

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ARBUTUS BIOPHARMA CORPORATION	:	
and GENEVANT SCIENCES GMBH,	:	
	:	CIVIL ACTION
Plaintiffs,	:	
	:	
v.	:	
	:	NO. 22-252
MODERNA, INC. and MODERNATX, INC.,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 8th day of July, 2024, upon consideration of Defendant’s letter request for clarification (D.I. 366) and there being no response, I find the following:

1. On June 20, 2024, I issued an Order ruling on the parties’ various discovery disputes.
2. In one of those disputes, I considered whether Defendant must produce non-lobbying material including Defendant’s communications with all federal agencies regarding this action, the Government’s Statement of Interest, appropriations for the COVID-19 vaccine, and application of § 1498 to the Moderna-U.S. contracts at issue. Defendant claimed that it had a common interest privilege with respect to these materials.
3. In my June 20, 2024 Order, I found that “Defendant had not met its burden of establishing this privilege in its communications with the U.S. Government. Indeed, it is hard to comprehend how Defendant and the Government share a common legal defense since, under 28 U.S.C. § 1498, either the Government or Defendant—not both—will be responsible for any infringement damages.” (June 20, 2024 Order ¶ 33.)
4. On June 27, 2024, Defendant filed a letter seeking clarification as to whether my Order regarding the common interest privilege applied only to communications discussing the application of

Section 1498 and the Statement, or whether it extended to all communications with the U.S. Government regarding the vaccine or the present case.

WHEREFORE, it is hereby **CLARIFIED** that the June 20, 2024 Order determined only that there is no common interest as to communications with the U.S. Government regarding Section 1498 and the Government's Statement of Interest.

BY THE COURT:

/s/ Mitchell S. Goldberg
MITCHELL S. GOLDBERG, J.