



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

CAMAC FUND, LP,

Plaintiff,

v.

PAUL A. WAGNER, LAWRENCE
EICHENFIELD, BARBARA K. FINCK,
DONALD A. WILLIAMS, STEPHEN K.
DOBERSTEIN, STEVEN KORNFELD,
SCOTT BRUN, DAVID GRYSKA,
FRED ALGER MANAGEMENT, LLC,
BVF PARTNERS L.P., FARALLON
CAPITAL MANAGEMENT, L.L.C.,
PERCEPTIVE ADVISORS LLC, and
TYBOURNE CAPITAL (US) LLC,

Defendants,

and

FORTE BIOSCIENCES, INC.,

Nominal Defendant.

C.A. No. 2023-0817-MTZ

PUBLIC VERSION

Filed: August 15, 2023

VERIFIED COMPLAINT

Plaintiff Camac Fund, LP (“Camac” or “Plaintiff”), a stockholder of Forte Biosciences, Inc. (“Forte” or the “Company”) brings this Verified Complaint (the “Complaint”) against (i) Paul A. Wagner, Lawrence Eichenfield, Barbara K. Finck, Donald A. Williams, Stephen K. Doberstein, Steven Kornfeld, Scott Brun, and David Gryska (the “Director Defendants”), in their capacities as members of the

Board of Directors of Forte (the “Board”), for breaches of fiduciary duties; (b) Fred Alger Management, LLC, BVF Partners L.P., Farallon Capital Management, L.L.C., Perceptive Advisors LLC, and Tybourne Capital (US) LLC (the “White Squire Defendants”) for aiding and abetting the Board’s breaches of fiduciary duty; and (iii) Nominal Defendant Forte for purposes of effectuating the declaratory and injunctive relief sought herein.

INTRODUCTION

1. This action arises from incumbent directors’ brazen defensive measures to entrench themselves in office. Through a “white squire defense,” the Director Defendants have made dilutive issuances of shares into friendly hands at prices well below the Company’s liquidation value and, in so doing, have *increased the Company’s outstanding common stock by 140%*.

2. Forte is a biopharmaceutical company that has failed to develop multiple potential treatments over the years, including most recently FB-401, which the Company abandoned at the end of 2021. Since entering the public markets in June 2020, the value of Forte’s stock has declined by 94%.

3. When Forte went public, the Company described itself as a “clinical-stage biopharmaceutical company focused on advancing through clinical trials our lead product candidate, FB-401, which is a live biotherapeutic for the treatment of inflammatory skin disease, including pediatric and adult patients with atopic

dermatitis.” After the close of trading on September 2, 2021, Forte announced that FB-401 had failed in Phase 2 of its clinical trials and did not meet the primary endpoint designed to measure its efficacy. The Company’s stock price collapsed from a high of \$31.47 per share on September 2 to a low of \$4.91 the following day.

4. In the following months, the Company’s stock price continued to fall. By late February 2022, the Company’s market capitalization was less than \$20 million, despite having over \$45 million in cash and no meaningful debt. Yet rather than liquidate the Company and return what little value remained to stockholders, the Director Defendants opted to keep their lucrative positions.

5. In May 2022, the Board announced a “pivot” toward a speculative “proprietary molecule,” FB-102, that purportedly might treat one or more “autoimmune related diseases.” When multiple unaffiliated stockholders expressed disagreement with this decision, the already-staggered Board immediately began implementing additional defensive measures. It announced a rights agreement (*i.e.*, a “poison pill”) with a 10% threshold, expanded the size of the Board by two directors (including one with a decades-long relationship to Defendant Wagner, the Company’s CEO), approved severance agreements with opulent payouts to officers in the event of a change of control, and executed two enormous stock offerings intended to neutralize all unaffiliated voting power.

6. Despite having repeatedly disclosed that the Company had sufficient cash for at least two years of operations—and even though the Company was trading significantly below the value of its cash on hand—Forte announced in August 2022 that it had issued 5.6 million new shares in an at-the-market transaction, amounting to 38% of then-outstanding common stock.

7. On August 1, 2022, Plaintiff filed a Schedule 13D, disclosing that it had acquired 7.5% of the Company's outstanding shares. On February 17, 2023, Plaintiff gave notice of two director nominees for the 2023 Annual Meeting (defined below). By that time, Plaintiff owned 8.6% of the Company's outstanding shares. In response, the Board delayed the meeting by three months (in violation of Section 211 of the DGCL), then made a mammoth private placement to place additional shares in the hands of friendly parties.

