

EXHIBIT 19

From: Sheh, Anthony <ASheh@wc.com>
Sent: Monday, November 20, 2023 6:06 PM
To: Afinogenova, Alina; Haunschild, Philip; McLennan, Mark C.
Cc: #KEModernaSpikevaxService; Li, Yan-Xin; Horstman, N. Kaye; 'Arbutus_MoFo'; Parrado, Alvaro; Elenberg, Falicia; Komis, Jihad; Genevant Team; Berl, David; Mahaffy, Shaun; Harber, Adam; Fletcher, Thomas; Ryen, Jessica; 'NTan@mofo.com'; Bolte, Erik; *jshaw@shawkeller.com; 'kkeller@shawkeller.com'; 'nhoeschen@shawkeller.com'; 'EWiener@mofo.com'; 'began@mnat.com'; 'tmurray@morrisonichols.com'; 'jblumenfeld@morrisonichols.com'; Hurst, James F.; Carson, Patricia A.; Wacker, Jeanna
Subject: RE: Arbutus v. Moderna, 1-22-cv-00252 - Letter to Counsel (Batch Information) - HIGHLY CONFIDENTIAL OCEO

This message is from an EXTERNAL SENDER

Be cautious, particularly with links and attachments.

Mark and Alina,

Further to Moderna's November 10 email and the meet-and-confer on November 17, Plaintiffs understand that Moderna's production of the ~480 batches/lots referenced below does not resolve the parties' dispute as to the remaining batches, but we appreciate Moderna's efforts to narrow the scope of the parties' dispute. We understand that the ~480 batches Moderna is agreeing to produce are being transferred by a third-party to another location. We also understand that Moderna is not withholding samples as to post-complaint batches. We understand that Moderna is looking into whether there are post-complaint batches that are due to imminently expire and that the parties' should have ample time before expiry to address samples from Moderna's ongoing booster production.

Plaintiffs are willing to consider covering the cost for Moderna to ship the samples and/or for a courier. As discussed, please let us know an estimate of the shipping costs. Additionally, we'd appreciate information regarding storage conditions and the capacity needed to store the samples. Assuming that the conditions are as before (e.g., minus 80 degree Celsius), Plaintiffs currently have 90% capacity left in a 19.4 cubic feet (549 L) freezer with interior dimensions of 51.2 in x 23.1 in x 28.3 (H x W x D, 130.1 cm x 58.8 cm x 97.37 cm) and will acquire additional space if needed. The shipping address would be:

Triclinic Labs, Inc.
Attn: Sample Submission
2660 Schuyler Ave. Ste. A.
Lafayette, IN 47905

Plaintiffs understand that Moderna considers batches that were not manufactured or imported into the U.S. to be batches "not accused of infringement." As outlined in previous correspondence, Plaintiffs disagree that such batches are not accused. See, e.g., E.g., D.I. 1 ¶¶ 50–54, 70, 89, 108, 130, 154. Plaintiffs understand that Moderna is investigating the scope of documents it is willing to produce concerning these batches, including its agreements with the relevant third-parties for sales of such batches (besides the U.S. Government, and whether located in the United States or abroad, and whether to a public or private entity), its communications with such third-parties concerning sales or

offers to sell batches of the Accused Product, documents evidencing the location and timing of any negotiations or meetings regarding such sales, and Moderna's marketing and strategic plans regarding such sales. Such documents are responsive to at least Plaintiffs' RFPs 51, 53, 60, 64, 69, 74, 75, 81, and 83. Please confirm the scope of documents that Moderna will agree to produce by December 1, 2023.

Best,
Tony

Anthony Sheh | Associate | Williams & Connolly LLP | (202) 434-5436 | [vcard](#)

From: Afinogenova, Alina <alina.afinogenova@kirkland.com>

Sent: Thursday, November 16, 2023 11:07 AM

To: Haunschild, Philip <phaunschild@wc.com>; McLennan, Mark C. <mark.mclennan@kirkland.com>; Sheh, Anthony <ASheh@wc.com>

