

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

_____, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

INOVIO PHARMACEUTICALS, INC., and
J. JOSEPH KIM,

Defendants.

Case No. _____

**CLASS ACTION COMPLAINT FOR
VIOLATION OF THE FEDERAL
SECURITIES LAWS**

DEMAND FOR JURY TRIAL

Plaintiff, _____, (“Plaintiff”), by and through his attorneys, alleges upon personal knowledge as to his own acts, and upon information and belief as to all other matters based upon the investigation conducted by his attorneys, which included, among other things, a review and analysis of public filings by Inovio Pharmaceuticals, Inc. (“Inovio” or the “Company” with the United States Securities and Exchange Commission (“SEC”, public reports and news articles, research reports by securities and financial analysts, economic analysis of securities movement and pricing data, press releases issued by Inovio, and other publicly available material and data identified herein, as follows:

I. NATURE AND SUMMARY OF THE ACTION

1. This is a class action for violations of the federal securities laws brought on behalf of all persons who purchased or otherwise acquired Inovio common stock (NASDAQ: INO) between February 14, 2020 and March 9, 2020, inclusive (the “Class Period”). Plaintiff alleges that Inovio and its Chief Executive Officer, J. Joseph Kim (“Kim” and, together with Inovio, “Defendants”), made false and misleading statements in violation of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. §§ 78j(b) and 78t(a), and SEC Rule 10b-5, 17 C.F.R. § 240.10b-5.

2. According to the World Health Organization (“WHO”), the worldwide outbreak of the novel coronavirus, COVID-19 (“COVID-19”), has become a global “pandemic” due to its extraordinary “speed and scale of transmission.”¹ The WHO Director-General has stated the organization is “deeply concerned by both the alarming levels of spread and severity, and by the alarming levels of inaction.” *Id.* “We have never before seen a pandemic sparked by a coronavirus We have rung the alarm bell loud and clear.” *Id.*

¹ WHO Director-General’s opening remarks at the Mission briefing on COVID19 (March 12, 2020).

3. As of the date of this Complaint, COVID-19 has infected more than 120,000 people and caused approximately 4,300 deaths worldwide.² Epidemiologists estimate that the number of COVID-19 cases in the world doubles every six days. *Id.* In the U.S., fears over the new coronavirus have had devastating economic and social consequences. Large public gatherings and major events have been canceled. Employees have been told to work from home, universities have moved all classes online and elementary schools have closed for sanitizing. Declarations of emergency are being proclaimed, and New York has deployed the National Guard to the hard-hit city of New Rochelle, north of New York City. Currently, there is no vaccine available to prevent the spread of COVID-19.

4. Headquartered in Plymouth Meeting, Pennsylvania, Inovio purports to be a “biotechnology company focused on rapidly bringing to market precisely designed DNA medicines to treat, cure and/or protect people from . . . infectious diseases.” During the Class Period, Defendants capitalized on widespread COVID-19 fears by falsely claiming that Inovio had developed a vaccine for COVID-19. First, on February 14, 2020, Inovio CEO Kim appeared on Fox Business News with Neal Cavuto and stated that Inovio had developed a COVID-19 vaccine “*in a matter of about three hours once we had the DNA sequence from the virus*” and “our goal is to start phase one human testing in the U.S. early this summer.” In response, Inovio’s stock price rose more than 10% over the next few trading days, on enormous trading volume.

5. Two weeks later, following a well-publicized March 2, 2020 meeting with President Trump to discuss the COVID-19 outbreak, Defendant Kim again claimed that Inovio had developed a COVID-19 vaccine, stating “*we were able to fully construct our vaccine within*

² “Coronavirus Has Become A Pandemic, W.H.O. Says,” by Donald G. McNeil, Jr., New York Times, Mar. 12, 2020.

three hours Our plan is to start [U.S. based COVID-19 trials] in April of this year.” The market responded favorably to Kim’s statement and Inovio’s stock price *more than quadrupled* from \$4.28 per share on February 28, 2020, and continued to increase in the following weeks, reaching an intra-day high of \$19.36 on March 9, 2020.

6. However, in truth, Inovio had not developed a COVID-19 vaccine. On March 9, 2020, before trading commenced, Citron Research (“Citron”) exposed Defendants’ misstatements, calling for an SEC investigation into the Company’s “ludicrous and dangerous claim that they designed a [COVID-19] vaccine in 3 hours.” In response to the news, Inovio’s stock price plummeted from its March 9 opening price of \$18.72 per share to close at \$9.83. The following day, March 10, 2020, Inovio’s stock price fell from its \$9.30 per share opening price to close at \$5.70 per share. The two-day drop wiped out approximately \$643 million in market capitalization for the Company, marking a **71%** decline from its Class Period high. In a message to shareholders that same day, Inovio attempted to blunt the Citron revelations but only highlighted its own misstatements, admitting that it had *not* developed a COVID-19 vaccine but rather had merely “*designed a vaccine construct*” – i.e., a precursor for a vaccine – and that it believed it had a “viable approach to address the COVID-19 outbreak.”