8. Through the private placement, Forte sold 15.2 million shares—amounting to *71% of then-outstanding common stock*—to the White Squire Defendants, as well as pre-funded warrants for the purchase of another 9.7 million shares, which together exceeded all previously outstanding common stock.

9. Plaintiff's nominees were likely to win election at the 2023 meeting but for the Board's illegal entrenchment. The Company's equity raises had no business purpose whatsoever other than to protect the Defendants' positions.

10. This action seeks to hold Defendants accountable for their breaches of fiduciary duty and to enjoin the White Squire Defendants' votes from being counted at the 2023 annual meeting.

PARTIES

11. Plaintiff is a Forte stockholder and has owned shares of Forte common stock at all material times alleged in this Complaint.

12. Defendant Paul A. Wagner is Forte's founder. He is Chief Executive Officer and Chairman of the Board. He has served as a member of the Board as a Class III director since 2020. His term expires this year, and he is standing for reelection at the Annual Meeting. Wagner's total compensation was \$5.41 million in fiscal year 2021 and \$1.2 million in fiscal year 2022.

13. Defendant Lawrence Eichenfield has served as a member of the Board as Class III director since 2020. His term expires this year and he is standing for reelection at the Annual Meeting. Eichenfield's total compensation was \$455,072 in fiscal year 2021 and \$89,233 in fiscal year 2022.

14. Defendant Barbara K. Finck has served as a member of the Board since March 2022. She is a Class I director whose term expires in 2024. Finck's total compensation was \$99,266 in fiscal year 2022.

15. Defendant Donald A. Williams has served as a member of the Board since 2020. He is a Class I director whose term expires in 2024. Williams' total compensation was \$468,208 in fiscal year 2021 and \$103,646 in fiscal year 2022.

16. Defendant Stephen K. Doberstein has served as a member of the Board since May 2022. He is a Class I director whose term expires in 2024. Doberstein's total compensation was \$83,912 in fiscal year 2022.

17. Defendant Steven Kornfeld has served as a member of the Board since 2020. He is a Class II director whose term expires in 2025. Kornfeld's total compensation was \$469,664 in fiscal year 2021 and \$107,060 in fiscal year 2022.

18. Defendant Scott Brun has served as a member of the Board since November 2022. He is a Class II director whose term expires in 2025. Brun's total compensation was \$39,430 in fiscal year 2022.

19. Defendant David Gryska has served as a member of the Board since January 2023. He is a Class II director whose term expires in 2025.

20. The Defendants listed in ¶¶ 12–19 are referred to herein as the “Director Defendants”.

21. Defendant Fred Alger Management, LLC (“Alger”) is a Delaware limited liability company. Alger has been a significant investor in Forte since before it entered the public markets in June 2020.

22. Defendant BVF Partners L.P. (“BVF”) is a Delaware limited partnership. BVF has been a significant investor in Forte since before it entered the public markets in June 2020.

23. Defendant Farallon Capital Management, L.L.C. is a Delaware limited liability company.

24. Defendant Perceptive Advisors LLC is a Delaware limited liability company.

25. Defendant Tybourne Capital (US) LLC is a California limited liability company.

26. The Defendants listed in ¶¶ 21–25 are referred to herein as the “White Squire Defendants.”

27. Nominal Defendant Forte is a Delaware corporation. Forte is named as a nominal defendant solely for the purposes of allowing the Court to effectuate the declaratory and injunctive relief sought herein.

SUBSTANTIVE ALLEGATIONS

I. Forte’s Incumbent Directors Destroy Virtually All Stockholder Value

28. Forte is a clinical-stage biopharmaceutical company that trades on the NASDAQ under the symbol “FBRX.” It entered the public markets in June 2020 through a business combination with Tocagen Inc.

29. The Company was initially focused on the development of its lead program, FB-401, a live biotherapeutic for the treatment of inflammatory skin disease.

30. In September 2021 the Company announced that FB-401 had failed in Phase 2 of its clinical trials by failing to meet the primary endpoint designed to measure its efficacy. By the end of 2021, the Company's stock price had declined by 85% and was trading significantly below its cash value.

31. To justify its continued existence, the Company pivoted to a new, highly speculative treatment, FB-102. In May 2022, the Company announced that the Board had determined to “embark on a new path [to] develop novel compounds for the treatment of autoimmune diseases, including potentially graft versus host disease (GvHD), alopecia areata and vitiligo.”

32. FB-102 is an entirely unproven treatment concept that is purportedly a “wholly-owned and proprietary molecule that was developed entirely by Forte.”

