

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

ROBERT CIARCIELLO Individually and
on Behalf of All Others Similarly Situated,

Plaintiff,

v.

BIOVENTUS INC., KENNETH M.
REALI, MARK L. SINGLETON,
GREGORY O. ANGLUM, and SUSAN M.
STALNECKER,

Defendants.

Case No. 1:23-cv-00032-CCE-JEP

**DECLARATION OF GEORGE N. BAUER IN SUPPORT OF (I) LEAD
PLAINTIFF'S MOTION FOR FINAL APPROVAL OF PROPOSED CLASS
ACTION SETTLEMENT AND APPROVAL OF THE PLAN OF ALLOCATION,
AND (II) LEAD PLAINTIFF'S COUNSEL'S MOTION FOR ATTORNEYS' FEES
AND EXPENSES, AND LEAD PLAINTIFF'S REASONABLE COSTS AND
EXPENSES**

I, GEORGE N. BAUER, declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true:

1. I am a partner at Bleichmar Fonti & Auld LLP (“BFA,” “Lead Counsel,” or “Settlement Class Counsel”), the Court-appointed Lead Counsel and Settlement Class Counsel in the above-captioned Action (the “Litigation”).¹

2. I respectfully submit this declaration in support of (i) Lead Plaintiff’s Motion for Final Approval of Proposed Class Action Settlement and Approval of the Plan of Allocation, and (ii) Settlement Class Counsel’s Motion for Attorneys’ Fees and Expenses, and Lead Plaintiff’s Reasonable Costs and Expenses. I have personal knowledge of the matters testified to herein based on my active participation in all material aspects of the prosecution and settlement of this action, and, if called upon, I could and would competently testify thereto.

3. Attached hereto are true and correct copies of the following documents:

a. **Exhibit 1** – The Declaration of Gerard Grysko, Deputy Executive Director of Lead Plaintiff Wayne County Employees’ Retirement System (“Wayne County” or “Lead Plaintiff”) in support of (i) Lead Plaintiff’s Unopposed Motion for Final Approval of Proposed Class Action Settlement, and (ii) Lead Plaintiff’s Counsel’s Motion for Attorneys’ Fees and Expenses, and Lead

¹ Capitalized terms not defined herein have the meanings stated in the Stipulation of Settlement, dated July 12, 2024, as revised on August 7, 2024 (the “Stipulation,” ECF No. 148-1).

Plaintiff's Reasonable Costs and Expenses.

- b. **Exhibit 2** - A list of BFA attorneys and professional support staff who worked on the case, as well as information about each individual's qualifications, experience, and role.
- c. **Exhibit 3** - A schedule summarizing the amount of time spent by each attorney and professional support staff employee of BFA from inception of the Litigation through November 6, 2024, the rates applicable to each individual, and a lodestar calculation for each individual.
- d. **Exhibit 4** – BFA's firm resume.
- e. **Exhibit 5** – The Declaration of Kathleen Brauns of A.B. Data Regarding: (A) Mailing of the Postcard Notice; (B) Publication of the Summary Notice; (C) the Settlement Website and Call Center Services; (D) Report on Objections and Requests for Exclusion Received; and (E) Claims Received to Date
- f. **Exhibit 6** – A summary of BFA's expenses incurred in connection with Lead Plaintiff's prosecution of the Litigation.
- g. **Exhibit 7** – The Declaration of Jed Melnick of JAMS.
- h. **Exhibit 8** – The Declaration of Gagan Gupta of Tin Fulton Walker & Owen PLLC.
- i. **Exhibit 9** – The Declaration of Susan R. Podolsky of The Law Offices of Susan R. Podolsky.
- j. **Exhibit 10** – A Proposed Order Granting (i) Motion for Final Approval of

Proposed Class Action Settlement and Approval of the Plan of Allocation, and
(ii) Lead Plaintiff's Counsel's Motion for Attorneys' Fees, Expenses, and
Lead Plaintiff's Reasonable Costs and Expenses.

I. LEAD PLAINTIFF'S PROSECUTION OF THE ACTION

A. Commencement of the Litigation and Appointment of Lead Plaintiff

4. The initial complaint in this Litigation was filed on January 12, 2023. (ECF No. 1.) The initial complaint alleged false and misleading statements concerning Bioventus's financial performance and its accounting procedures and practices, specifically those concerning rebates. (*Id.* ¶¶ 47-74.) The initial complaint further alleged violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, and Sections 11 and 15 of the Securities Act of 1933. (*Id.* ¶¶ 93-122.)

5. On March 13, 2023, Wayne County moved, pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA"), 15 U.S.C. § 78u-4(a)(3)(B), for appointment as Lead Plaintiff and for the appointment of BFA as Lead Counsel. (ECF Nos. 19-21.) There were three other motions for Lead Plaintiff: Yitzhak Zilberman (ECF Nos. 7-10); Gregory and Cynthia Stillman (ECF Nos. 11-13); and Victor Carlomagno (ECF Nos. 16-18).

6. On March 16, 2023, the Court ordered the movants to each file "one consolidated brief addressing the motions and applications of the other three" by no later than April 3, 2023. (There was no ECF document number assigned to this Text Order.)

7. On April 3, 2023, Gregory and Cynthia Stillman and Yitzhak Zilberman filed Notices of Non-Opposition concerning Wayne County's motion, (ECF Nos. 40 & 43), and Victor Carlomagno withdrew his motion for appointment, (ECF No. 41).

8. On April 12, 2023, the Court entered an order appointing Wayne County as Lead Plaintiff and BFA as Lead Counsel. (ECF No. 44.)

9. On April 21, 2023, the Court entered an order requiring that by May 12, 2023, before Lead Plaintiff filed an amended complaint, Defendants shall provide Lead Counsel with a detailed written explanation of any deficiencies they contend subject the original complaint to dismissal. (ECF No. 46.) The Court further ordered that by June 12, 2023, Lead Plaintiff should file a consolidated complaint; by July 17, 2023, Defendants shall answer or move to dismiss the consolidated complaint; and by July 31, 2023, Lead Plaintiff should file any further amended complaint. (*Id.*)

B. Amended Complaint and Motion to Dismiss Briefing

10. Immediately after Wayne County was appointed Lead Plaintiff and BFA was appointed Lead Counsel, BFA, on behalf of Lead Plaintiff, commenced an extensive investigation for the purpose of preparing a consolidated amended class action complaint.

