

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. )

1:23-CV-32

**ORDER PRELIMINARILY APPROVING SETTLEMENT AND  
PROVIDING FOR CLASS NOTICE**

Catherine C. Eagles, Chief District Judge.

A putative class action is pending entitled *Ciarciello v. Bioventus, Inc., et al.*, Case No. 1:23-CV-00032 (M.D.N.C.) (the “Litigation”).<sup>1</sup> The Parties have moved pursuant to Federal Rule of Civil Procedure 23(e) for an order preliminarily approving the settlement of this Litigation, in accordance with a Stipulation of Settlement, Doc. 137-1, (the “Stipulation”), as amended, Doc. 148-1, (the “amended Stipulation”), which, together with the Stipulation’s Exhibits and as modified by further filings, Doc. 148-2; Doc. 148-3, sets forth the terms and conditions for a proposed Settlement of the Litigation and for dismissal of the Litigation on the merits and with prejudice upon the terms and conditions

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<sup>1</sup> Any capitalized terms that are not otherwise defined herein shall have the meanings ascribed to them in the amended Stipulation of Settlement, (the “amended Stipulation”). Doc. 148-1.

set forth therein.

The Court has read and considered the Stipulation and amended Stipulation, the Exhibits, briefing of the Parties, supplemental submissions, and other relevant matters of record and heard from the Parties at a public hearing held August 7, 2024. The Parties to the amended Stipulation have consented to the entry of this Order. All defined terms contained herein shall have the same meanings as set forth in the amended Stipulation, unless otherwise defined.

**NOW, THEREFORE, IT IS HEREBY ORDERED:**

1. **Preliminary Approval of the Settlement.** The Court hereby preliminarily approves the amended Stipulation and the Settlement set forth therein, subject to further consideration at the Settlement Hearing described below. Pursuant to Rule 23(e)(1) of the Federal Rules of Civil Procedure, the Parties have shown that the Court will likely be able to approve the proposal under Rule 23(e)(2).
2. The Court preliminarily finds that the proposed Settlement should be approved as it (i) is the result of informed, extensive, arm's-length and non-collusive negotiations between experienced counsel, including mediation under the direction of an experienced mediator, Jed Melnick of JAMS; (ii) eliminates the risks to the Parties of continued litigation; (iii) falls within a range of reasonableness warranting final approval; (iv) has no obvious deficiencies; (v) treats Settlement Class Members equitably relative to one another under the proposed Plan of Allocation; and (vi) warrants notice of the proposed Settlement to Settlement Class Members and further consideration of the Settlement at the Settlement

Hearing described below. The Court further finds that the confidential agreement establishing the conditions under which Defendants may terminate the Settlement is standard and has no negative impact on the fairness of the Settlement.

3. Pending final determination of whether the Settlement should be approved, Lead Plaintiff, all Settlement Class Members, and anyone who acts or purports to act on their behalf, shall not institute, commence, or prosecute any action which asserts Released Claims against Defendants and their Related Parties (other than continuing proceedings related to the Settlement).
4. **Settlement Hearing.** A hearing (the “Settlement Hearing”) shall be held before this Court on December 13, 2024, at 9:30 a.m., at the L. Richardson Preyer Courthouse, 324 W. Market Street, Greensboro, N.C. 27401.
  - a. The purposes of the Settlement Hearing shall be to: (i) determine whether the proposed Settlement of the Litigation on the terms and conditions provided for in the amended Stipulation is fair, reasonable, and adequate to the Settlement Class and should be approved by the Court; (ii) determine whether a Judgment as defined in ¶ 1.11 of the amended Stipulation should be entered dismissing the Litigation with prejudice against the Defendants; (iii) determine, for purposes of the Settlement only, whether the Settlement Class should be finally certified, whether Lead Plaintiff should be finally certified as Class Representative for the Settlement Class, and whether Lead Plaintiff’s Counsel should be finally appointed as counsel for the Settlement Class; (iv) determine whether the