Cc: #KEModernaSpikevaxService <KEModernaSpikevaxService@kirkland.com>; Li, Yan-Xin <yanxin.li@kirkland.com>; Horstman, N. Kaye <kaye.horstman@kirkland.com>; 'Arbutus_MoFo' <Arbutus_MoFo@mofo.com>; Parrado, Alvaro <alvaro.parrado@kirkland.com>; Elenberg, Falicia <felenberg@wc.com>; Komis, Jihad <JKomis@wc.com>; Genevant Team <GenevantTeam@wc.com>; Berl, David <DBerl@wc.com>; Mahaffy, Shaun <SMahaffy@wc.com>; Harber, Adam <AHarber@wc.com>; Fletcher, Thomas <TFletcher@wc.com>; Ryen, Jessica <JRyen@wc.com>; 'NTan@mofo.com' <NTan@mofo.com>; Bolte, Erik <ebolte@wc.com>; *jshaw@shawkeller.com <jshaw@shawkeller.com>; 'kkeller@shawkeller.com' <kkeller@shawkeller.com>; 'nhoeschen@shawkeller.com' <nhoeschen@shawkeller.com>; 'EWiener@mofo.com' <EWiener@mofo.com>; 'began@mnat.com' <began@mnat.com>; 'tmurray@morrisnichols.com' <tmurray@morrisnichols.com>; 'jblumenfeld@morrisnichols.com' <jblumenfeld@morrisnichols.com>; Hurst, James F. <james.hurst@kirkland.com>; Carson, Patricia A. <patricia.carson@kirkland.com>; Wacker, Jeanna <jeanna.wacker@kirkland.com>

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Hi Philip,

We are not available before 3pm ET today, but can be available tomorrow before 12pm ET or between 1 and 3pm ET.

Thank you,
Alina

Alina Afinogenova

KIRKLAND & ELLIS LLP

200 Clarendon Street, Boston, MA 02116

T +1 617 385 7526 **M** +1 917 324 5094

F +1 212 446 4900

alina.afinogenova@kirkland.com

From: Haunschild, Philip <phaunschild@wc.com>

Sent: Wednesday, November 15, 2023 11:20 AM

To: McLennan, Mark C. <mark.mclennan@kirkland.com>; Sheh, Anthony <ASheh@wc.com>

Cc: #KEModernaSpikevaxService <KEModernaSpikevaxService@kirkland.com>; Li, Yan-Xin <yanxin.li@kirkland.com>; Horstman, N. Kaye <kaye.horstman@kirkland.com>; Afinogenova, Alina <alina.afinogenova@kirkland.com>; 'Arbutus_MoFo' <Arbutus_MoFo@mofo.com>; Parrado, Alvaro <alvaro.parrado@kirkland.com>; Elenberg, Falicia <felenberg@wc.com>; Komis, Jihad <JKomis@wc.com>; Genevant Team <GenevantTeam@wc.com>; Berl, David <DBerl@wc.com>; Mahaffy, Shaun <SMahaffy@wc.com>; Harber, Adam <AHarber@wc.com>; Fletcher, Thomas <TFletcher@wc.com>; Ryen, Jessica <JRyen@wc.com>; 'NTan@mofo.com' <NTan@mofo.com>; Bolte, Erik

<ebolte@wc.com>; *jshaw@shawkeller.com <jshaw@shawkeller.com>; 'kkeller@shawkeller.com' <kkeller@shawkeller.com>; 'nhoeschen@shawkeller.com' <nhoeschen@shawkeller.com>; 'EWiener@mofo.com' <EWiener@mofo.com>; 'began@mnat.com' <began@mnat.com>; 'tmurray@morrisnichols.com' <tmurray@morrisnichols.com>; 'jblumenfeld@morrisnichols.com' <jblumenfeld@morrisnichols.com>; Hurst, James F. <james.hurst@kirkland.com>; Carson, Patricia A. <patricia.carson@kirkland.com>; Wacker, Jeanna <jeanna.wacker@kirkland.com>

Subject: RE: Arbutus v. Moderna, 1-22-cv-00252 - Letter to Counsel (Batch Information) - HIGHLY CONFIDENTIAL OCEO

Hi Mark,

Thank you for your email. Please let us know when Moderna is available to meet-and-confer tomorrow before 3:00 PM (ET) regarding Moderna's proposal as to the samples that Moderna has agreed to produce. We have a number of questions that we would like to address on the meet-and-confer, including at least the following:

- Does your email mean to draw a distinction between the "lots" that Moderna is agreeing to produce and the "batches" that the parties have previously been discussing? We understand these to be interchangeable terms, but please let us know if that is wrong.
- How did Moderna select the approximately 480 lots that it has agreed to produce samples from?
- Is Moderna refusing to produce samples from any unexpired lots?
- Will Moderna be producing samples from lots manufactured after February 28, 2022, the date of the filing of the complaint?
- For part numbers with unexpired lots, will Moderna be producing both expired and unexpired lots from the same part number?
- What is Moderna's position as to representativeness and the ability to argue non-infringement of lots that Moderna is not agreeing to produce samples from?
- Has Moderna determined whether there are additional part numbers for Drug Product or mRNA-LNP beyond those that we have identified in our October 31, 2023 email?

