

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
BUSINESS LITIGATION SESSION

JOSEPH CIMA, derivatively and on behalf of
OVASCIENCE, INC.

Plaintiff,

v.

MICHELLE DIPP, JEFFREY YOUNG,
RICHARD H. ALDRICH, MARY FISHER,
MARC KOZIN, STEPHEN KRAUS, THOMAS
MALLEY, HARALD F. STOCK, JOHN HOWE,
and JOHN SEXTON,

Defendants,

and

OVASCIENCE, INC.

Nominal Defendant.

CIVIL ACTION NO. 2016-3443-BLSI

**NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF STOCKHOLDER
DERIVATIVE ACTIONS**

**TO: ALL RECORD HOLDERS AND BENEFICIAL OWNERS OF PREVIOUS
ENTITY KNOWN AS OVASCIENCE, INC.¹, NOW KNOWN AS TEMPEST
THERAPEUTICS, INC. (“TEMPEST” OR THE “COMPANY”) COMMON
STOCK (TICKER SYMBOL: TPST)**

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. THIS NOTICE
RELATES TO A PROPOSED SETTLEMENT AND DISMISSAL WITH PREJUDICE OF
LEGACY STOCKHOLDER DERIVATIVE LITIGATION THAT INVOLVED THE TEMPEST

¹ OvaScience, Inc. (“OvaScience”) no longer exists. Through two reverse mergers a separate company, Tempest Therapeutics, Inc. (“Tempest” or the “Company”), inherited OvaScience’s liability. None of the individual defendants named in this litigation were ever Tempest officers or directors.

PREDECESSOR COMPANY KNOWN AS OVASCIENCE, INC. AND CONTAINS IMPORTANT INFORMATION REGARDING YOUR RIGHTS.

IF THE COURT APPROVES THE SETTLEMENT OF THE DERIVATIVE ACTIONS, COMPANY SHAREHOLDERS WILL BE FOREVER BARRED FROM CONTESTING THE APPROVAL OF THE PROPOSED SETTLEMENT AND DISMISSAL WITH PREJUDICE, AND FROM PURSUING RELEASED CLAIMS.

THIS ACTION IS NOT A “CLASS ACTION.” THUS, THERE IS NO COMMON FUND UPON WHICH YOU CAN MAKE A CLAIM FOR A MONETARY PAYMENT.

PLEASE TAKE NOTICE that this action is being settled on the terms set forth in a Stipulation of Settlement, dated March 20, 2023 (the “Stipulation”). The purpose of this Notice is to inform you of:

- the existence of the above-captioned derivative action pending in the Superior Court of the Commonwealth of Massachusetts, Suffolk County (the “Court”) captioned *Cima v. Dipp, et al.*, Case No. 2016-3443-BLSI (the “Action”),
- the existence of a similar derivative action pending in the United States District Court, District of Massachusetts, captioned *Chiu, et al. v. Dipp, et al.*, Case No. 1:17-cv-11382 (“Federal Action,” together with the State Court Action, the “Derivative Actions”),
- the proposed settlement between Plaintiffs² and Defendants reached in the Derivative Actions (the “Settlement”),
- the hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the Settlement and dismissal of the Consolidated Action with prejudice,
- Plaintiffs’ Counsel’s application for fees and expenses, and
- Plaintiffs’ case contribution service awards.

This Notice describes what steps you may choose to take, if any, in relation to the Settlement. This Notice is not an expression of any opinion by the Court about the truth or merits of Plaintiffs’ claims or Defendants’ defenses. This Notice is solely to advise you of the proposed Settlement of the Derivative Actions and of your rights in connection with the proposed Settlement.

Summary

On March 20, 2023, the Company, in its capacity as a nominal defendant, entered into the Stipulation to resolve the Derivative Actions filed derivatively on behalf of legacy company OvaScience, Inc., in the Superior Court of Massachusetts, Suffolk County against certain current and former directors and officers of the Company and against the Company as a nominal defendant. The Stipulation and the settlement contemplated therein (the “Settlement”), subject to the approval of the Court, are intended by the Parties to fully, finally, and forever compromise, resolve, discharge, and settle the Released Claims and to result in the complete dismissal of the

² All capitalized terms used in this Notice, unless otherwise defined herein, are defined as set forth in the Stipulation.

Derivative Actions with prejudice, upon the terms and subject to the conditions set forth in the Stipulation. The Settlement was reached after a long, arms-length settlement process. The proposed Settlement requires the Company to adopt certain corporate governance reforms, as outlined in Exhibit A to the Stipulation.