proposed Plan of Allocation for the Net Settlement Fund is fair and reasonable and should be approved; (v) consider Lead Plaintiff's Counsel's application for an award of attorneys' fees and expenses (which may include an application for an award to Lead Plaintiff for reimbursement of its reasonable costs and expenses directly related to its representation of the Settlement Class, pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA")); (vi) hear any objections by Settlement Class Members to the Settlement, Plan of Allocation, or Lead Plaintiff's Counsel's or Plaintiff's application(s); and (viii) consider such other matters the Court deems appropriate.

- b. The Court may approve the proposed Settlement with such modifications as the Parties may agree to, if appropriate, and with or without further notice to the Settlement Class of any kind. The Court further reserves the right to enter the Judgment approving the Settlement regardless of whether it has approved the Plan of Allocation or awarded attorneys' fees and/or expenses. The Court may also change the date of the Settlement Hearing, decide to hold the hearing remotely, or modify any of the other dates set in this Order without further individual notice to members of the Settlement Class. Any such changes shall be posted on the settlement website by the Claims Administrator.

**5. Class Certification for Settlement Purposes.**

- a. Pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure,

the Court preliminarily certifies, for purposes of effectuating this Settlement only, a Settlement Class consisting of all persons and entities who purchased or otherwise acquired Bioventus Class A common stock between February 11, 2021, and November 21, 2022, both inclusive, and were damaged thereby.

- b. Excluded from the Settlement Class are: (i) Defendants and any affiliates or subsidiaries thereof; (ii) present and former officers and directors of Bioventus and their immediate family members (as defined in Item 404 of SEC Regulation S-K, 17 C.F.R. § 229.404, Instructions (1)(a)(iii) & (1)(b)(ii)); (iii) Defendants' liability insurance carriers, and any affiliates or subsidiaries thereof; (iv) any entity in which any Defendant had or has had a controlling interest; (v) Bioventus' employee retirement benefit plan(s); and (vi) the legal representatives, heirs, estates, agents, successors, or assigns of any person or entity described in the preceding five categories. Also excluded from the Settlement Class are any Settlement Class Members that validly and timely request exclusion in accordance with the requirements set by the Court in the Notice of Pendency and Proposed Settlement of Class Action.
- c. Pursuant to Rule 23, and for purposes of settlement only, the Court hereby preliminarily certifies Lead Plaintiff as Settlement Class Representative and Bleichmar Fonti & Auld LLP as Settlement Class Counsel.

**6. Settlement Class Findings.** With respect to the Settlement Class, the Court

preliminarily finds, for purposes of effectuating this Settlement only, that (i) the Members of the Settlement Class are so numerous that joinder of all Settlement Class Members in the Litigation is impracticable; (ii) there are questions of law and fact common to the Settlement Class which predominate over any individual questions; (iii) the claims of the Lead Plaintiff are typical of the claims of the Settlement Class; (iv) Lead Plaintiff and Lead Plaintiff's Counsel have fairly and adequately represented and protected the interests of all Settlement Class Members; and (v) a class action is superior to other available methods for the fair and efficient adjudication of the controversy, considering that: the claims of Settlement Class Members in the Litigation are substantially similar and would, if tried, involve substantially identical proofs and may therefore be efficiently litigated and resolved on an aggregate basis as a class action; the amounts of the claims of many of the Settlement Class Members are too small to justify the expense of individual actions; and it does not appear that there is significant interest among Settlement Class Members in individually controlling the litigation of their claims.

