IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ACUITAS THERAPEUTICS INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 1:22-cv-02229-MKV
	)	
GENEVANT SCIENCES GMBH and ARBUTUS BIOPHARMA CORP.,	)	
	)	
Defendants.	)	

PLAINTIFF ACUITAS THERAPEUTICS INC.'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS THE FIRST AMENDED COMPLAINT

Nicholas Groombridge
Eric Alan Stone
Josephine Young
Allison C. Penfield
Chih-wei Wu
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019
(212) 373-3000

Saurabh Gupta (*pro hac vice* granted)
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
Washington, D.C. 20006-1047
(202) 223-7300

Attorneys for Plaintiff Acuitas Therapeutics Inc.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

PRELIMINARY STATEMENT

This case presents a controversy over which federal courts have subject-matter jurisdiction: A declaratory judgment action by a product supplier against patent owners who have threatened to sue that supplier's customers, in circumstances that could implicate the supplier's own liability. The Federal Circuit reconfirmed the justiciability of such cases earlier this year, in an opinion that Defendants omit. *See Mitek Sys., Inc.* v. *United Servs. Auto. Ass'n*, 34 F.4th 1334 (Fed. Cir. 2022).

This case is about Comirnaty®, commonly known as the "Pfizer vaccine" against COVID-19. Despite the shorthand, Pfizer actually worked with a company called BioNTech to develop Comirnaty®. One of the critical components of Comirnaty®, a messenger RNA ("mRNA") vaccine, is a lipid nanoparticle ("LNP") made up of compounds called lipids that can protect the mRNA so that it can be safely delivered into the person's cells. Pursuant to a license agreement, Plaintiff Acuitas provided BioNTech with the lipids in Comirnaty®. Acuitas worked for over a decade to develop those lipids. Acuitas's hard work and insights were essential to Comirnaty®'s success.

Defendants Arbutus and Genevant, on the other hand, had nothing to do with the development of Comirnaty®, or of Acuitas's lipids used therein. None of Defendants' own lipids or mRNA-LNPs are used in any approved product. Yet they appear to have been writing patent claims to try to ensnare Comirnaty®, and they sent demand letters to Pfizer, copying Acuitas's licensee and partner BioNTech, preserving their right to seek damages for patent infringement under nine Arbutus patents they say Comirnaty® may infringe. All of those patents allegedly encompass compositions containing lipids and mRNA.

In response to Defendants' letters, BioNTech formally notified Acuitas of an indemnification claim under the Acuitas-BioNTech License Agreement. Acuitas then brought this

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