Further, regarding the batches that Moderna will be providing samples from, we have made clear in multiple meet-and-confers in March, April, and November, and in separate correspondence, *e.g.*, March 3, 2023 Letter from A. Sheh; May 11, 2023 Letter from L. Cash, that Moderna's refusal to provide discovery on the basis that certain batches were simply manufactured abroad is improper. Moderna cannot shield batches from discovery based on Moderna's own self-serving analysis of whether such batches infringe. *See, e.g., California Inst. of Tech. v. Broadcom Ltd.*, 25 F.4th 976, 992 (Fed. Cir. 2022); *Carnegie Mellon Univ. v. Marvell Tech. Grp., Ltd.*, 807 F.3d 1283, 1308 (Fed. Cir. 2015). Plaintiffs are entitled to take relevant discovery regarding all batches that have been accused of infringement. Please be prepared to discuss this on our meet-and-confer. Please also be prepared to explain how Moderna is determining what batches "can be accused of infringement."

Thank you,

Philip N. Haunschild

Associate | Williams and Connolly LLP

680 Maine Avenue SW, Washington, DC 20024

202-434-5979 phaunschild@wc.com | www.wc.com

From: McLennan, Mark C. <mark.mclennan@kirkland.com>

Sent: Friday, November 10, 2023 3:00 PM

To: Sheh, Anthony <ASheh@wc.com>

Cc: #KEModernaSpikevaxService <KEModernaSpikevaxService@kirkland.com>; Li, Yan-Xin <yanxin.li@kirkland.com>; Horstman, N. Kaye <kaye.horstman@kirkland.com>; Afinogenova, Alina <alina.afinogenova@kirkland.com>; 'Arbutus_MoFo' <Arbutus_MoFo@mofo.com>; Parrado, Alvaro <alvaro.parrado@kirkland.com>; Elenberg, Falcia <felenberg@wc.com>; Komis, Jihad <JKomis@wc.com>; Genevant Team <GenevantTeam@wc.com>; Berl, David <DBerl@wc.com>; Mahaffy, Shaun <SMahaffy@wc.com>; Harber, Adam <AHarber@wc.com>; Fletcher, Thomas <TFletcher@wc.com>; Ryen, Jessica <JRyen@wc.com>; 'NTan@mofo.com' <NTan@mofo.com>; Bolte, Erik <ebolte@wc.com>; *jshaw@shawkeller.com <jshaw@shawkeller.com>; 'kkeller@shawkeller.com' <kkeller@shawkeller.com>; 'nhoeschen@shawkeller.com' <nhoeschen@shawkeller.com>; 'EWiener@mofo.com' <EWiener@mofo.com>; 'began@mnat.com' <began@mnat.com>; 'tmurray@morrisnichols.com' <tmurray@morrisnichols.com>; 'jblumenfeld@morrisnichols.com' <jblumenfeld@morrisnichols.com>; Hurst, James F. <james.hurst@kirkland.com>; Carson, Patricia A. <patricia.carson@kirkland.com>; Wacker, Jeanna <jeanna.wacker@kirkland.com>

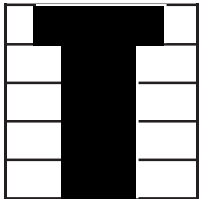
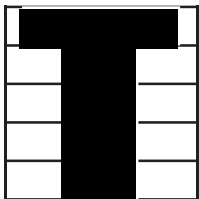
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CONTAINS INFORMATION MODERNA HAS DESIGNATED HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL’S EYES ONLY

Counsel,

Regarding Plaintiffs’ questions from the meet-and-confer on the number of vials per lot Moderna is able to produce from regulatory retains, we confirm that Moderna maintains its agreement to produce 3 vials per lot. This is proportional to the needs of the case in light of the extensive data Moderna is agreeing to produce about each lot, in the absence of any explanation from Plaintiffs as to why more than 3 vials is needed, and due to Moderna’s need to retain samples for regulatory and compliance purposes, as laid out in detail in our October 20, 2023 letter.

With regard to the number of accused lots that Moderna will produce samples from, in the spirit of compromise and in an effort to narrow the dispute, Moderna is preparing to produce samples of 3 vials of expired drug product from approximately 480 lots. We will provide the lot numbers shortly, but can confirm they correspond to the part numbers below. Moderna will produce (if not already produced) specifications for these part numbers and CoAs for each lot later today or Monday (we are still waiting for the final production volume). Moderna will continue to making rolling productions of additional CoAs and specifications for accused batches as we review them, but we wanted to prioritize these 480 lots first.



Moderna will make this production in the spirit of compromise and does so without waiving any objections to Plaintiffs’ RFPs for samples from the remaining accused batches (both the number of samples and quantity of lots). Moderna also makes this production without any representations that the expired drug product is representative of its characteristics at release. Moderna will agree to this production if Plaintiffs agree to pay for the shipping costs or arrange a courier to

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