivity Health as the surviving entity (the “Proposed Transaction”). Pursuant to the terms of the definitive agreement and plan of merger the companies entered into on April 5, 2022 (the “Merger Agreement”), each Tivity Health stockholder will receive \$32.50 in cash (the “Merger Consideration”) for each Tivity Health share owned.

1. As discussed below, Defendants have asked Tivity Health’s stockholders to support the Proposed Transaction based upon the materially incomplete and misleading representations and information contained in the Proxy Statement, in violation of Sections 14(a) and 20(a) of the Exchange Act. Specifically, the Proxy Statement contains materially incomplete and misleading information concerning the analyses performed by the Company’s financial advisor, Lazard Frères & Co. LLC (“Lazard”) in support of its fairness opinions.

2. It is imperative that the material information that has been omitted from the Proxy Statement is disclosed to the Company’s stockholders prior to the forthcoming stockholder vote so that they can properly exercise their corporate suffrage rights.

3. For these reasons and as set forth in detail herein, Plaintiff seeks to enjoin Defendants from taking any steps to consummate the Proposed Transaction unless and until the material information discussed below is disclosed to Tivity Health’s stockholders or, in the event the Proposed Transaction is consummated, to recover damages resulting from the Defendants’ violations of the Exchange Act.

## **JURISDICTION AND VENUE**

4. This Court has subject matter jurisdiction pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331 (federal question jurisdiction) as Plaintiff alleges violations of Sections 14(a) and 20(a) of the Exchange Act and SEC Rule 14a-9.

5. Personal jurisdiction exists over each Defendant either because the Defendant conducts business in or maintains operations in this District, or is an individual who is either present in this District for jurisdictional purposes or has sufficient minimum contacts with this District as to render the exercise of jurisdiction over Defendant by this Court permissible under traditional notions of fair play and substantial justice.

6. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C. § 78aa, as well as under 28 U.S.C. § 1391, because the Company trades on the NASDAQ Stock Exchange, headquartered in this District and the proxy solicitor for the Company, Innisfree M&A Incorporated, is also headquartered in this District.

## **PARTIES**

7. Plaintiff is, and has been at all relevant times, the owner of Tivity Health stock and has held such stock since prior to the wrongs complained of herein.

8. Individual Defendant Richard Ashworth has served as a member of the Board since 2020 and is the President and Chief Executive Officer of the Company.

9. Individual Defendant Anthony M. Sanfilippo has served as a member of the Board since 2020.

10. Individual Defendant Sara J. Finley has served as a member of the Board since 2018.

11. Individual Defendant Robert J. Greczyn has served as a member of the Board since 2015.

12. Individual Defendant Beth M. Jacob has served as a member of the Board since 2018.

13. Individual Defendant Bradley S. Karro has served as a member of the Board since 2014.

14. Individual Defendant Stephanie Davis Michelman has served as a member of the Board since 2022.

15. Individual Defendant Erin L. Russell has served as a member of the Board since 2020.

16. Defendant Tivity Health is a Delaware corporation and maintains its principal offices at 701 Cool Springs Boulevard, Franklin, Tennessee 37067. The Company's stock trades on the NASDAQ Global Select Market under the symbol "TVTY."

17. The defendants identified in paragraphs 10-15 are collectively referred to as the "Individual Defendants" or the "Board."

18. The defendants identified in paragraphs 10-16 are collectively referred to as the "Defendants."

## **SUBSTANTIVE ALLEGATIONS**

### **A. The Proposed Transaction**

19. Tivity Health provides fitness and health products and solutions in the United States. The Company offers SilverSneakers to members of Medicare Advantage, Medicare Supplement, and group retiree plans; Prime Fitness, a fitness facility access program through commercial health plans, employers, and other sponsoring organizations; virtual fitness experiences, including live instructor-led classes; and WholeHealth living program, a continuum of services related to complementary, alternative, and physical medicine. It also provides Wisely Well brand meals designed to support individuals and caregivers who are seeking meal

convenience, as well as those recovering after a hospitalization or living with chronic conditions. The Company was formerly known as Healthways, Inc. and changed its name to Tivity Health, Inc. in January 2017. Tivity Health was incorporated in 1981 and is headquartered in Franklin, Tennessee.

20. On April 5, 2022, the Company announced the Proposed Transaction:

NASHVILLE, Tenn., April 5, 2022 /PRNewswire/ -- Tivity Health® (Nasdaq: TVTY), a leading provider of healthy life-changing solutions, including SilverSneakers®, Prime® Fitness and WholeHealth Living®, today announced that it has entered into a definitive agreement to be acquired by funds managed by Stone Point Capital. Under the terms of the agreement, Tivity Health stockholders will receive \$32.50 in cash per share, representing a total transaction value of \$2.0 billion. Upon completion of the transaction, Tivity Health will become a privately held company, and its common stock will no longer be traded on Nasdaq.

Anthony Sanfilippo, Chairman of the Board of Directors of Tivity Health, said, "This agreement with Stone Point creates immediate and substantial value for shareholders while ensuring the company continues to help SilverSneakers members live healthier, happier and more connected lives as a leading senior fitness and health improvement platform. This transaction is the culmination of an extensive review of strategic alternatives that the Board initiated after receiving an unsolicited proposal from Stone Point. As part of that review, the Board engaged with numerous potential acquirers with the assistance of outside advisors. The Board unanimously agreed that the transaction with Stone Point is the best opportunity for maximizing the value of Tivity Health. I am proud of what this company has accomplished for all stakeholders, in navigating the pandemic, streamlining and focusing the business, and executing on its strategy. Because of our team's incredible work and dedication, over the past twelve months, Tivity Health stock has delivered a return of approximately 40%, and since February 28, 2020, has delivered a 155% return."

Richard Ashworth, President and Chief Executive Officer of Tivity Health commented, "Stone Point recognizes the value of our brands, our well-known senior fitness and health improvement platform, and our world-class team. In the past two years, we have strengthened the business and look forward to working with Stone Point as we continue to innovate and expand on the healthy, life-changing solutions we provide to members, clients and partners."

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