11. As part of that investigation, BFA analyzed Bioventus's U.S. Securities and Exchange Commission ("SEC") filings and public statements, media reports, analyst reports, and historic stock price data. BFA, working with its investigators, also conducted an extensive search to locate former Bioventus employees who might have

relevant information pertaining to the claims in the Amended Complaint (described below), which ultimately incorporated information from six former employees. In addition to these investigative steps, BFA retained the services of forensic accounting experts at Heming Morse LLP to assist in the evaluation of Bioventus's financial statements.

12. On June 12, 2023, Lead Plaintiff filed an amended complaint. (ECF No. 48.) The amended complaint alleged material misstatements and omissions about the pricing of and revenue from Bioventus's largest products, Bioventus's violations of U.S. Generally Accepted Accounting Principles ("GAAP"), and Bioventus's admitted material weaknesses in internal controls and disclosure controls. The amended complaint raised claims against Defendants Bioventus, Reali, Singleton, Anglum, and Stalneckner, as well as a number of other Bioventus board members under Sections 11 and 15 of the Securities Act of 1933, Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, and Item 303 of SEC Regulation S-K. In addition, the amended complaint cited to information provided by two former employees identified in the course of BFA's investigation.

13. On July 17, 2023, Defendants filed a motion to dismiss the June 12 amended complaint, (ECF No. 53), arguing that Plaintiff failed to plead an actionable Exchange Act claim because Plaintiff failed to identify a single false or misleading statement; failed to plead a strong inference of scienter; and failed to establish loss causation. Defendants further argued that Plaintiff failed to plead a Securities Act claim

because it lacks standing to pursue such claims.

14. Pursuant to the Court's April 21, 2023, Order (*see* ECF No. 46; *supra* ¶ 9), Lead Counsel, on behalf of Lead Plaintiff, filed a Second Amended Complaint on July 31, 2023. (ECF No. 58.) The Second Amended Complaint likewise alleged violations of the Securities and Exchange Acts based on false and misleading statements about Bioventus's internal controls, pricing on its key products, and its material overstatement of revenue and EBITDA in violation of GAAP. In addition, among other things, the Second Amended Complaint, removed the Item 303 claims, narrowed the number of defendants by removing all directors except for Stalnecker, who was the chair of the audit committee, and added additional allegations from confidential former employee witnesses that were obtained during BFA's continuing investigation. Specifically, the Second Amended Complaint identified four additional former employees (FE-3 through FE-6), and alleged in detail the Defendants' receipt of an audit report that concluded in September 2021 that the Company did not have effective controls over rebates, rebate payments, or rebate accruals. (*See* Amended Complaint, ¶¶ 82-101.)

15. On August 21, 2023, Defendants filed a motion to dismiss the Second Amended Complaint. (ECF Nos. 63-67.) Defendants argued, among other things, that:

- Plaintiff failed to allege falsity because the alleged misstatements were either forward-looking, nonactionable judgments or opinions, or puffery, or were not false because they were premised on former employees who

report generalized problems or recount incorrect conclusions from the Company's internal audit report;

- Plaintiff failed to allege scienter because there were no stock sales suggesting a motive to defraud investors and Plaintiff's allegations are otherwise based on the same former employee allegations that were contradicted by a September 2021 audit report submitted by Defendants or otherwise lacked specific facts;
- Plaintiff failed to establish loss causation because the alleged loss causation events were the materialization of risks that Bioventus had warned investors could occur, and because the alleged corrective disclosures did not correct any of the alleged misstatements; and
- Plaintiff failed to plead standing for the alleged Securities Act violations.

16. On September 12, 2023, Lead Plaintiff filed an opposition to the Defendants' motion to dismiss. (ECF No. 70.) Plaintiff argued, among other things, that:

- Plaintiff pleaded falsity because false financial statements and false claims of effective controls are not opinions, but statements of fact, and also because Defendants rely on a single, previously undisclosed, cherry-picked document, which, in any event, concluded that Bioventus lacked supporting documentation concerning its calculation of accruals and that if that shortcoming was left uncorrected, could result in inaccurate

financial statements;

- Plaintiff pleaded scienter because the audit report in September 2021 proved that the Defendants were aware of the Company’s failure to accurately calculate rebates and because Reali and Anglum were specifically told by employees that Bioventus significantly underestimated rebate payments and needed to be conservative to avoid having to reverse revenue;
- Plaintiff pleaded loss causation because Bioventus’s disastrous earnings results, admissions, and corresponding stock drops—including 57.5% in one day—were the direct result of the facts and risks Defendants’ misstatements concealed, and no risk disclosure warned investors of these existing facts; and
- Plaintiff pleaded standing for the Securities Act violations because he alleged purchases traceable to Bioventus’s registration statement.

17. On November 6, 2023, the Court issued an Opinion and Order granting in part and denying in part Defendants’ motion to dismiss the Second Amended Complaint. (ECF No. 75.) Specifically, the Court denied the motion as to Lead Plaintiff’s Securities Exchange Act claims finding that Plaintiff alleged “many factual details sufficient to plausibly allege with particularity misleading statements made with knowledge and causing loss.” However, the Court granted the motion as to Lead Plaintiff’s Securities Act claim because Lead Plaintiff had not alleged facts to plausibly

show statutory standing.

C. Case Management

18. On November 30, 2023, the Parties filed a joint Rule 26(f) Report (ECF No. 78) and a Local Rule 5.5 Report (ECF No. 79), which, among other things, proposed a discovery plan and a proposed schedule for class certification motions, expert discovery, and other case events.

19. The Court approved the parties' joint reports on December 4, 2023. (ECF No. 80.) The Court also ordered that if the parties do not provide the name of an agreed-upon mediator within 21 days of the order, the Clerk will select a mediator from the Court's panel of mediators. (*Id.*) On December 20, 2023, the Parties jointly notified the Court that they had selected Jed Melnick of JAMS to serve as mediator. (ECF No. 82.) The Court approved the Parties' selection on December 21, 2023. (ECF No. 83.)