33. At the time of the pivot to FB-102, the Company reported over \$40 million in cash on its balance sheet and stated that “Forte believes [the cash] is sufficient to fund operations for at least the next 24 months.”

34. The Company's market capitalization at the time was *roughly \$16 million*, reflecting a 60% discount to the value of the Company's cash.

35. Given the enormous trading discount of the Company's stock, the entirely speculative value of FB-102, and the Board's track record of obliterating stockholder value, investors' response to Forte's decision to press forward with its business plan was overwhelming negative.

36. In anticipation of a stockholder revolt—and in direct response to investor concerns expressed publicly and to management—the Board implemented a Rights Agreement (i.e., “poison pill”) in July 2022 with a 10% threshold. The Board stated that the Rights Agreement was intended to “render [it] more difficult or discourage a merger, tender or exchange offer or other business combination involving the Company that is not approved by the Board.”

37. By the end of July 2022, the Company's stock price had declined by more than 91% since the business combination.

II. Management Begins To Entrench Itself In Anticipation Of A Contested Director Election

38. On August 1, 2022, Plaintiff, an investor focused on mispriced assets, filed an initial Schedule 13D disclosing beneficial ownership of approximately 7.5% of Forte's outstanding common stock. A week later, Plaintiff amended its Schedule 13D to disclose that it now owned 9.8% of the Company's outstanding stock.

39. Given that the Company had held its most recent annual meeting in June 2022, management necessarily began to focus on the forthcoming 2023

meeting, at which Defendant Wagner, and Defendant Eichenfield (the “Incumbent Nominees”) would stand for reelection.

40. Shortly after Camac disclosed its stake, the Board revealed that it had already begun significant work to dilute unaffiliated stockholders and entrench the incumbent directors.

41. Specifically, on August 15, 2022, Forte revealed that it had “issued an additional 5.6 million shares of common stock”—*i.e.*, *roughly 38% of then-outstanding shares*—“for gross proceeds of approximately \$7.0 million under its [a]t-the-[m]arket financing facility” (the “At-The-Market Offering”). The Company had only 14.8 million shares of common stock outstanding at the time.

42. While the Board suggested that the purpose of the Company’s offering was to “further strength[en] its balance sheet,” it continued to hold roughly \$40 million in cash and had stated *only three months earlier* in May 2022 that it had “sufficient cash for at least the next 24 months.”

43. Indeed, in March 2022 and May 2022, the Board had specifically reviewed and discussed the Company’s “cash runway projections,” including an “estimate of the cash balance as of the end of 2022,” but did not conclude that additional cash was needed for the Company’s foreseeable operations.

44. When the Board met on August 11, 2022, it abruptly changed course, finding that it would “need to raise additional capital [REDACTED]

to continue to pursue development of FB-102,” purportedly because of “increases in cash utilization due to [REDACTED]

45. Nonetheless, following the At-The-Market Offering, management unequivocally advised the Board that “the Company has at least a 24-month cash runway following the recent [at-the-market] financing transactions.”

46. At the time of the At-The-Market Offering, the Board was fully aware of the substantial discount at which its shares traded and investor demands to return the Company’s capital, including through a liquidation.

47. For example, on July 19, 2022, Funicular Funds, LP, a significant investor in Forte, filed a Schedule 13D that criticized the Board’s aggressive implementation of the poison pill and stated “[o]ne of the pill triggers is the public announcement of a tender offer; given how deeply discounted the Issuer’s securities remain, a ‘hostile’ party could conceivably offer to purchase [Forte’s] entire capital stock at a discount to liquidation value while still offering stockholders a very substantial premium. The Board no doubt feels compelled to substitute its judgment for stockholders’ in such a circumstance even though a large proportion of the stockholders might find the offer compelling.”

48. On August 4, 2022, ATF Fund II LLC, another significant investor in Forte, filed a Schedule 13D stating that it had “previously expressed dissatisfaction

with the strategic direction of [Forte],” and that its intention was to “engage in discussions with [Forte’s] management, board of directors, [and] other representatives . . . regarding potential alternatives and recommendations that [ATG] believe would present the opportunity for more immediate and certain value creation for [Forte’s] stockholders in lieu of proceeding with [Forte’s] current business plan and development of its product candidates,” including “liquidation of the Issuer’s assets and return of capital to the Issuer’s stockholders.”

49. During the August 11, 2022 meeting, the Board specifically discussed “current ownership and the on-going demands from certain shareholder activists to liquidate the Company,” but cursorily determined that “it would not be in the stockholders’ best interests to return capital or dissolve the Company at this time and the best use of the Company’s available capital to maximize stockholder value is to continue development of FB-102.”

