

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

CHARLES R. BLACKBURN and MICHELE
ROSATI, Derivatively on Behalf of
NOVAVAX, INC.,

Plaintiffs,

v.

STANLEY C. ERCK, GREGORY F.
COVINO, JOHN J. TRIZZINO, GREGORY
M. GLENN, JOHN A. HERRMANN III,
GREGG H. ALTON, RICHARD H.
DOUGLAS, MARGARET G. MCGLYNN,
DAVID M. MOTT, RACHEL K. KING,
MICHAEL A. MCMANUS, JR., JAMES F.
YOUNG, and GARY C. EVANS,

Defendants,

and

NOVAVAX, INC.

Nominal Defendant

Case No. 1:22-cv-01417

VERIFIED STOCKHOLDER DERIVATIVE COMPLAINT

TABLE OF CONTENTS

I.	NATURE OF THE ACTION	1
II.	JURISDICTION AND VENUE	5
III.	PARTIES	6
IV.	THE DUTIES OF THE INDIVIDUAL DEFENDANTS.....	9
A.	Fiduciary Duties.....	9
B.	The Board Committee Charters	10
V.	SUBSTANTIVE ALLEGATIONS	13
A.	Background	13
1.	Covid-19 Gives the Company a Lifeline	14
2.	The US Government Gives the Company Over \$1.6 Billion to Develop its Vaccine Candidate.....	16
B.	Novavax Expands its Manufacturing Capabilities and Anticipates Seeking Regulatory Approval of its COVID-19 Vaccine by Second Quarter 2021.....	16
C.	The Company's Quality Controls Were Gravely Deficient.....	18
1.	Novavax Was Required to Adhere to the FDA's Strict Manufacturing Regulations	18
2.	Unbeknownst to Stockholders, the FDA Had Cited Severe Manufacturing Deficiencies at Novavax's Facilities.....	21
D.	The Individual Defendants Cause the Company to Issue Materially False and Misleading Statements	24
E.	The Truth Emerges	34
F.	The Individual Defendants Cause the Company to Issue a Materially Misleading Proxy Statement.....	38
G.	Defendants Sold Nearly \$90 Million of Novavax Stock While in Possession of MNPI.....	42
VI.	DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS	45
VII.	CAUSES OF ACTION.....	49

COUNT I	
Against Defendants Erck, Alton, Douglas, McGlynn, Mott, King, McManus, and Young for Violations of Section 14 of the Exchange Act	49
COUNT II	
Against Defendants Erck, McManus, Mott, Young, Alton, Douglas, King and McGlynn for Breach of Fiduciary Duty (<i>Caremark</i>)	50
COUNT III	
Against Defendants Erck, Evans, Glenn, Herrmann, McManus, Mott, Trizzino, and Young for Breach of Fiduciary Duty (<i>Caremark</i>)	51
COUNT IV	
Against Defendants Erck, Evans, Glenn, Herrmann, McManus, Mott, Trizzino, and Young for Unjust Enrichment.....	52
PRAYER FOR RELIEF	52
JURY DEMAND	52

Plaintiffs Charles R. Blackburn and Michele Rosati (collectively, “Plaintiffs”), by and through their undersigned attorneys, bring this stockholder derivative complaint for the benefit of nominal defendant, Novavax Inc. (“Novavax” or the “Company”), against its Board of Directors (the “Board”) and certain of its current and former executive officers to remedy defendants’ violations of Section 14(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), as amended; breach of fiduciary duty for insider trading (*Brophy* claim) and failing to adequately oversee the Company’s mission-critical compliance with manufacturing safety regulations (*Caremark* claim); and unjust enrichment. Plaintiffs’ allegations are based upon their personal knowledge as to themselves and their own acts, and upon information and belief, developed from the investigation and analysis by Plaintiffs’ counsel, including a review of publicly available information such as filings by Novavax with the U.S. Securities and Exchange Commission (“SEC”), press releases, news reports, analyst reports, investor conference transcripts, publicly available filings in lawsuits, and matters of public record, as well as documents obtained pursuant to a Freedom of Information Act (“FOIA”) request to the U.S. Food and Drug Administration (“FDA”) and books and records produced in response to Plaintiffs’ books and records demands pursuant to 8 Del. C. § 220 (the “220 Demands”). All such books and records are expressly incorporated into this Complaint. For the avoidance of doubt, this incorporation by reference does not change the pleading standard applicable to any motion to dismiss that may be filed in this case.

I. NATURE OF THE ACTION

1. Novavax is a late-stage biotechnology company that seeks to discover, develop and commercialize innovative vaccines to prevent serious infectious diseases and address urgent, global health needs. When the Covid-19 pandemic began in March 2020, Novavax had 127 employees engaged primarily in research, development and manufacturing activities. The

Company was at risk of being delisted from the Nasdaq stock exchange as its stock traded under \$4 per share and had just enough cash to survive another six months.

2. Although the Company had never successfully brought a vaccine to market in its 35 year history, the Company announced its intention to develop a Covid-19 vaccine on February 26, 2020. On March 10, 2020, Novavax received \$4 million in funding from the Coalition for Epidemic Preparedness Innovations, a global partnership among organizations to accelerate the development of vaccines for emerging infectious diseases.

3. Following this initial round of funding, Defendants lobbied for additional grants from government and private organizations. In mid-April 2020, and again in June 2020, when it believed additional funding was imminent, the Board granted over \$70 million in equity compensation to the Company's senior executives "in recognition of the extraordinary work of Novavax employees to implement a new vaccine program against SARS-CoV-2 and to incentivize the additional work necessary to make the program successful."

4. In July 2020, Novavax announced that it was selected to participate in Operation Warp Speed ("OWS") and would likely receive over \$1 billion in additional funds to support development of its Covid-19 vaccine. Thereafter, Defendants told shareholders that the Company was ramping up development and production of its vaccine candidate.

5. Having sold its own manufacturing facilities in 2019 to alleviate its cash crunch, beginning on July 23, 2020, Novavax announced that it had entered into agreements with contract development manufacturing organizations ("CDMOs") through which third-parties would manufacture the Company's vaccine.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.