20. On December 11, 2023, Defendants filed an Answer, denying all allegations in the Second Amended Complaint and asserting twenty separate affirmative defenses. (ECF No. 81.)

21. On January 11, 2024, the Parties jointly moved for a protective order to govern the production and receipt of confidential information in discovery, which the Parties had negotiated extensively. (ECF No. 84.) The Court entered the protective order on January 24, 2024. (ECF No. 85.)

D. The Parties Engaged in Extensive Discovery

1. Initial Disclosures

22. On December 4, 2023, the parties exchanged initial disclosures pursuant to Rule 26. In preparing Lead Plaintiff's disclosures, BFA conferred with the Lead Plaintiff concerning, among other things: Lead Plaintiff's document preservation processes and obligations; the location of relevant documents; the identification of systems where those documents could be found in the ordinary course of business; and the identification of individual custodians who may have possession of relevant documents and information.

2. Document Discovery

23. Lead Plaintiff, through BFA, sought, and ultimately received and reviewed, extensive document productions from the Defendants and certain third parties. On November 21, 2023, Lead Plaintiff served on the Defendants its First Requests for Production of Documents, consisting of 63 individual requests for production. The Defendants served responses and objections on December 21, 2023. On May 29, 2024, Lead Plaintiff served on the Defendants its Second Requests for Production of Documents, consisting of 3 additional individual requests for production.

24. Lead Plaintiff, through BFA, then engaged in numerous meet-and-confer sessions and exchanged dozens of letters and emails with Defendants' counsel concerning the scope of Defendants' document productions. The Defendants were represented in these matters by highly experienced counsel from Latham & Watkins LLP, one of the most prestigious litigation firms in the world.

25. Among other things, Lead Plaintiff, through BFA, heavily negotiated

custodians and search terms, including by fighting for and obtaining additional custodians and sources of information; challenged Defendants' purported privilege assertions; fought for and obtained Defendants' production of text messages and chats; and enforced Defendants' preservation obligations. While Lead Plaintiff, through BFA, were able to resolve many of these disputes through negotiation, they sought to compel production on a number of these issues (as discussed further below).

26. In addition to the requests for production served on the Defendants, Lead Plaintiff, through BFA, also issued extensive discovery requests to various non-parties who were likely to possess relevant information. Specifically, Lead Plaintiff, through BFA, served subpoenas on the following third parties:

- Ankara – a third-party that Bioventus retained to assist with modeling the impact of price changes on Bioventus's key products.
- Anthem Health – a healthcare provider that contracted with Bioventus for rebates and other financial arrangements.
- Blue Cross Blue Shield – a healthcare provider that contracted with Bioventus for rebates and other financial arrangements.
- Bertner Advisors – a public relations consultant retained by Bioventus to advise on public statements and press releases.
- CarelonRx – a third-party administrator of insurance claims that dealt with Bioventus during the relevant period.
- Deloitte – external advisory firm retained by Bioventus to investigate and

advise on internal controls and compliance issues.

- Emisar – a third-party that negotiated rebates with Bioventus on behalf of OptumRx, a UnitedHealth subsidiary and pharmacy benefit manager.
- Express Scripts – a pharmacy benefit manager that is a subsidiary of Cigna Health and that dealt with Bioventus during the relevant period.
- Grant Thornton – an external auditor that reviewed and advised on Bioventus’s internal controls around rebates and reimbursements.
- OptumRx – a UnitedHealth subsidiary and pharmacy benefit manager that dealt with Bioventus during the relevant period.
- Prime Therapeutics – a pharmacy benefit manager that dealt with Bioventus during the relevant period.
- McKinsey – a consultant retained by Bioventus to advise on rebate and chargeback accounting, and internal controls
- RSM – retained by Bioventus as an “internal audit partner” that assisted with Sarbanes-Oxley disclosures and internal audits.
- ZS Associates – an external software provider that provided Bioventus with software used in connection with its modeling and tracking of rebate data.

27. BFA engaged in dozens of meet-and-confer sessions and exchanged dozens of letters and emails with counsel for these non-party entities concerning the scope of their document productions.

28. As a result of BFA's efforts, the Defendants and non-parties altogether produced over 70,000 documents totaling over 665,000 pages to the Lead Plaintiff, many of which, given the complexity surrounding the technical rebate and reimbursement calculations at the center of Bioventus's alleged fraud, consisted of complex accounting documents and spreadsheets.

29. Lead Plaintiff, through BFA, established a comprehensive system to review, analyze, and code the documents received in discovery. Specifically, BFA assigned a team of dedicated attorneys to review the documents and determine whether they were relevant, not relevant, and/or "hot." The BFA review attorneys also categorized the documents according to which specific issues in the case the documents related to, and determined the individuals and deponents to which the documents related so they may be easily retrieved and examined in preparation for depositions. The review was targeted to be as efficient and streamlined as possible, with the use of complex search strings designed to identify documents relevant to specific issues and/or witnesses. The review team also deployed technology assisted review tools, which employ artificial intelligence to screen large volumes of documents and identify those most likely to be relevant. The use of these tools by BFA's review team allowed reviewers to focus their efforts on documents targeted for maximum impact to the case.

30. BFA retained the services of Trustpoint, one of the largest integrated legal solutions providers in the country, to host the documents received in discovery on its state-of-the-art Relativity platform. Trustpoint's platform allowed BFA's review team

to run complex searches, assign batches of documents for review, code and classify documents by topic areas, witnesses, and/or relevance, and perform case management and QC tasks. Trustpoint's platform also provided the technology assisted review tool, which, as noted above, greatly streamlined the review overall.

31. Lead Plaintiff also collected and produced documents in response to the Defendants' First Set of Requests for the Production of Documents, which were served on January 8, 2024, and which consisted of 38 individual requests. After Lead Plaintiff served responses and objections on February 7, 2024, the Parties, through counsel, engaged in numerous meet-and-confer sessions and exchanged numerous letters and emails concerning the scope of Lead Plaintiff's productions. In particular, Defendants sought discovery from numerous custodians and sources. While BFA, on behalf of Lead Plaintiff, challenged many of these requests as irrelevant and unduly burdensome, Lead Plaintiff, working with BFA, collected data from nine custodians and Lead Plaintiff's centralized files, reviewed over 55,000 documents that hit on Defendants' proposed search terms, and ultimately produced over 5,300 pages of relevant documents in seven separate productions on February 23, March 4, March 13, April 2, April 3, April 12, and May 3, 2024.