50. The minutes from the August 2022 meeting do not include any further discussion of the Board’s purported analysis. The directors did not retain outside advisers or even their own counsel with respect to the determination not to liquidate. Nor did the Board ask for a presentation or analysis from management or interested shareholders.

51. On August 18, 2022, Camac filed an amendment to its Schedule 13D disclosing beneficial ownership of approximately 7.1% (as it had been significantly

diluted by the At-The-Market Offering). Camac noted concerns at the time with the highly dilutive transactions.

52. On August 26, 2022, Camac served the Company with a demand pursuant to Section 220 of the Delaware General Corporation Law seeking to inspect books and records relating to mismanagement at the Company and the suitability of the incumbent directors.

53. On September 28, 2022, Camac filed an amendment to its Schedule 13D disclosing beneficial ownership of approximately 8.2% of Forte's outstanding common stock.

54. On October 20, 2022, the Company agreed to produce (subject to redactions) certain minutes and written actions of the Board, D&O Questionnaires, and stockholder list materials.

55. On November 14, 2022, the Board disclosed that it was expanding its size by unilaterally appointing Defendant Brun, who was not nominated by a shareholder of the Company, as a Class II director.

56. The Board also disclosed that it had adopted generous severance agreements with the Company's officers in the event of a change in control, which were designed solely to discourage the termination of current management and protect current management if the incumbent Board were to be replaced.

57. Under the new agreements, if an officer is terminated following a change in control of the Company, the officer is purportedly entitled to:

- A lump sum cash payment equal to 150% of such executive's base salary as in effect immediately before such termination, or 200% in the case of the Chief Executive Officer;
- A lump sum cash payment equal to 150% of such officer's target bonus opportunity, or 200% in the case of the Chief Executive Officer, as in effect immediately before such termination or the applicable change in control, if greater;
- Company payment of the premiums required for continued coverage pursuant to COBRA under the Company's group health, dental and vision care plans for the executive officer and his or her eligible dependents for up to 18 months, or 24 months in the case of the Chief Executive Officer; and
- 100% accelerated vesting and exercisability of the outstanding and unvested Company equity granted to the executive.

58. The severance agreements were intended solely to further entrench current management.

59. On November 23, 2022, Camac filed a Section 220 complaint in this Court after the Company failed to produce documents sufficient to satisfy its inspection demand.

60. On January 10, 2023, the Board disclosed that it was further increasing the size of the Board, as a further defensive measure, by unilaterally appointing Defendant Gryska to the Board. Gryska, according to the Company's press release, has a more-than-20-year relationship with Defendant Wagner, Forte's CEO.

61. As a result of the addition of Defendants Brun and Gryska, the incumbent directors positioned themselves to maintain control of the Board even if they lost director elections in the 2023 and 2024 annual meetings. Prior to the expansion of the Board, the incumbent directors stood to lose control of the Board by the 2024 meeting.

62. On February 17, 2023, Camac delivered a nomination notice to the Company nominating two highly qualified persons to the Board, Michael G. Hacke and Chris McIntyre (the "Camac Nominees").

63. Camac appeared virtually certain to defeat the Incumbent Nominees at the forthcoming annual meeting, presumably in June 2023 (*i.e.*, within thirteen months of the June 1, 2022 meeting).

64. On February 21, 2023, Camac filed an amendment to its Schedule 13D disclosing beneficial ownership of approximately 8.6% of Forte's outstanding common stock and disclosing the Camac Nominees.

65. On March 8, 2023 and March 9, 2023, Camac's counsel held a call with the Company's counsel in an attempt to reach an agreement that would avoid the cost and disruption of a contested meeting.

66. Through counsel, Camac suggested multiple potential frameworks to reach an agreement, including, among others, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

67. The Company refused to cooperate and chose to continue operations despite clear and specific objections from its stockholders. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

68. On March 15, 2023, Camac reached out directly to Defendant Wagner in an effort to reach a compromise, but Defendant Wagner never responded to the invitation to speak.

69. On May 15, 2023, the Company announced Q1 2023 results and disclosed an operational loss of \$6.7 million, compared to \$2.5 million for the same time period in 2022.

70. On May 25, 2023, Camac filed an amendment to its Schedule 13D disclosing beneficial ownership of approximately 8.8% of outstanding common stock.