II. JURISDICTION AND VENUE

7. The claims asserted herein arise under Sections 10(b) and 20(a) of the Exchange Act, 15 U.S.C. §§ 78(b) and 78t(a), and SEC Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5.

8. This Court has subject matter jurisdiction over this action pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa, and 28 U.S.C. § 1331.

9. This Court has jurisdiction over each Defendant named herein because each Defendant is an individual or corporation who has sufficient minimum contacts with this District

so as to render the exercise of jurisdiction by the District Court permissible under traditional notions of fair play and substantial justice.

10. Venue is proper in this District pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa and 28 U.S.C. § 1931(b). Many of the acts and transactions alleged herein, including the preparation and dissemination of materially false and misleading information, occurred in substantial part in this District and the Company has its principal executive offices located and conducts substantial business in this District.

11. In connection with the acts, omissions, conduct and other wrongs in this Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to the United States mail, interstate telephone communications and the facilities of the national securities exchange.

III. PARTIES

12. Defendant Inovio is a Delaware corporation with its principal executive offices at 660 W. Germantown Pike, Suite 110, Plymouth Meeting, PA 19462. Inovio common stock trades on the Nasdaq stock exchange under the symbol “INO.”

13. Defendant Kim is the President and Chief Executive Officer of Inovio and has served in that capacity since 2009.

IV. DEFENDANTS’ MATERIALLY FALSE AND MISLEADING STATEMENTS

14. Inovio and Kim made false and misleading statements to the market, claiming unequivocally that the Company had successfully developed a vaccine against the spread of

COVID-19 and that it anticipated rapidly bringing that vaccine to market. Given the heightened anxiety surrounding this pandemic and the desperate demand for an effective COVID-19 vaccine, Defendants knew and were deliberately reckless as to the falsity of their claims.

15. First, on February 14, 2020, Defendant Kim appeared on Fox Business News with Neal Cavuto, where he claimed that Inovio had developed a COVID-19 vaccine and was “able to *rapidly construct our vaccine in a matter of about three hours* once we had the DNA sequence from the virus available because of the power of our DNA medicine platform.” He continued that “our goal is to start phase one human testing in the U.S. early this summer,” claiming “we’ve done this many, many times before. We’re planning to beat our own record.”

16. Analysts raised consensus price targets to \$9.43 per share on strong “Buy” recommendations.

17. Second, on March 2, 2020, Defendant Kim attended a televised meeting with President Trump at the White House where he repeated his prior February 14, 2020 claim that Inovio had developed a COVID-19 vaccine, stating the Company had “applied our very innovative, 21st century platform . . . to COVID-19 . . . by getting the DNA sequence of the virus, *we were able to fully construct our vaccine within three hours*. And we’ve been working on preclinical and preparation work with the help of FDA . . . Our plan is to start [U.S. based COVID-19 trials] in April of this year.” News outlets and securities analysts repeated and commented favorably on Kim’s statements.

18. In response to the claim, the market responded favorably. Inovio common stock jumped from \$4.39 per share on March 2, 2020 to \$7.45 per share on March 3, 2020. Inovio shares and continued to increase until they were trading as high as \$14.09 per share on March 6, 2020.

19. In an interview with *The Scientist*, on February 21, 2020, Dr. David Weiner of the Wistar Institute discussed the steps being taken to develop a vaccine for COVID-19. Dr. Weiner mentioned that Wistar was working with Inovio and that as soon as they learned of the COVID-19 outbreak in China, they began to work on a vaccine. Dr. Weiner discussed the approaches they were taking in attempting to develop a vaccine. Tellingly, Dr. Weiner is not reported to have stated that Inovio had already developed a vaccine.

20. In the midst of the hype surrounding Inovio, the Company entered into an agreement to sell an aggregate \$50 million of its shares of common stock on the open market beginning on March 9, 2020.

21. In its March 9, 2020 Form 8-K announcing its sale of stock, Inovio stated that “on March 3, 2020, the Company announced that it plans to pursue an accelerated timeline for developing its DNA vaccine INO-4800 to address COVID-19, also known as coronavirus. The Company believes it may be in a position to begin human clinical trials in the United States in April 2020 and soon thereafter in China and South Korea, subject to approval by the U.S. Food and Drug Administration and China and South Korea regulatory authorities, respectively, and aims to produce up to one million doses by the end of 2020, with its existing capacity and contract resources, for further clinical trials or emergency use.”

22. The statements described in paragraphs 15, 16, and 20 *supra* were materially false and misleading and omitted to disclose material information. Specifically, Defendants falsely described their product as a fully completed vaccine when it was nothing of the sort. Defendants falsely claimed they had developed the vaccine in a matter of hours, which is a scientific impossibility. And Defendants falsely stated that they would be able to begin human trials in

April 2020 when they had no reason to believe that they would have the necessary regulatory approvals to do so.

23. Defendants knew, or in reckless disregard for the truth should have known, that at the time the statements described in paragraphs 15, 16, and 20 *supra* were made, Inovio had not developed a vaccine for COVID-19, that such a vaccine could not be developed in a matter of hours, and that trials were not likely to begin in April 2020.