3. Interrogatories

32. Lead Plaintiff, through BFA, served Defendants with three sets of interrogatories totaling 29 individual interrogatories on January 24, April 12, and May 29, 2024. Lead Plaintiff, through BFA, engaged in numerous meet and confers and

exchanged dozens of letters and emails with Defendants concerning what Lead Plaintiff contended were inadequate responses by Defendants. These efforts resulted in Defendants providing several sets of supplemental responses.

33. Lead Plaintiff was also served by Defendants with nine interrogatories on February 29, 2024, to which Lead Plaintiff, through BFA, responded on April 1, 2024. Defendants served a second set of interrogatories totaling 21 additional individual interrogatories on March 29, 2024. Due to the Settlement, Lead Plaintiff did not respond to the second set.

4. Requests for Admission

34. On March 29, 2024, the parties exchanged requests for admission. Lead Plaintiff, through BFA, served 27 individual requests for admission; Defendants served 29 individual requests for admission. Due to the Settlement, the parties did not respond to these requests.

5. Depositions

35. As noted above, BFA established a comprehensive system for reviewing, analyzing, and coding documents received in discovery. One of the primary goals of BFA's document review effort was to prepare for depositions.

36. At the time of the Settlement, Lead Plaintiff, through BFA, was preparing to take numerous fact depositions. These include depositions of (i) Defendants Reali, Anglum, and Stalnecker, as well as a Rule 30(b)(6) deposition of Defendant Bioventus; (ii) Bioventus's General Counsel (who, according to Bioventus's productions, was

involved in the review of Bioventus's internal controls around rebates), and other current and former employees; and (iii) certain third-parties, including Bioventus's auditors and consultants.

37. As part of its preparations, BFA drafted a Rule 30(b)(6) deposition notice, and had numerous meet and confers and exchanged numerous emails and letters concerning the scope of the depositions. BFA also prepared outlines and document collections to be used at the depositions, a process which was ongoing at the time the settlement was reached.

6. Discovery Disputes

38. Discovery in this Action was hotly contested. BFA and Defendants' counsel exchanged many dozens of letters and emails and participated in dozens of meet-and-confer sessions concerning, among other things, the scope of search terms, the identification of document custodians, the production of privilege logs, the application of the attorney-client privilege and attorney work product, the metadata to be provided with electronically stored information, the preservation of evidence, and the adequacy of discovery responses. Most of these disputes were resolved through negotiation between the parties and did not require the Court's intervention. However, several were litigated and adjudicated by the Court.

39. On March 6, 2024, Lead Plaintiff, through BFA, filed a motion for an expedited discovery conference. (ECF No. 87.) Lead Plaintiff sought to address its request that Defendants produce the full custodial and centralized files for two former

Bioventus employees whom Defendants had subpoenaed for depositions. On March 14, 2024, a telephone conference to discuss the issue was held before Magistrate Judge Peake. Magistrate Judge Peake provided preliminary guidance indicating that the Defendants should produce the documents requested by Plaintiffs.

40. On April 22, 2024, Lead Plaintiff, through BFA, filed another motion for an expedited discovery conference. (ECF No. 113.) Lead Plaintiff sought to address (i) Defendants' refusal to provide verified interrogatory responses in a timely fashion; and (ii) Defendants' refusal to produce relevant text messages, including messages among the individual Defendants concerning rebates, internal control deficiencies, and pricing changes. On April 26, 2024, Magistrate Judge Peake ordered the parties to meet and confer about these issues again, and to submit a joint status report by May 3, 2024. (ECF No. 117.) The Parties promptly met and conferred on April 29, 2024, and submitted the joint report on May 3, 2024. (ECF No. 118.) On May 6, 2024, Magistrate Judge Peake issued an Order denying Plaintiff's request for an expedited conference to the extent it sought further orders or deadlines at that time, but set the case for a status conference on May 23, 2024, and ordered the Parties to file a joint status report by May 21, 2024. (ECF No. 119.)

E. Experts

41. At the time of the settlement, Lead Plaintiff, through BFA, had retained the services of two highly qualified experts to assist in the prosecution of the case and to serve as witnesses at trial. Lead Plaintiff, through BFA, retained (a) a forensic

accounting expert to provide advice and testimony on accounting issues; and (b) Chad Coffman, of Peregrine Economics LLC, to provide expert advice and testimony on damages and loss causation issues.

42. BFA consulted extensively with these experts and their teams throughout the litigation and at the time of settlement was working with the experts to prepare and disclose expert reports by the August 16, 2024, deadline.

43. In addition, Mr. Coffman and his team at Peregrine prepared a 39-page expert report on whether the market for Bioventus stock was efficient during the class period and whether class-wide damages could be calculated under a common methodology under the Securities Exchange Act of 1934, which report was submitted in support of Lead Plaintiff's motion for class certification. (*See* ECF No. 99-1.) BFA also worked with Mr. Coffman and his team to develop the Plan of Allocation that was submitted with Lead Plaintiff's Motion for Preliminary Approval. (ECF No. 148-2, at 29 of 37.)

F. Class Certification

44. On March 8, 2024, Lead Plaintiff, through BFA, moved for certification of a class consisting of “[a]ll persons and entities who purchased or otherwise acquired Bioventus’s Class A common stock between February 11, 2021 and November 21, 2022, both inclusive, and were damaged thereby.” (ECF Nos. 89-92, 98, 99.) Lead Plaintiff also sought appointment as Class Representative and BFA’s appointment as Class Counsel, pursuant to Rule 23(g). In support of the motion, Lead Plaintiff, through

BFA, meticulously explained how the proposed class satisfies the requirements of Rule 23(a), and how common questions of law and fact predominate over any other questions and how a class action is superior to other methods of adjudication pursuant to Rule 23(b). Lead Plaintiff, through BFA, also submitted the expert report of Chad Coffman, which explained how the market for Bioventus stock was efficient and how class wide damages could be calculated. (ECF No. 99-1.)