In light of the substantial benefits conferred upon the Company by Plaintiffs' Counsel's efforts, after engaging in arm's length negotiations, the Individual Defendants³ agreed to cause their insurers to pay Plaintiffs' Counsel's attorneys' fee and expenses in the amount of \$450,000.00 (the "Fee and Expense Award"), subject to Court approval. Plaintiffs' Counsel may also apply to the Court for \$1,500 case contribution service awards to be paid to each of the three Plaintiffs (the "Service Awards"), to be paid out of the Fee and Expense Award.

This Notice is a summary only and does not describe all of the details of the Stipulation. For full details of the matters discussed in this summary, please see the full Stipulation and its exhibits posted on the Company's website, <https://ir.tempesttx.com/investor-resources/notices>, contact Plaintiffs' Counsel at the addresses listed below, or inspect the full Stipulation and its exhibits filed with the Clerk of the Court.

What are the Lawsuits About?

The Derivative Actions were brought derivatively on behalf of nominal defendant OvaScience, Inc., a predecessor company of Tempest, and allege that, beginning in 2013, the Individual Defendants breached their fiduciary duties and committed other violations of law by making and/or causing OvaScience to make materially false statements or omissions to the investing public, and by causing the Company to fail to maintain internal controls. Specifically, the Derivative Actions allege that legacy OvaScience, Inc. was a fertility company that claimed to have discovered a therapy which increased in vitro fertilization ("IVF") live birth rates by extracting mitochondria (a substance in egg cells which is generally viewed as the energy source of the egg) from egg precursor cells (immature egg cells found in the protective outer layer of a woman's own ovaries) and injecting the same into the mature egg being utilized in the IVF process. The Derivative Actions alleged that this process, the AUGMENTSM treatment ("AUGMENT"), was OvaScience, Inc.'s sole marketable product at the relevant time.

The Derivative Actions also alleged that the theory that such injection of additional mitochondria improves egg health and IVF success rates, was difficult to test and prove. It was further difficult to test the efficacy of the AUGMENT treatment. Nonetheless, the Derivative Actions alleged that OvaScience, Inc. repeatedly communicated to investors that the efficacy of AUGMENT had been scientifically validated, which was untrue. Further, on March 16, 2015, OvaScience, Inc. represented to investors that it was on target to have 1,000 active AUGMENT treatment cycles in process by the end of fiscal 2015, which the Derivative Actions also alleges was untrue and known by OvaScience, Inc. to be untrue.

The Derivative Actions alleged that the Individual Defendants caused OvaScience, Inc. to issue false and misleading statements and/or failed to disclose, among other things, that: (a) the

³ The "Individual Defendants" are defined in the Stipulation as Michelle Dipp, Jeffrey Young, Richard H. Aldrich, Mary Fisher, Marc Kozin, Stephen Kraus, Thomas Malley, Harald F. Stock, John Howe, John Sexton and Jeffrey D. Cappello. None of the Individual Defendants were ever Tempest officers or directors.

science behind AUGMENT had not been scientifically validated; (b) OvaScience, Inc. was unable to achieve the purported success rates it claimed; (c) the reasons why OvaScience, Inc. moved its studies outside of the United States; (d) that at all relevant times, OvaScience, Inc. profitability and prospects were false and misleading; and (e) resultantly, OvaScience, Inc. lacked adequate internal controls over its publicly issued statements and financial reporting.

Why is there a Settlement of the Derivative Actions?

The Court has not decided in favor of Defendants or Plaintiffs in the Derivative Actions. Instead, the Parties have agreed to the Settlement to avoid the distraction, costs, and risks of further litigation, and because the Company has determined that the corporate governance reforms adopted by the Company as part of the Settlement provide substantial benefits to the Company and its shareholders.

Defendants have denied and continue to deny each and all of the claims and contentions alleged by Plaintiffs in the Derivative Actions. The Individual Defendants have expressly denied and continue to deny all charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Derivative Actions. Nonetheless, Defendants have concluded that it is desirable for the Derivative Actions to be fully and finally settled in the matter and upon the terms and conditions set forth in this Stipulation.

The Settlement Hearing, and Your Right to Object to the Settlement

On March 23, 2023, the Court entered an order preliminarily approving the Stipulation and the Settlement contemplated therein (the “Preliminary Approval Order”) and providing for notice of the Settlement to be made to the Company’s shareholders. The Preliminary Approval Order further provides that the Court will hold a hearing (the “Settlement Hearing”) on June 12, 2023 at 2:00 p.m. before the Honorable Peter B. Krupp in Courtroom 1309 at the Suffolk County Superior Court, 3 Pemberton Square, Boston, MA 02108 to among other things: (i) determine whether the proposed Settlement is fair, reasonable and adequate and in the best interests of the Company and its current shareholders; (ii) consider any objections to the Settlement submitted in accordance with this Notice; (iii) determine whether a judgment should be entered dismissing all claims in the Derivative Actions with prejudice, and releasing the Released Claims against the Released Persons; (iv) whether the Court should approve the agreed-to Fee and Expense Award; (v) whether the Court should approve the Service Awards, which shall be funded from the Fee and Expense Award to the extent approved by the Court; and (vii) consider any other matters that may properly be brought before the Court in connection with the Settlement.

