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20 *Attorneys for Defendants BioNTech SE*  
21 *and BioNTech US, Inc.*

22 **IN THE UNITED STATES DISTRICT COURT**  
23 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

24 Allele Biotechnology and  
25 Pharmaceuticals, Inc.,  
26  
27 Plaintiff,

28 v.

Pfizer Inc.; BioNTech SE;  
BioNTech US, Inc.; and DOES 1-  
30  
Defendants.

Case No. 3:20-cv-01958-H (AHG)

**DEFENDANTS' NOTICE OF  
MOTION TO DISMISS  
COMPLAINT PURSUANT TO  
RULE 12(B)(6)**

Date: March 15, 2021  
Time: 10:30 AM  
Courtroom: 15A  
Judge: Hon. Marilyn L. Huff  
Magistrate: Hon. Allison H. Goddard

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:  
2 PLEASE TAKE NOTICE that on March 15, 2021, at 10:30 AM, in Courtroom  
3 15A of this Court, Defendants Pfizer Inc.; BioNTech SE; and BioNTech US, Inc., by  
4 their undersigned counsel, will move this Court, pursuant to Federal Rule of Civil  
5 Procedure 12(b)(6), to dismiss the above-captioned matter for failing to state a claim  
6 on which relief can be granted. This Motion is made on the grounds that the alleged  
7 infringing activity in Allele Biotechnology and Pharmaceuticals, Inc.’s Complaint is  
8 protected by the “safe harbor” provision under 35 U.S.C. § 271(e)(1), as set forth in  
9 the attached memorandum of points and authorities in support of this motion.

10  
11 Respectfully submitted,

12  
13 Dated: February 8, 2021

NOONAN LANCE BOYER & BANACH LLP

14 By: /s/ David J. Noonan

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28

1 Dated: February 8, 2021

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By: /s/ Elizabeth L. Brann

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**SIGNATURE CERTIFICATION**

Pursuant to Section 2(f)(4) of the Electronic Case Filing Administrative Policies and Procedures Manual, I hereby certify that the content of this document is acceptable to Elizabeth L. Brann, counsel for Defendants BioNTech SE and BioNTech US, Inc., and that I have obtained Ms. Brann’s authorization to affix her electronic signature to this document.

Dated: February 8, 2021

NOONAN LANCE BOYER & BANACH LLP

By: /s/ David J. Noonan

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Pfizer, Inc.*