45. Prior to filing their opposition to class certification, Defendants noticed the depositions of (i) Lead Plaintiff's 30(b)(6) designee; (ii) Mr. Coffman; (iii) Lead Plaintiff's investment manager; and (iv) Lead Plaintiff's investment consultant. Lead Plaintiff, through BFA, spent many hours preparing to defend these depositions, including by reviewing and preparing document sets and conducting mock examinations with Lead Plaintiff and Mr. Coffman. BFA also attended and defended these depositions on behalf of Lead Plaintiff.

46. On April 19, 2024, Defendants filed their opposition to class certification. (ECF Nos. 111-112.) Among other things, Defendants submitted the expert report of Jennifer Marietta-Westberg, challenging Mr. Coffman's opinions concerning a class-wide methodology for calculating damages. (ECF No. 112-13.)

47. Prior to filing their reply, Lead Plaintiff, through BFA, noticed the deposition of and deposed Defendants' expert.

48. On May 10, 2024, Lead Plaintiff filed its reply in support of class certification. (ECF Nos. 126-127.)

49. Lead Plaintiff's motion was pending at the time of the Settlement.

G. Settlement Negotiations

50. The Parties engaged in private mediation before Jed Melnick of JAMS. A full-day mediation session occurred on May 29, 2024. Before the session, the parties exchanged detailed mediation statements addressing issues of liability and the strength of the evidence uncovered to date. During the May 29 session, the Parties exchanged multiple demands and counteroffers under Mr. Melnick's auspices. At the conclusion of the session, Mr. Melnick made a recommendation to settle the case for \$15.25 million. The Parties accepted this recommendation, advised the Court on June 4, 2024, of their agreement in principle (*see* ECF No. 134), and subsequently negotiated the Stipulation.

H. Preliminary Approval

51. On July 15, 2024, Lead Plaintiff, through BFA, moved for preliminary approval of the settlement. (ECF Nos. 137-139.) The Settlement requires a \$15.25 million cash payment, which together with any interest gained and net of costs, taxes, and approved fees and expenses, will be distributed to Settlement Class Members who submit valid Proof of Claim forms in accordance with a plan of allocation to be approved by the Court. The parties also agreed to a mutual release of claims related to the conduct alleged in the case and claims related to the prosecution and defense of the case. (Stipulation ¶¶ 4.1-4.5, 5.7.)

52. On July 31, 2024, the Court issued a Text Order requesting additional

information about the preliminary approval motion, including information about Lead Plaintiff's involvement in the settlement negotiations, information about the proposed plan of allocation, and information about available insurance coverage.

53. On July 31, 2024, Ms. Robin Winchester emailed with questions that the Court intended to address at the upcoming hearing, including, among other things, questions about Lead Plaintiff's proposed claim form, plan of allocation, and methodology for determining artificial inflation.

54. On August 2, 2024, Ms. Winchester emailed additional questions that the Court intended to address at the upcoming hearing concerning the proposed claim form and the scope of the parties' releases.

55. On August 5, 2024, Lead Plaintiff, through BFA, provided additional information as requested by the Court, including, but not limited to, (i) a declaration from Lead Plaintiff's Deputy Executive Director, attesting to Lead Plaintiff's oversight of the litigation, involvement in the settlement negotiations, and approval of the Settlement terms; (ii) a declaration from Chad Coffman concerning the design and nature of the proposed plan of allocation; (iii) additional information about analogous plans of allocation and settlement papers submitted and approved in other matters; (iv) information about available insurance coverage; and (v) proposed edits to the claim form, Notice, and Stipulation. (ECF Nos. 141-144.)

56. On August 7, 2024, the Court held a hearing on Plaintiff's motion for preliminary approval.

57. On August 13, 2024, the Court (i) granted preliminary approval of the Settlement, (ii) preliminarily certified the Settlement Class as set forth in the Stipulation, (iii) approved the form and content of Notice, (iv) approved the retention of A.B. Data as Claims Administrator; and (v) set deadlines for issuing notice, moving for final approval, and submitting claims, objections, and requests for exclusion. (ECF No. 150, the “Preliminary Approval Order.”)

I. Notice, Claims, and Settlement Fund Administration

58. On August 27, 2024, A.B. Data caused the Summary Notice to be published in *The Wall Street Journal* and *PR Newswire*. (Ex. 5, ¶ 16.) On September 3, 2024, A.B. Data began mailing Notice to potential Settlement Class Members and posted the Notice and related documents to the Settlement-specific website. (Ex. 5, ¶¶ 7-15, 17.)

59. As set forth in the Preliminary Approval Order, the deadline for Settlement Class Members to submit exclusions was October 18, 2024, and the deadline for Settlement Class Members to object to the Settlement or any aspect of the Settlement is November 22, 2024. (ECF No. 150 at 18.) Neither A.B. Data nor BFA received any requests for exclusion, and to date, neither A.B. Data nor BFA have received any objections to the Settlement or any aspect of the Settlement, including the Fee and Expense Applications. (Ex. 5, ¶¶ 22-23.)

II. SETTLEMENT CLASS COUNSEL’S FEE AND EXPENSE APPLICATION

60. BFA seeks (i) an award of attorneys’ fees of \$5,032,500, or 33% of the

Settlement Fund, plus interest at the same rate earned by the Settlement Fund (the “Fee Application”), and (ii) payment for litigation expenses that it incurred in connection with the prosecution of the Litigation from the Settlement Fund in the amount of \$623,509, plus interest at the same rate earned by the Settlement Fund (the “Expense Application”). The Notice and Long-Form Notice informed Class Members that Settlement Class Counsel would seek fees up to 33% and reimbursement of expenses up to \$800,00 plus interest. (ECF No. 137-3, at 3 of 3; ECF No. 148-2, at 4.)

A. Fee Application

1. The Time and Labor Expended

61. Lead Plaintiff’s Counsel devoted significant time and effort to the prosecution of this Litigation, which totaled 7,853.40 hours amounting to \$6,145,414 worth of time and effort.