- 7. Approval of Form and Content of Notice.** The Court approves the form and content of the Notice of Pendency and Proposed Settlement of Class Action (the "Notice"), Doc. 137-3, and the Summary Notice ("Summary Notice"), Doc. 137-6, attached to Lead Plaintiff's motion for preliminary approval of proposed class action settlement, dated July 15, 2024, Doc. 137, and the Long-Form Notice of Pendency and Proposed Settlement of Class Action ("Long-Form Notice"), as

amended, Doc. 148-2, and the Proof of Claim and Release form (the “Proof of Claim”), as amended, Doc. 148-3, filed on the docket on August 7, 2024. The Court further finds that they: (a) constitute the best notice to Settlement Class Members practicable under the circumstances; (b) are reasonably calculated, under the circumstances, to describe the terms and effect of the Settlement and to apprise Settlement Class Members of their right to object to the proposed Settlement or to exclude themselves from the Settlement Class; (c) are reasonable and constitute due, adequate, and sufficient notice to all persons entitled to receive such notice; and (d) satisfy all applicable requirements of the Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution, 15 U.S.C. § 78u-4(a)(7), as amended by the PSLRA, the rules of this Court, and all other applicable law and rules. The date and time of the Settlement Hearing shall be included in the Notice, the Long-Form Notice, and the Summary Notice before they are mailed, posted online, and published, respectively.

8. **Retention of Claims Administrator and Manner of Notice.** Lead Plaintiff’s Counsel is hereby authorized to retain A.B. Data Ltd. (“Claims Administrator”) to supervise and administer the notice procedure as well as the processing of claims as more fully set forth below:

- a. No later than August 27, 2024, the Claims Administrator shall cause the Summary Notice to be published once in *The Wall Street Journal* and *PR Newswire*;

- b. No later than September 3, 2024 (the “Notice Date”), the Claims Administrator shall commence mailing a copy of the Notice by First-Class Mail to (i) all Settlement Class Members who can be identified with reasonable effort, and (ii) brokers and nominees on the Claims Administrator’s list of brokers and nominees that commonly hold securities for the benefit of investors. Further, on the Notice Date, the Notice, Long-Form Notice, Proof of Claim, and the amended Stipulation and its Exhibits shall be posted on the website to be established by the Claims Administrator for the purpose of providing information concerning the Settlement to Settlement Class Members and for online claim submission by Settlement Class Members; and
- c. On or before December 6, 2024, Lead Plaintiff’s Counsel shall cause to be served on Defendants’ Counsel and filed with the Court proof, by affidavit or declaration, of such mailing, publishing, and posting. The filing shall include information about any glitches or issues with the notice program and shall set forth the number of class members of who opted-out, objected, and submitted claims to date.
9. All reasonable expenses incurred in identifying and notifying Settlement Class Members, as well as administering the Settlement Fund, shall be paid as set forth in the amended Stipulation. In the event the Settlement is not approved by the Court, or otherwise fails to become effective, neither Lead Plaintiff nor Lead Plaintiff’s Counsel shall have any obligation to repay any amounts incurred



and/or disbursed from the Settlement Fund in connection with administering the Settlement, as provided in the amended Stipulation.

**10. Participation in the Settlement.** All Members of the Settlement Class shall be bound by all determinations and judgments in the Litigation concerning the Settlement, including, but not limited to, the releases provided for therein, whether favorable or unfavorable to the Settlement Class, regardless of whether such Persons seek or obtain by any means, including, without limitation, by submitting a Proof of Claim or any similar document, any distribution from the Settlement Fund or the Net Settlement Fund. Settlement Class Members who wish to participate in the Settlement shall complete and submit Proofs of Claim in accordance with the instructions contained therein. Unless the Court orders otherwise, all Proofs of Claim must be postmarked or submitted electronically no later than December 2, 2024. Any Settlement Class Member who does not submit a Proof of Claim within the time provided for (a) shall be bound by all determinations and judgments in the Litigation concerning the Settlement, whether favorable or unfavorable to the Settlement Class, including, without limitation, the Judgment and the releases provided for therein; (b) shall be barred from commencing, maintaining, or prosecuting any of the Released Claims against any of the Defendants and their Related Parties, as more fully described in the amended Stipulation; and (c) shall be barred from sharing in the distribution of the proceeds of the Net Settlement Fund, unless otherwise ordered by the Court. Notwithstanding the foregoing, Lead Plaintiff's Counsel shall have