The Truth Emerges

24. On March 9, 2020, Citron Research, a short-seller best known for exposing accounting fraud at Valeant Pharmaceuticals, the “Pharmaceutical Enron,” published the following statement on Twitter:



25. Following the publication of this message, shares of Inovio fell precipitously. Shares traded at a high of \$19.36 per share on March 9, 2020, but by March 10, 2020 closed at \$5.70 per share, a fall of 71%.

Class Action Allegations

26. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of a class of all persons and entities who purchased or otherwise acquired Inovio common stock between February 14, 2020 and March 9, 2020, inclusive. Excluded from the Class are Defendants, directors and officers of the Company, as well as their families and affiliates.

27. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court.

28. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class which predominate over questions which may affect individual Class members include:

- a. Whether the Exchange Act was violated by Defendants;
- b. Whether Defendants omitted and/or misrepresented material facts;
- c. Whether Defendants' statements omitted material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;
- d. Whether Defendants knew or recklessly disregarded that their statements were false and misleading;
- e. Whether the price of the Company's stock was artificially inflated; and
- f. The extent of damage sustained by Class members and the appropriate measure of damages.

29. Plaintiff's claims are typical of those of the Class because Plaintiff and the Class sustained damages from Defendants' wrongful conduct alleged herein.

30. Plaintiff will adequately protect the interests of the Class and has retained counsel who are experienced in class action securities litigation. Plaintiff has no interests that conflict with those of the Class.

31. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

Fraud on the Market

32. Plaintiff will rely upon the presumption of reliance established by the fraud-on-the-market doctrine that, among other things:

- a. Defendants made public misrepresentations or failed to disclose material facts during the Class Period;
- b. The omissions and misrepresentations were material;
- c. The Company's common stock traded in efficient markets;
- d. The misrepresentations alleged herein would tend to induce a reasonable investor to misjudge the value of the Company's common stock; and
- e. Plaintiff and other members of the class purchased the Company's common stock between the time Defendants misrepresented or failed to disclose material facts.

33. At all relevant times, the markets for the Company's stock were efficient for the following reasons, among others: (i) the Company filed periodic public reports with the SEC; and (ii) the Company regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases on the major news wire services, and through other wide-ranging public disclosures such as communications with the financial press, securities analysts, and other similar reporting services.

Plaintiff and the Class relied on the price of the Company's common stock, which reflected all information in the market, including the misstatements by Defendants.

No Safe Harbor

34. The statutory safe harbor provided for forward-looking statements under certain conditions does not apply to any of the allegedly false statements pleaded in this Complaint. The specific statements pleaded herein were not identified as forward-looking statements when made.

35. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements.

Loss Causation

36. On March 9, 2020, following the publication of a Tweet by Citron Research challenging the veracity of Inovio's claims about its COVID-19 vaccine, shares of Inovio fell from a high of \$19.36 per share on March 9, 2020, to close at \$5.70 on March 10, 2020.

37. The Citron disclosure contradicted statements made by Defendants during the Class Period and was a causal element of the concurrent decline in the Company's share price.

Causes of Action

Count One

Violations of § 10(b) of the Exchange Act and Rule 10b-5 Promulgated Thereunder

38. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

39. During the Class Period, Defendants disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose the material facts necessary in order to

make the statements made, in light of the circumstances under which they were made, not misleading.

40. Defendants violated § 10(b) of the Exchange Act and Rule 10b-5 in that they (i) employed devices, schemes, and artifices to defraud; (ii) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (iii) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon those who purchased or otherwise acquired the Company's securities during the class period.

41. Plaintiff and the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for the Company's common stock. Plaintiff and the Class would not have purchased the Company's common stock at the price paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by Defendants' misleading statements.

Count Two
Violations of § 20(a) of the Exchange Act
(Against Defendant Kim)

42. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

43. Defendant Kim acted as a controlling person of the Company within the meaning of § 20(a) of the Exchange Act as alleged herein. By virtue of his high-level positions at the Company, Defendant Kim had the power and authority to cause or prevent the Company from engaging in the wrongful conduct complained of herein. Defendant Kim was provided with or had unlimited access to the documents described above which contained statements alleged by Plaintiffs to be false or misleading both prior to and immediately after their publication, and had

the ability to prevent the issuance of those materials or to cause them to be corrected so as not to be misleading

Prayer for Relief

WHEREFORE, Plaintiff prays for relief and judgment as follows:

- a) determining that this action is a proper class action pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of the Class as defined herein, and a certification of Plaintiff as class representative pursuant to Rule 23 of the Federal Rules of Civil Procedure and appointment of Plaintiff's counsel as Lead Counsel;
- b) awarding compensatory and punitive damages in favor of Plaintiff and the other class members against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including pre-judgment and post-judgment interest thereon.
- c) awarding Plaintiff and other members of the Class their costs and expenses in this litigation, including reasonable attorneys' fees and experts' fees and other costs and disbursements; and
- d) awarding Plaintiff and the other Class members such other relief as this Court may deem just and proper.

Demand for Jury Trial

Plaintiff hereby demands a trial by jury in this action of all issues so triable.