62. Specifically, BFA spent 7,196.50 hours with a total lodestar of \$5,656,919. (*See* Exhibit 3.) This included, among other things, investigating, drafting, and filing two Amended Complaints, which uncovered the facts that substantiated a strong inference of a complex fraud; successfully defeating the Defendants’ motion to dismiss; aggressively pursuing discovery from the Defendants and third-parties; reviewing and analyzing over 665,000 pages of documents from Defendants and more than a dozen third parties; negotiating numerous discovery disputes and litigating several before the Court; negotiating the timing, scope, and number of depositions, including a Rule 30(b)(6) deposition, and preparing to take such depositions; briefing

class certification, including taking and defending expert depositions and defending depositions of Lead Plaintiff and its third-party asset manager and investment consultant; preparing experts to provide testimony concerning damages, loss causation, and accounting issues; and successfully leveraging the work performed throughout the litigation to secure, through aggressive arms-length negotiations, an extremely favorable resolution for Settlement Class Members.

63. Attached as Exhibit 2 is a list of BFA attorneys and professional support staff who worked on the case, as well as information about each individual's qualifications, experience, and role.

64. Attached as Exhibit 3 is a schedule summarizing the amount of time spent by each attorney and professional support staff employee of BFA from inception of the Litigation through November 6, 2024, the rates applicable to each individual, and a lodestar calculation for each individual.

65. Exhibit 3 is based on contemporaneous time records prepared and maintained by BFA in the ordinary course. As a partner responsible for supervising BFA's work on this case, I supervised the review of these time records to prepare this declaration. The purpose of this review was to confirm both the accuracy of the time entries and the necessity for, and reasonableness of, the time committed to the Litigation.

66. As reflected in Exhibit 3, the hourly rates for BFA attorneys and professional support staff range from \$395 for paralegal support to \$1,250 for a

founding firm partner, with a blended firm rate of approximately \$751. Current rates are used for current personnel; for attorneys and professional support staff who are no longer employed by BFA, the hourly rate used is the hourly rate for such employee in his or her final year of employment by BFA.

67. BFA's rates are the usual and customary rates set by BFA for each individual. Different timekeepers within the same employment category (*e.g.*, partner, associate) may have different rates depending on their respective years of experience, years at the firm, years in current position, relevant experience, relevant expertise, and/or rates of similarly situated individuals at BFA or at peer firms. BFA's rates are comparable to the rates set by peer firms for attorneys and staff of similar skill and experience.

68. Courts across the country have consistently held that BFA's hourly rates are reasonable. Indeed, the District of Colorado recently approved rates that are identical to the rates applicable here. *See Bilinsky v. Gatos Silver, Inc., et al.*, No. 1:22-cv-00453-PAB-KAS (D. Colo. Oct. 15, 2024); *see also* Settlement Approval Hearing Transcript, *In re Teva Sec. Litig.*, No. 3:17-cv-00558 (SRU) (D. Conn.) (June 2, 2022), 28-29 (granting fee request and accepting BFA's rates); *Police Ret. Sys. of St. Louis v. Granite Constr. Inc.*, No. C 19-04744 WHA, 2022 WL 816473, at *9 (N.D. Cal. Mar. 17, 2022) ("This order accepts [BFA's] claimed rates as generally tracking the going rate for those with the same levels of skill and experience in our geographic region.").

69. BFA excluded from the lodestar calculations reflected in Exhibit 3 all

time related to the preparation of the Fee and Expense Applications (which amounted to 58.90 hours and \$56,300). BFA also eliminated all time from nine timekeepers with fewer than 100 hours billed to the matter (which amounted to 293 hours and \$161,363).

70. Exhibit 3 demonstrates that Settlement Class Counsel undertook a concentrated and efficient allocation of staffing. In fact, of the 7,196.50 hours spent by BFA's 14 timekeepers, five attorneys committed 3,533.10 hours, or approximately half. The nature of this staffing was undertaken to ensure that knowledge of key information was centralized among a small number of attorneys and staff, that time was not wasted initiating new personnel, duplication of effort was minimized, and that the litigation team was highly coordinated in order to tackle the complex factual and legal issues with utmost efficiency, as detailed further below.

2. The Novelty and Difficulty of the Questions Presented by the Litigation and Counsel's Skills in Representing the Class

71. The difficulties presented by this complex securities class action, and the skill required to successfully navigate them, favor approval of the requested fee award.

72. This was a complex case involving false and misleading statements about rebates and reimbursements of insurance claims in the healthcare industry. At the outset, BFA was required to learn, among other things, how the labyrinthine world of healthcare benefits worked; the various entities involved in the management of healthcare benefits; the impact of changing governmental regulations on healthcare pricing; how insurance rebates are calculated, accounted for, and recorded; and how those facts applied to the securities laws.

73. Lead Plaintiff's Counsel drafted two amended complaints (including the operative Second Amended Complaint) that reflect counsel's extensive work to develop highly technical allegations regarding the healthcare benefits systems at issue in the case and the nature and extent of the Defendants' alleged accounting misstatements. Lead Plaintiff's Counsel deployed its experience and skill in developing such allegations, as well as in incorporating the expertise of experts and the technical allegations supplied by former Bioventus employees.

74. Lead Plaintiff's Counsel's successful opposition to Defendants' motion to dismiss further underscores the complexity of the case. Defendants made very technical arguments about how rebates are calculated and how statements about such calculations are subject to judgment, assumptions, and changing circumstances. Lead Plaintiff's Counsel parried these attacks with careful and technical responses that won the day.

75. The case became even more complex as Lead Plaintiff's Counsel prosecuted the litigation through discovery. Not only did Lead Plaintiff's Counsel have to deploy its procedural skill and knowledge to navigate the Federal Rules of Civil Procedure to negotiate and secure substantial discovery responses from Defendants, it also had to analyze a factual record dense with complex insurance agreements, rebate calculation spreadsheets and data files, and technical discussions in emails, chats, and other sources about healthcare benefits. Lead Plaintiff's Counsel's team accomplished this feat efficiently and effectively, and ultimately built a sufficiently compelling

factual record to help secure the outstanding settlement presented here for final approval.

76. In short, Lead Plaintiff could not have secured this outstanding result without Lead Plaintiff's Counsel's skillful navigation of the novel and difficult questions at issue in this Litigation.