the discretion (but not the obligation) to accept late-submitted claims for processing by the Claims Administrator so long as distribution of the Net Settlement Fund is not materially delayed thereby. No Person shall have any claim against Lead Plaintiff, Lead Plaintiff's Counsel, or the Claims Administrator by reason of the decision to exercise such discretion whether to accept late submitted claims. Because of the complexity of the Proof of Claim, Lead Plaintiff's Counsel and the Claims Administrator shall provide reasonable assistance to individuals filing claims.

**11. Exclusion from the Settlement Class.** Any Person who desires to request exclusion from the Settlement Class shall do so by submitting a written request for exclusion to the Claims Administrator, which must be timestamped (for online submissions) or received by the Claims Administrator no later than October 18, 2024. The request for exclusion must: (i) include the person's or entity's name, address, and telephone number; (ii) state that the person or entity wishes to be "excluded from the Settlement Class" in this Litigation; (iii) include proof (such as stockbroker confirmation slips, stockbroker statements, or other documents) adequately evidencing the date(s), price(s), and number of shares of Bioventus Class A common stock purchased and/or sold during the Class Period; and (iv) be signed by the person or entity requesting exclusion or their authorized representative (accompanied by proof of authorization). No request for exclusion shall be effective unless it is timely and provides the required information. Upon receiving any request(s) for exclusion, the Claims Administrator shall promptly

notify Lead Plaintiff's Counsel of such request(s) and provide them copies of such request(s) and the documentation accompanying them by facsimile or electronic mail. All Persons who submit valid and timely requests for exclusion shall have no rights under the amended Stipulation, shall not share in the distribution of the Net Settlement Fund, and shall not be bound by the amended Stipulation or the Judgment entered in the Litigation. Lead Plaintiff's Counsel shall cause to be provided to Defendants' Counsel copies of all requests for exclusion promptly upon receipt and as expeditiously as possible and, in any event, not more than five (5) calendar days after receipt by the Claims Administrator.

12. Any Settlement Class Member who or which does not timely and validly request exclusion from the Settlement Class in the manner stated in this Order: (a) shall be deemed to have waived his, her or its right to be excluded from the Settlement Class; (b) shall be forever barred from requesting exclusion from the Settlement Class in this or any other proceeding; (c) shall be bound by the provisions of the amended Stipulation and Settlement and all proceedings, determinations, orders and judgments in the Litigation, including, but not limited to, the Judgment and the Releases provided for therein, whether favorable or unfavorable to the Settlement Class; and (d) will be barred from commencing, maintaining, or prosecuting any of the Released Plaintiff's Claims against any of the Released Defendants, as more fully described in the amended Stipulation and Notice.

13. **Appearance and Objections at Settlement Hearing.** Any Member of the

Settlement Class may enter an appearance in the Litigation, at his, her, or its own expense, individually or through counsel of his, her, or its own choice. If he, she, or it does not enter an appearance, he, she, or it will be represented by Lead Plaintiff's Counsel.

14. Any Settlement Class Member who does not timely request exclusion from the Settlement Class may file a written objection to the proposed Settlement and show cause why the proposed Settlement of the Litigation should or should not be approved as fair, reasonable, and adequate, why the Judgment should or should not be entered thereon, why the Plan of Allocation should or should not be approved, or why attorneys' fees and expenses should or should not be awarded to Lead Plaintiff's Counsel or awards granted to Plaintiff; provided, however, that no Settlement Class Member or any other Person shall be heard or entitled to contest such matters, unless that Person has mailed or delivered said objections, papers, and/or briefs to the Clerk of the United States District Court for the Middle District of North Carolina, on or before November 22, 2024, and delivered copies of any such papers to Bleichmar Fonti & Auld LLP, Joseph A. Fonti, 300 Park Avenue, Suite 1301, New York, N.Y. 10022, and Latham & Watkins LLP, Colleen C. Smith, 12670 High Bluff Drive, San Diego, C.A. 92130, with emailed copies to [bioventussettlement@bfalaw.com](mailto:bioventussettlement@bfalaw.com) such that they are received on or before the same date.

