

**IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF DELAWARE**

ARBUTUS BIOPHARMA CORPORATION  
AND GENEVANT SCIENCES GMBH,

Plaintiffs,

v.

MODERNA, INC. and MODERNATX, INC.

Defendants.

C.A. No. 22-252 (MSG)

**STATEMENT OF INTEREST OF THE UNITED STATES**

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February 14, 2023

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The United States (the Government) appears on behalf of its Department of Health and Human Services and Department of Defense pursuant to 28 U.S.C. § 517<sup>1</sup> to inform the Court of its interest in this litigation. The Government is aware of the Court’s resolution of Moderna’s motion to dismiss, D.I. 31 at 15–16, where the Court noted that the Government had not provided a statement of interest. In light of the Court’s hesitance to find authorization and consent absent a statement of interest from the United States, the United States appears to present its position.<sup>2</sup>

## **I. THE INTEREST OF THE UNITED STATES**

In accordance with 28 U.S.C. § 1498, the United States granted Moderna, Inc. and ModernaTX, Inc. (“Moderna”)<sup>3</sup> its “authorization and consent” to manufacture and use inventions covered by United States patents under Contract No. W911QY-20-C-0100 (the ’0100 Contract), which is at issue in this litigation. The Government granted its authorization and consent by inserting the Federal Acquisition Regulation (FAR) clauses 52.227-1 and 52.227-1, Alternate I, in the contract. The Government’s acceptance of liability in this instance is limited to the ’0100 Contract and does not extend to all of Moderna’s allegedly infringing activity as described in the Complaint.

In pertinent part, section 1498 provides:

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<sup>1</sup> Section 517 provides, in pertinent part, that “any officer of the Department of Justice[] may be sent by the Attorney General to any ... district to attend to the interests of the United States in a suit pending in a court of the United States...or to attend to any other interest of the United States.”

<sup>2</sup> The United States is prepared to appear, should the Court have questions regarding this statement of interest or require other assistance with respect to this statement.

<sup>3</sup> For the purposes of this statement of interest, the Government refers to Moderna, Inc. and ModernaTX, Inc. collectively as “Moderna.”

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