

**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**

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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.

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