15. To object, a Settlement Class Member must state that he, she, or it objects to the Settlement in *Ciarciello v. Bioventus, Inc., et al.*, Case No. 1:23-cv-00032-CCE-

JEP (M.D.N.C.), and must (1) include the objector's name, address, and telephone number; (2) provide documentation establishing the objector's membership in the Settlement Class, including documents showing the number of shares of Bioventus Class A common stock purchased, acquired, and sold during the Class Period, as well as the dates and prices of each such purchase, acquisition, and sale; (3) contain a statement of reasons for the objection, including whether it applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class; (4) identify any other class action settlement(s) in which the objector or the objector's attorney has objected; (5) include copies of any papers or other documents upon which the objection is based; and (6) include the objector's signature, even if represented by counsel. Any Settlement Class Member who does not make his, her, or its objection in the manner provided in this Order shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the proposed Settlement as set forth in the amended Stipulation, to the Plan of Allocation, or to the award of attorneys' fees and expenses to Lead Plaintiff's Counsel or awards to Lead Plaintiff, unless otherwise ordered by the Court.

16. Attendance at the Settlement Hearing is not necessary. However, persons wishing to be heard orally in opposition to the approval of the Settlement, the Plan of Allocation, and/or the Fee and Expense Application are required to indicate in their written objection their intention to appear at the hearing. Persons

who intend to object to the Settlement, the Plan of Allocation, and/or the Fee and Expense Application and desire to present evidence at the Settlement Hearing must include in their written objections the identity of any witnesses they may call to testify and copies of any exhibits they intend to introduce into evidence at the Settlement Hearing.

17. Settlement Class Members do not need to appear at the hearing or take any other action to indicate their approval.

18. At or after the Settlement Hearing, the Court shall determine whether the Settlement, the Plan of Allocation proposed by Lead Plaintiff's Counsel, and any application for attorneys' fees or expenses, shall be approved.

19. **Settlement Fund.** The Court approves the establishment of the Escrow Accounts into which the Settlement Amount will be deposited for the benefit of the Settlement Class. All funds held by the Escrow Agent shall be deemed and considered to be *in custodia legis* of the Court and shall remain subject to the jurisdiction of the Court until such time as such funds shall be distributed pursuant to the amended Stipulation and/or further order(s) of the Court. No person who is not a Settlement Class Member or Lead Plaintiff's Counsel shall have any right to any portion of, or to any distribution of, the Net Settlement Fund unless otherwise ordered by the Court or otherwise provided in the amended Stipulation.

20. **Supporting Papers.** All opening papers in support of final approval of the Settlement, the Plan of Allocation, and the application for attorneys' fees and

expenses shall be filed and served by Lead Plaintiff's Counsel on or before November 8, 2024. Any reply papers in response to objections shall be filed and served on or before December 6, 2024.

21. Defendants shall not have any responsibility for, or liability with respect to, the Plan of Allocation or any application for attorneys' fees or expenses submitted by Lead Plaintiff's Counsel, and such matters will be considered separately from the fairness, reasonableness, and adequacy of the Settlement.
22. All reasonable expenses incurred in identifying and notifying Settlement Class Members, as well as administering the Settlement Fund, shall be paid as set forth in the amended Stipulation. In the event the Settlement is not approved by the Court, or otherwise fails to become effective, neither Lead Plaintiff nor Lead Plaintiff's Counsel shall have any obligation to repay any amounts disbursed or incurred pursuant to ¶¶ 2.12 or 2.13 of the amended Stipulation.
23. **Use of this Order.** Neither this Order nor the proposed Settlement (including the amended Stipulation), nor any of the negotiations or proceedings connected with it: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, the truth of any of the allegations in the Litigation of any wrongdoing, fault, or liability of the Released Defendants, or that Lead Plaintiff or any Settlement Class Members have suffered any damages, harm, or loss; (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Released Defendants in any civil, criminal, or administrative proceeding in any court, administrative agency,

