UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Southern Division)

AMY SNYDER, Derivatively on Behalf of NOVAVAX, INC.,
2632 Tunlaw Road NW #107
Washington, D.C. 20007

Plaintiff,

v.

STANLEY C. ERCK
21 Firstfield Road
Gaithersburg, MD 20878

JOHN J. TRIZZINO
21 Firstfield Road
Gaithersburg, MD 20878

GREGORY M. GLENN
21 Firstfield Road
Gaithersburg, MD 20878

JOHN A. HERRMANN III
21 Firstfield Road
Gaithersburg, MD 20878

GREGG H. ALTON
21 Firstfield Road
Gaithersburg, MD 20878

RICHARD H. DOUGLAS
21 Firstfield Road
Gaithersburg, MD 20878

MARGARET G. MCGLYNN
21 Firstfield Road
Gaithersburg, MD 20878

DAVID M. MOTT
21 Firstfield Road
Gaithersburg, MD 20878

Case No.:

FILED UNDER SEAL

DEMAND FOR JURY TRIAL

RACHEL K. KING
21 Firstfield Road
Gaithersburg, MD 20878

MICHAEL A. MCMANUS, JR.
21 Firstfield Road
Gaithersburg, MD 20878

JAMES F. YOUNG
21 Firstfield Road
Gaithersburg, MD 20878

GARY C. EVANS
5128 Horseshoe Trail
Dallas, TX 75209

Defendants,

and

NOVAVAX, INC.
21 Firstfield Road
Gaithersburg, MD 20878

Nominal Defendant

VERIFIED STOCKHOLDER DERIVATIVE COMPLAINT

Plaintiff Amy Snyder ("**Plaintiff**"), by and through her undersigned attorneys, brings this stockholder derivative complaint for the benefit of Nominal Defendant, Novavax Inc. ("**Novavax**" or the "**Company**"), against its current and a former member of its Board of Directors (the "**Board**") to remedy their breaches of fiduciary duties for insider trading (*Brophy* claim), failing to adequately oversee the Company's mission-critical compliance with manufacturing safety regulations (*Caremark* claim), and unjust enrichment. Plaintiff's allegations are based upon her personal knowledge as to herself and her own acts, and upon information and belief, developed from the investigation and analysis by Plaintiff's 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, and books and records produced in response to Plaintiff's books and records demand pursuant to *8 Del. C.* § 220 (the "**220 Demand**"). 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. Plaintiff brings this stockholder derivative action on behalf of Novavax against the Company's directors and certain of its current and former executive officers for wrongfully selling the Company's stock based on adverse material non-public information ("**MNPI**"). The Board also failed to adequately oversee the Company's mission-critical compliance with manufacturing safety regulations and protocols. This misconduct has damaged the Company and gives rise to claims for breach of fiduciary duty and unjust enrichment.

2. Novavax purports to be a late-stage biotechnology company that promotes global health through the discovery, development, and commercialization of innovative vaccines to prevent serious infectious diseases. The Company's product candidates include, among others, NVX-CoV2373, which is in development as a vaccine for COVID-19. Novavax planned to complete Emergency Use Authorization ("**EUA**") submissions for NVX-CoV2373 with the U.S. Food and Drug Administration ("**FDA**") in the second quarter of 2021.

3. During 2021, directors and certain executive officers of the Company made materially false and misleading statements regarding NVX-CoV2373's development while selling Novavax stock at artificially inflated prices. Defendants kept the Company's stock price inflated by materially misleading the public about when the Company actually planned to complete EUA submission and the true reasons for the delays in completing EUA submission.

4. Specifically, Defendants misled investors about the vaccine's purported successful development, production, and imminent FDA approval. In reality, Novavax's vaccine was nowhere close to being approved for use: (a) because the vaccine's purity and potency numbers fell well below FDA safety requirements as a result of severe manufacturing problems; (b) because of the failure to manufacture the vaccine at scale; and (c) because of supply chain disruptions—all of which caused significant delays that jeopardized any chance Novavax had to capitalize on the market for COVID-19 vaccines.

5. Contract development manufacturing organizations ("**CDMOs**") are companies that provide drug development and drug manufacturing services in the pharmaceutical industry on a contract basis. The Company uses CDMOs to assist in manufacturing NVX-CoV2373. The Company is responsible for the conditions of the CDMOs' facilities. The Board failed to adequately oversee the Company's mission-critical compliance with manufacturing safety regulations at its CDMOs' facilities.

6. The Board's failures were not fully revealed until October 19, 2021, when *Politico* published an article entitled *'They rushed the process': Vaccine maker's woes hamper global inoculation campaign*.[1] The *Politico* article cited sources stating that Novavax's "issues are more concerning than previously understood" and that the Company could take until the end of 2022 to resolve its manufacturing issues and win regulatory authorizations and approvals.

[1] Sarah Owermohle, Erin Banco and Adam Cancryn, *'They rushed the process': Vaccine maker's woes hamper global inoculation campaign*, Politico (Oct. 19, 2021), https://www.politico.com/news/2021/10/19/novavax-vaccine-rush-process-global-campaign-516298.

7. These revelations precipitated the filing of a securities class action in this District against Novavax and certain of the defendants named herein, captioned *Sinnathurai v. Novavax, Inc., et al.*, Case No. 8:21-cv-02910 (the "**Securities Fraud Class Action**").

8. On March 4, 2022, Plaintiff served her 220 Demand on the Company seeking to inspect the Company's books and records related to Board and management knowledge and/or oversight of the Company's compliance with manufacturing protocols and their knowledge of MNPI concerning the same, including their relation to regulatory approval of Novavax's COVID-19 vaccine candidate, NVX-CoV2373. Following negotiations and entry into a confidentiality agreement, the Company produced over 2,300 pages of internal documents.

9. Premised on the information produced in response to the 220 Demand, Plaintiff did not make a litigation demand prior to filing suit because making a demand would be a futile and useless act.

10. At least half of the Company's current Board could not give disinterested and independent consideration to a litigation demand because four of the eight current directors engaged in insider trading on the basis of MNPI in breach of their duty of loyalty and were thus unjustly enriched; because at least four of the eight current directors knew or should have known of the grossly deficient manufacturing controls and procedures, yet allowed misleading statements to be disseminated; and because the entire Board failed to oversee manufacturing controls and compliance with current Good Manufacturing Practices ("**cGMPs**"). As a result, at least half of the Board is unable to impartially consider whether to bring the claims asserted in this action.

II. JURISDICTION AND VENUE

11. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because the matter in controversy exceeds the sum of $75,000 and there is complete diversity of citizenship between Plaintiff and all of the Defendants.

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