

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

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

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.

**REPLY MEMORANDUM OF LAW IN FURTHER 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, EXPENSES, AND LEAD PLAINTIFF'S REASONABLE COSTS AND
EXPENSES**

Lead Plaintiff and Lead Plaintiff’s Counsel respectfully submit this reply memorandum of law in further support of (1) Lead Plaintiff’s Motion for Final Approval of Proposed Class Action Settlement and Approval of the Plan of Allocation (ECF Nos. 163-164) (the “Final Approval Motion”), and (2) Lead Plaintiff’s Counsel’s Motion for Attorneys’ Fees, Expenses, and Lead Plaintiff’s Reasonable Costs and Expenses (ECF Nos. 165-166) (the “Fee and Expense Motion”).¹

Lead Plaintiff and Lead Plaintiff’s Counsel are pleased to report that there have been *no objections* to any aspect of the Settlement, the Plan of Allocation, the requested attorneys’ fees or expenses, or Lead Plaintiff’s request for reasonable costs and expenses. There have also been *no requests for exclusion* from the Settlement. Accordingly, the Court should grant the Final Approval Motion and the Fee and Expense Motion, for all the reasons set forth in Lead Plaintiff’s opening papers and herein.

Consistent with the Court’s Preliminary Approval Order (*see* ECF No. 150), the Claims Administrator, A.B. Data, has to date delivered notice to over 26,000 potential Settlement Class Members, published notice in *The Wall Street Journal* and via *PR Newswire*, and posted the Notice to its website. (ECF No. 167-5, Brauns Declaration, dated November 8, 2024, ¶¶ 15-17; Brauns Declaration, dated December 6, 2024, ¶¶ 6-8.) Among other things, notice to Settlement Class Members advised of the \$15.25 million Settlement Amount; the terms of the proposed Plan of Allocation; Lead Plaintiff’s

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). Emphasis added unless otherwise stated.

Counsel's request for fees not to exceed 33% of the Settlement Amount and for expenses not to exceed \$800,000, plus interest on both at the same rate earned by the Settlement Fund; and Lead Plaintiff's request for reasonable costs and expenses not to exceed \$15,000. (*See, e.g.*, ECF No. 148-2, at 4, 21, 26.)

After completion of this robust Court-approved notice program, the Settlement Class's uniformly positive response to the Settlement and Plan of Allocation has resulted in no objections and no requests for exclusion.² The absence of objections strongly supports final approval. In fact, "in litigation involving a large class, such as that here, it [is] extremely unusual not to encounter objections." *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 478 (S.D.N.Y. 1998). Accordingly, for the reasons previously stated, the Court should grant final approval of the Settlement, finally approve the Plan of Allocation, and finally certify the Settlement Class. *See In re Novant Health, Inc.*, No. 1:22-CV-697, 2024 WL 3028443, at *7 (M.D.N.C. June 17, 2024) (Eagles, C.J.) (finding in response to 37 opt-outs and no objections that "[t]he degree of opposition to the settlement is low and the small number of exclusion requests indicate the settlement is fair, adequate, and reasonable"); *Lewis v. Precision Concepts Grp. LLC*, No. 1:18CV64, 2021 WL 7185505, at *3 (M.D.N.C. Mar. 23, 2021) ("No Settlement Class Member objected to the proposed settlement, and only one requested exclusion. This favorable response demonstrates that the class approves the settlement, which further supports final

² In contrast, as of December 5, 2024, potential Settlement Class Members have submitted 16,982 claims. (Brauns Declaration, dated December 6, 2024, ¶¶ 13.)

approval.”); *Truesdale v. Nationwide Affinity Ins. Co. of Am.*, No. 1:11CV467, 2013 WL 12136588, at *5 (M.D.N.C. Apr. 4, 2013) (approving settlement where there were no objections and only two requests for exclusion).

Likewise, there have been no objections to Lead Plaintiff’s Counsel’s request for attorneys’ fees and reimbursement of litigation expenses, or Lead Plaintiff’s request for reasonable costs and expenses. The lack of any objections to these requests also weighs strongly in favor of approval. *See Rodriguez v. Riverstone Communities, LLC*, No. 5:21-CV-486-CD, 2024 WL 407483, at *2 (E.D.N.C. Feb. 2, 2024) (noting that “[t]here have been no objection(s) to the settlement terms or the requested award of attorneys’ fees and expenses” in granting final approval and requested attorneys’ fees) (emphasis in original); *In re Neustar, Inc. Sec. Litig.*, No. 1:14-cv-885, 2015 WL 8484438, at *7 (E.D. Va. Dec. 8, 2015) (“[T]he lack of objections supports finding the fee request reasonable.”)

Based on the foregoing and the entire record herein, Lead Plaintiff and Lead Plaintiff’s Counsel respectfully request that the Court grant the Final Approval Motion and the Fee and Expense Motion, including, but not limited to:

1. Enter the Proposed Order, submitted at ECF No. 167-10;
2. Grant final approval of the settlement pursuant to Fed. R. Civ. P. 23(e)(2);
3. Certify the Settlement Class for purposes of the settlement;
4. Finally approve the Plan of Allocation;
5. Enter the Final Judgment Approving Settlement, substantially in the form attached to the Stipulation as Exhibit B (ECF No. 137-7);

6. Grant the Fee Application for \$5,032,500, or 33% of the \$15.25 million Settlement Fund, plus interest at the same rate earned by the Settlement Fund;
7. Grant the Expense Application for \$623,509 in reasonable litigation expenses incurred in connection with the prosecution of the Litigation, plus interest at the same rate earned by the Settlement Fund; and
8. Grant Lead Plaintiff its reasonable costs and expenses of \$11,813.94.

DATED: December 6, 2024

Respectfully submitted,

/s/ Joseph A. Fonti

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* reflects attorneys appearing pursuant to
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CERTIFICATE OF COMPLIANCE WITH LR 7.3(d)(1)

Pursuant to Local Rule 7.3(d)(1) of the Rules of Practice and Procedure of the United States District Court for the Middle District of North Carolina, counsel for Lead Plaintiff Wayne County Employees' Retirement System certify that the foregoing brief, which was prepared using Times New Roman 13-point proportional font, is 864 words.

/s/ Joseph A. Fonti

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