The Court may, in its discretion, change the date and/or time of the Settlement Hearing without further notice to you. The Court also has reserved the right to hold the Settlement Hearing telephonically or by videoconference without further notice to you. If you intend to attend the Settlement Hearing, please consult the Court’s calendar and/or the website of the Company, <https://ir.tempesttx.com/investor-resources/notices/>, for any change in date, time or format of the Settlement Hearing.

Any current shareholder of the Company who wishes to object to the fairness, reasonableness, or adequacy of the Settlement as set forth in the Stipulation, or to the agreed-upon Fee and Expense Award or Service Awards to the three Plaintiffs, may file with the Court a written objection. An objector must at least twenty-one (21) calendar days prior to the Settlement Hearing:

(1) file with the Clerk of the Court and serve (either by hand delivery or by first class mail) upon the below listed counsel a written objection to the Settlement setting forth (a) the nature of the objection; (b) proof of ownership of the Company common stock as of March 20, 2023 and through the date of the filing of any such objection, including the number of shares of the Company common stock held and the date of purchase or acquisition; and (c) any and all documentation or evidence in support of such objection. Any objector who does not timely file and serve a such an objection shall be foreclosed from raising any objection to the Settlement and shall not be permitted to appear at the Settlement Hearing, except for good cause shown.

IF YOU MAKE A WRITTEN OBJECTION, IT MUST BE ON FILE WITH THE CLERK OF THE COURT NO LATER THAN May 22, 2023. The Clerk's address is:

Clerk of the Court,
Suffolk County Superior Court
3 Pemberton Square, Boston, MA 02108

YOU ALSO MUST DELIVER COPIES OF THE MATERIALS TO PLAINTIFFS' COUNSEL AND DEFENDANTS' COUNSEL SO THEY ARE RECEIVED NO LATER THAN May 22, 2023. Counsel's addresses are:

Counsel for Plaintiffs:

THE BROWN LAW FIRM, P.C.
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New York, NY 10017
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Counsel for Defendants:

MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY AND POPEO, P.C.
John F. Sylvia, BBO # (555581)
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One Financial Center
Boston, MA 02111
Tel: (617) 348-1820
Email: Jfsylvia@mintz.com
Mdlevitt@mintz.com

An objector may file an objection on his, her, or its own or through an attorney hired at his, her, or its own expense. Any current shareholder of the Company who does not timely file and serve a written objection complying with the above terms shall be deemed to have waived, and shall be foreclosed from raising, any objection to the Settlement, and any untimely objection shall be barred.

Any objector who files and serves a timely, written objection in accordance with the instructions above, may appear at the Settlement Hearing either in person or through counsel

retained at the objector's expense. Objectors need not attend the Settlement Hearing, however, in order to have their objections considered by the Court.

If you are a current shareholder of the Company and do not take steps to appear in this action and object to the proposed Settlement, you will be bound by the Judgment of the Court and will forever be barred from raising an objection to the settlement in this State Court Action, and from pursuing any of the Released Claims.

COMPANY SHAREHOLDERS AS OF MARCH 20, 2023 WHO HAVE NO OBJECTION TO THE SETTLEMENT DO NOT NEED TO APPEAR AT THE SETTLEMENT HEARING OR TAKE ANY OTHER ACTION.

Interim Stay and Injunction

Pending the Court's determination as to final approval of the Settlement, Plaintiffs and Plaintiffs' Counsel, and any Company shareholders, derivatively on behalf of the Company, are barred and enjoined from commencing, prosecuting, instigating, or in any way participating in the commencement or prosecution of any action asserting any Released Claims derivatively against any of the Released Persons in any court or tribunal.

Scope of the Notice

This Notice is a summary description of the Derivative Actions, the complaints, the terms of the Settlement, and the Settlement Hearing. For a more detailed statement of the matters involved in the Derivative Actions, reference is made to the Stipulation and its exhibits, copies of which may be reviewed and downloaded at <https://ir.tempesttx.com/investor-resources/notices>

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You may obtain further information by contacting Plaintiffs' Counsel at: Timothy Brown, The Brown Law Firm, P.C., 767 Third Avenue, Suite 2501, New York, NY 10017, Telephone: (516) 922-5427, E-mail: tbrown@thebrownlawfirm.net; or Thomas J. McKenna, Gainey McKenna & Egleston, 501 Fifth Avenue, 19th Floor, New York, NY 10017, Telephone: (212) 983-1300, E-mail: tjmckenna@gme-law.com. **Please Do Not Call the Court or Defendants with Questions About the Settlement.**

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