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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.)

EMANUEL MCCRAY, *On Behalf of*)
Himself and All Others Similarly Situated,)

Intervenors-Plaintiffs.)

Case No.: 22-cv-00252-MSG

**NOTICE OF MOTION AND
MOTION FOR CLASS
CERTIFICATION**

PROPOSED CLASS ACTION

To Plaintiffs Arbutus Biopharma Corporation and Genevant Sciences GmbH
and their attorneys of record, to Defendants Moderna, Inc. and ModernaTx, Inc. and
their attorneys of record, and to the United States and its attorneys of record,

PLEASE TAKE NOTICE that on _____, 2023, at _____ in the Courtroom

1 of the presiding judge in this case in the Federal Courthouse in Fort Worth, Texas,
2 or as soon thereafter as Plaintiffs-Intervenors may be heard, Plaintiffs-Intervenors
3 will and do hereby move the Court for an order certifying this case as a class action
4 pursuant to Rule 23(a) and (b) of the Federal Rules of Civil Procedure on behalf of
5 the following class of similarly situated persons:
6

7
8 All persons born or naturalized in the United States who are citizens of
9 the United States, and subject to the jurisdiction of the United States.

10 This motion is based upon the accompanying memorandum of law and upon
11 all other matters of record herein. In accordance with Local Rule 7.1.1, a
12 conference was not. The last action on the Docket occurred on February 22, 2023,
13 (Doc. 55), granting Motion for Pro Hac Vice Appearance of Attorney Nancy Kaye
14 Horstman.
15

16 Dated: February 26, 2023
17

18 Respectfully submitted,

19
20 
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**
2 **IN SUPPORT OF MOTION FOR CLASS CERTIFICATION**

3 **I. THE PROPOSED CLASS MEETS RULE 23.**

4 **A. General.**

5 The proposed Complaint is incorporated herein as if repeated here.

6 In *Bond v. U.S.*, 564 U.S. 211, 222 (2011), the Supreme Court stated that:

7 “Fidelity to principles of federalism is not for the States alone to
8 vindicate. The recognition of an injured person’s standing to object to a
9 violation of a constitutional principle that allocates power within
10 government is illustrated, in an analogous context, by cases in which
11 individuals sustain discrete, justiciable injury from actions that
12 transgress separation-of-powers limitations. Separation-of-powers
13 principles are intended, in part, to protect each branch of government
14 from incursion by the others. Yet the dynamic between and among the
15 branches is not the only object of the Constitution’s concern. The
16 structural principles secured by the separation of powers protect the
17 individual as well.”

18 In *Califano v. Yamasaki*, 442 U.S. 682, 700-701 (1979), the Supreme Court
19 held that:

20 “[C]lass relief is appropriate in civil actions brought in federal court,
21 including those seeking to overturn determinations of the departments
22 of the Executive Branch of the Government in cases where judicial
23 review of such determinations is authorized. . . . Indeed, a wide variety
24 of federal jurisdictional provisions speak in terms of individual
25 plaintiffs, but class relief has never been thought to be unavailable
26 under them. (Citations omitted.) Where the district court has
27 jurisdiction over the claim of each individual member of the class, Rule
28 23 provides a procedure by which the court may exercise that
 jurisdiction over the various individual claims in a single proceeding.”

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