3. Lead Plaintiff's Counsel Secured a Significant Victory for the Class

77. As noted above, Lead Plaintiff's Counsel litigated the case aggressively and the Settlement was reached near the close of fact discovery, only after the factual record had been well-developed through document and written discovery, and only after many hours of hard-fought, arms-length negotiations. Those efforts resulted in a Settlement of \$15.25 million, which represents a significant benefit to the Class.

78. The Settlement Amount is the second largest recovery in a securities class action in the Middle District of North Carolina in the last 25 years and the fifth largest in any North Carolina federal court during that time. The others are: *Nieman v. Duke Energy Corp*, No. 3:12-cv-00456 (W.D.N.C. 2015) (\$146.25 million); *In re Krispy Kreme Doughnuts, Inc., Sec. Litig.*, No. 1:04-cv-00416 (M.D.N.C. 2007) (\$75 million); *In re Red Hat, Inc., Sec. Litig.*, No. 5:04-cv-473 (E.D.N.C. 2012) (\$20 million); and *Ollila v. Babcock & Wilcox Enterprises, Inc.*, No. 3:17-cv-00109 (W.D.N.C.) (\$19.5 million).

79. Further, the Settlement Amount represents a recovery of over 10.8% of the maximum estimated damages of approximately \$140 million, and as much as 27%

of potential triable damages of \$56.7 million in the event Defendants prevailed on certain merits related issues. Of course, Defendants would have argued at trial that no damages are warranted and that none of their conduct was actionable. In any event, the recovery is more than double the 4.5–4.8% average recovery in Section 10(b) cases between 2014-2023. *See Cornerstone Research, Securities Class Action Settlements – 2023 Review and Analysis*, available at <https://www.cornerstone.com/wp-content/uploads/2024/03/Securities-Class-Action-Settlements-2023-Review-and-Analysis.pdf>.

80. The settlement of 10-27% of estimated damages also exceeds or compares very favorably to recent securities class action settlements in this District and before this Court. *See, e.g., Ollila v. Babcock & Wilcox Enterprises, Inc.*, No. 3:17-CV-00109, ECF No. 90 (W.D.N.C. 2019) (granting final approval of settlement of approximately 4.8% of estimated recoverable damages) (Cogburn, J.); *Caplin v. Trans1, Inc., et al.*, No. 7:12-CV-00023, ECF No. 134 (E.D.N.C. 2018) (Fox, J.) (granting final approval of settlement representing 18% of plaintiff's likely recovery at trial).

81. The recovery is particularly noteworthy given that Bioventus's financial position greatly diminished the prospect of any cash recovery meaningfully larger than the proposed Settlement. Prior to the Settlement, Bioventus had reported that it had a cash balance of \$25 million and over \$355 million in outstanding long-term debt as of

March 30, 2024.² That cash balance had decreased by nearly one-third from \$36 million as of December 31, 2023. Bioventus's diminishing cash reserves presented a serious risk that the Class could not recover more than the \$15.25 million achieved in the proposed Settlement.

4. The Contingent Nature of Counsel's Fee and the Preclusion of Other Employment

82. The requested fee award is also reasonable in light of the significant risks assumed by BFA in prosecuting this complex class action on a fully contingent basis. BFA undertook the representation of the Settlement Class knowing that the Litigation could last for years, provided no guarantee of any compensation, and would require the substantial investment of time that would otherwise have been devoted to other cases. BFA also assumed the risk of advancing all costs and expenses necessary to successfully prosecute the Litigation with no guarantee of any reimbursement.

83. As an initial matter, litigating any case under the PSLRA's exacting standards presents risks, and in fact nearly half of all securities class actions are dismissed within three years of filing. See Cornerstone Research, Securities Class Action Filings – 2022 Year in Review, available at <https://www.dwt.com/-/media/files/2023/03/securitiesclassactionfilings2022yearinreview.pdf?rev=7e1d597878934c028b5c301a7bef3f2b&hash=C8B70DD2EB3F761A89843F5FB48B8EE1>.

84. Here, successful prosecution of the Litigation faced additional significant

² See Bioventus Form 10-Q, dated May 7, 2024, available at <https://ir.bioventus.com/static-files/b3d3dfdf-e95c-4682-96df-d8a83ae6a919>.

risks on the merits and otherwise. For example, Defendants denied that they made any false and misleading statements and contend that the reversals recorded in 3Q22 were the result of “surprise” invoices that Bioventus in good faith did not anticipate; that Bioventus has never issued a restatement concerning its alleged accounting misstatements; and that Bioventus’s internal controls weaknesses were limited to 3Q22, not the entirety of the Class Period.

85. Defendants would also likely have challenged the Class’s damages. Specifically, Defendants were likely to argue that the corrective disclosures that caused Bioventus’s stock drops were comprehensive and addressed issues that were not reflected in Defendants’ alleged misstatements. As a result, Defendants could have argued that the Class’s damages were significantly lower than \$140 million, if not zero. *See Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 342–43 (2005) (to establish loss causation, plaintiffs must disaggregate the losses caused by the corrective disclosures from those caused by other factors). Defendants also vigorously opposed class certification on various grounds, including that Lead Plaintiff is not an adequate class representative, that Lead Plaintiff is not typical, and that common issues do not predominate. (*See* ECF No. 111.) Although Lead Plaintiff believes that these arguments are meritless (*see* ECF No. 123), the proposed Settlement avoids the risk that Defendant could have defeated certification.

5. The Experience, Reputation, and Ability of Counsel

86. BFA partners have litigated dozens of securities actions that have

contributed to the recovery of more than \$11 billion for investors, including nearly \$2 billion since the founding of the firm in 2014. Securities class actions that BFA has prosecuted and successfully resolved include a \$420 million recovery in *In re Teva Securities Litigation*, No. 3:17-cv-0558 (D. Conn.); a \$234 million recovery in *In re MF Global Holdings Securities Litigation*, 11-cv-07866-VM (S.D.N.Y.); a \$219 million recovery in *In re Genworth Financial Inc. Securities Litigation*, 14-cv-00682-JAG (E.D. Va.); a \$129 million recovery in *Greene v. Granite Construction Inc.*, No. 19-cv-04744 (N.D. Cal.); a \$120 million recovery in *Freedman v. Weatherford Int'l, Ltd.*, 12-cv-02121-LAK (S.D.N.Y.); and a \$21 million recovery in *Bilinsky v. Gatos Silver, Inc., et al.*, No. 1:22-cv-00453-PAB-KAS (D. Colo.).