or other tribunal; or (c) is or may be deemed to be or may be used as an admission or evidence that any claims asserted by Lead Plaintiff were not valid or that the amount recoverable was not greater than the Settlement Amount, in any civil, criminal, or administrative proceeding in any court, administrative agency proceeding, or other forum or tribunal.

**24. Termination of Settlement.** In the event that the Settlement does not become effective in accordance with the terms of the amended Stipulation, or the Effective Date does not occur, or in the event that the Settlement Fund, or any portion thereof, is returned to the Defendants pursuant to the amended Stipulation, then this Order shall be rendered null and void to the extent provided by and in accordance with the amended Stipulation and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the amended Stipulation. The Parties shall be deemed to have reverted to their respective positions in the Litigation as of July 12, 2024.

**25. Stay of Proceedings.** All proceedings in the Litigation are stayed until further order of this Court, except as necessary to implement the Settlement or comply with the terms of the amended Stipulation. Pending final determination of whether the Settlement should be approved, neither Lead Plaintiff nor any Settlement Class Member, either directly, representatively, or in any other capacity, shall commence or prosecute against any Defendants or their Related Parties any action or proceeding in any court or tribunal asserting any of the



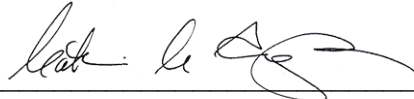
Released Claims.

26. **Taxes.** Lead Plaintiff's Counsel is authorized and directed to prepare any tax returns and any other tax reporting forms for or in respect to the Settlement Fund, to pay from the Settlement Fund any Taxes owed with respect to the Settlement Fund, and to otherwise perform all obligations with respect to Taxes and any reporting or filings in respect thereof without further order of the Court in a manner consistent with the provisions of the amended Stipulation.

27. **Jurisdiction.** The Court retains exclusive jurisdiction over the Litigation to consider all further matters arising out of or connected with the Settlement.

28. The Clerk shall post this Order and the amended Stipulation of Settlement, Doc. 148-1, on the court website for 60 days.

This the 13th day of August, 2024.



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UNITED STATES DISTRICT JUDGE

## Appendix A – Deadlines

<b>Date of Order Granting Preliminary Approval of Settlement</b>	<b>August 13, 2024</b>
Claims Administrator causes Summary Notice to be published in <i>The Wall Street Journal</i> and <i>PR Newswire</i>	August 27, 2024 (+14 days from this Order)
Claims Administrator begins mailing of Notice and posts Notice and related documents to settlement website (“Notice Date”)	September 3, 2024 (+21 days from this Order)
Exclusions must be submitted online or received by Claims Administrator	October 18, 2024 (+45 days from Notice Date)
Briefs and documentation in support of motion for final approval must be filed	November 8, 2024 (35 days before Settlement Hearing)
Settlement Class Member’s Objections must be mailed to be heard in court	November 22, 2024 (21 days before Settlement Hearing)
Proof of Claims must be postmarked or submitted	December 2, 2024 (+90 days from Notice Date)
Lead Plaintiff’s Counsel files with the Court and gives Defendants’ Counsel proof of compliance with notice program and information about any issues, and the number of opt-outs, objections, and claims submitted	December 6, 2024 (7 days before Settlement Hearing)
Any reply papers in response to objections must be filed	December 6, 2024 (7 days before Settlement Hearing)
<b>Date of Settlement Hearing</b>	<b>December 13, 2024, at 9:30 a.m.</b>