87. BFA also serves as lead counsel in a number of high-profile securities class action lawsuits throughout the country, including *Lozada v. TaskUs, Inc.*, No. 22-cv-01479 (S.D.N.Y.); *In re Talis Biomedical Securities Litigation*, No. 22-cv-00105 (N.D. Cal.); *Peters v. Twist Bioscience Corp.*, No. 22-cv08168 (N.D. Cal.); *Chow v. Enochian Biosciences Inc.*, No. 22-cv-01374 (C.D. Cal.); and *In re UiPath, Inc., Securities Litigation*, No. 1:24-cv-04702 (S.D.N.Y.).

6. The Reaction of the Lead Plaintiff and Class Supports the Fee Application

88. As reflected in the attached Exhibit 1, an authorized representative of the Lead Plaintiff was present throughout the settlement negotiations and had carefully considered the strengths and weaknesses of the case. Lead Plaintiff's representative authorized the acceptance of the mediator's proposal and strongly supports approval of

the proposed Settlement. (Exhibit 1, ¶¶ 7-8.)

89. Lead Plaintiff has also reviewed Lead Plaintiff's Counsel's Fee and Expense Applications, and supports both. (*Id.* ¶¶ 9, 12.)

90. In addition, to date, no Settlement Class members have objected or sought exclusion from the Settlement.

B. Expense Application

1. BFA's Litigation Expenses

91. BFA respectfully requests \$623,509 in litigation expenses that it incurred in the prosecution of the Litigation. BFA incurred these expenses with full knowledge that it might not recover any of them if the Litigation was not successful.

92. Given the fully contingent representation and the risks of litigation, BFA was incentivized to prosecute this Action as efficiently as possible without undermining its aggressive litigation strategy. Notably, the requested amount of expenses is nearly \$160,000 lower than the maximum amount of \$800,000 estimated in the Notice that was disseminated to the Class. (*See* ECF No. 148-2, at 4.) To date, no Settlement Class Member has objected to the maximum amount of expenses set forth in the Notice, confirming the reasonableness of the requested expenses.

93. Attached as Exhibit 6 is a summary of Settlement Class Counsel's expenses incurred in connection with Lead Plaintiff's prosecution of the Litigation. Exhibit 6 identifies each category of expense and the amount incurred in each category.

94. Exhibit 6 and this Declaration are based on information maintained

contemporaneously and in the ordinary course by BFA, including without limitation receipts, invoices, expense vouchers, check records, and other similar documents. I have reviewed Exhibit 6 and believe it to be an accurate record of the expenses incurred by BFA related to this matter.

95. I believe that the expenses set forth in Exhibit 6 are fair and reasonable and were necessary for the efficient and effective prosecution of the Litigation. I also believe that the expenses set forth in Exhibit 6 comply fully with BFA's firm policies governing expense reimbursement. As noted above, BFA has to date received no reimbursement for any of the expenses set forth in Exhibit 6.

96. The expenses set forth in Exhibit 6 consist primarily (but not exclusively) of the following costs and expenses:³

- Expert Fees: \$291,533. This category includes the fees for Peregrine and Lead Plaintiff's forensic accounting consulting expert, as discussed above. (*See supra* ¶ 41.)
- Litigation Support Vendor Fees: \$191,758. This category includes (i) a vendor who provided investigative services concerning former Bioventus employees in connection with the Amended Complaint, and (ii) Trustpoint, which provided necessary processing, hosting, and assistance for BFA's analysis of document discovery.

³ As noted in Exhibit 6, additional expenses were incurred for postage, mailing, local and out-of-town transportation, meals, and accommodations.

- Mediation Fees: \$19,427. This category includes the fees borne by BFA to retain the services of Jed Melnick of JAMS to mediate the settlement of the Litigation.
- Court Reporter Services: \$18,948. This category includes fees and costs to retain Veritext, a well-known court reporting service, to provide court reporting and transcripts of depositions.
- Service & Filing Fees: \$12,217. This category includes Court filing fees and fees for service of subpoenas and other court documents.
- Outside Counsel: \$74,356. This category includes counsel retained to represent former Bioventus employees who provided information concerning the allegations in the Amended Complaint.
- Computer Research: \$5,916. This category includes vendors such as PACER and Thomson Reuters. These resources were used to obtain access to legal research, factual databases, and for cite-checking of briefs.

2. Lead Plaintiff's Request for an Award and Reimbursement of Expenses

97. Pursuant to 15 U.S.C. § 78u-4(a)(4), Lead Plaintiff Wayne County Employees' Retirement System also seeks an award of costs and expenses directly related to their representation of the Settlement Class.

98. As detailed in Lead Plaintiff's declaration, based on the time its personnel has devoted to the Litigation, Lead Plaintiff seeks an award of \$11,813.94. (Exhibit 1, ¶ 15 & Ex. A.)

99. We respectfully submit that these awards are consistent with Congress's intent, as expressed in the PSLRA, of encouraging investors to take active roles in supervising securities actions. As set forth in its declaration (*id.*, ¶ 4), Lead Plaintiff's personnel have been committed to pursuing this Action and diligently and effectively fulfilled their obligations as representative plaintiffs. Among other things, they performed the following tasks:

- Regularly communicating with Lead Counsel concerning the status, progress, and major strategy decisions regarding the Litigation;
- Reviewing major motions and pleadings to provide comments and direction as needed;
- Assisting in locating, collecting, and preserving potentially relevant documents;
- Responding to discovery requests, including requests for production and interrogatories, collecting data from nine custodians plus centralized files, reviewing over 50,000 documents, and producing relevant information regarding WCERS' transactions in Bioventus securities;
- Preparing for and testifying during a Rule 30(b)(6) deposition, which was taken on April 10, 2024; and
- Preparing for and participating in the mediation session.

100. We respectfully submit that Lead Plaintiff's efforts and contributions were reasonable and warrant reimbursement.

101. I declare under penalty of perjury that the foregoing is true and correct.

Executed in White Plains, New York on November 8, 2024.

/s/ George N. Bauer

George N. Bauer