III. In A Last Ditch Attempt To Keep Control, The Board Implements An Even Bigger Private Placement

71. On July 28, 2023, the Company entered into a private securities transaction with the White Squire Defendants to sell (i) 15.2 million shares of the Company's common stock at a purchase price of \$1.006 per share; and (ii) 9.7 million pre-funded warrants (the "Warrants") to purchase common stock at a purchase price of \$1.005 per Warrant (the "Private Placement"). At the time of the Private Placement, the Company had 21,051,195 outstanding shares and \$35.9 million in cash (\$1.70 per share in cash).

72. The new shares constituted *over 71% of then-outstanding shares*, profoundly altering the Company's capital structure and the relative voting power of stockholders.

73. Following the announcement of the Private Placement, the Company's stock price declined another 13% (from \$1.01 per share on August 1, 2023 to a low of \$0.85 per share on August 8, 2023), reflecting the market's perception of the Board's cheap trick.

74. The Private Placement was a transparent and illegal attempt to dilute unaffiliated stockholders and consolidate *majority voting power* with the White Squire Defendants, who are virtually certain to vote only in favor of the incumbent Board.

75. Defendants Alger and BVF are long-term investors in Forte (from before Forte was a public company), and thus are friendly with management and will vote only in favor of the incumbent Board.

76. The other White Squire Defendants likewise will vote only in favor of the incumbent Board. Upon information and belief, the Board did not use a financial adviser to organize the Private Placement, but rather each White Squire Defendant had a preexisting relationship with Defendant Wagner and was solicited to participate in the Private Placement by him.

77. Compounding this disloyal breach of fiduciary duty, the Board intentionally delayed the 2023 annual meeting to *September 19, 2023*, despite having held the prior meeting on June 1, 2022.

78. On August 2, 2023, the Company filed its preliminary proxy statement (the “Proxy”) announcing that the 2023 meeting would be held on September 19, 2023 (the “Annual Meeting”). [REDACTED]

[REDACTED]

[REDACTED]

79. The Proxy made virtually no attempt to justify the Board’s current management of the Company, counter Camac’s arguments in support of its nominees, or address the Board’s conduct with respect to the Private Placement. At best, the Board stated only that the Camac Nominees purportedly “have never held a position at a biotechnology company, have no medical background and have no prior public company board experience,” and that the “Board believes their presence in the boardroom would be destructive rather than constructive.” The Proxy contains no support whatsoever for the Board’s contentions.

80. On August 4, 2023, the Company disclosed that its “current independent registered public accountant . . . would not stand for re-appointment for the fiscal year ending December 31, 2024 [and] will cease to serve as the Company’s independent registered public accountant.” The Board provided no additional information about the circumstances of the auditor’s withdrawal.

81. But for the Board's breaches of fiduciary duty, as set forth above, the Incumbent Nominees would have been replaced at the Annual Meeting by the Camac Nominees.

82. As of the filing of this Complaint, the Company's stock has declined by over 94% since entering the public markets.

COUNT I

DIRECT CLAIM FOR BREACH OF FIDUCIARY DUTY AGAINST THE DIRECTOR DEFENDANTS

83. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

84. The Director Defendants, as current directors, owed and continue to owe Forte stockholders the highest duties of care, loyalty, and good faith. These fiduciary duties preclude the Director Defendants from taking any action to favor their own interests ahead of the interests of the Company and its stockholders.

85. In breach of their fiduciary duties, the Director Defendants approved the Private Placement and rescheduled the annual meeting to entrench themselves and undermine stockholders' ability to freely vote to install a majority of new directors that are not aligned with the incumbent regime.

86. In approving the Private Placement, the Board used corporate assets to finance an unnecessary and unfair investment by the White Squire Defendants,

which has effectively precluded stockholders from electing any alternative to the incumbent directors.

87. The terms of the Private Placement are highly advantageous to the White Squire Defendants and unfair and detrimental to the Company and its unaffiliated public stockholders because the White Squire Defendants were permitted to acquire an enormous portion of the Company's outstanding equity at an enormous discount to the value of the Company's cash for no business purpose other than to perpetuate the Director Defendants in office.

88. As a result of the Director Defendants' breaches of fiduciary duty, Plaintiff will be harmed.

89. Plaintiff has no adequate remedy at law.

COUNT II

DIRECT CLAIM FOR AIDING AND ABETTING AGAINST THE WHITE SQUIRE DEFENDANTS

90. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

91. The White Squire Defendants knew that the Director Defendants owed fiduciary duties to the Company and its stockholders. As alleged herein, the Director Defendants breached their fiduciary duties.

92. The White Squire Defendants knowingly participated in such breaches of fiduciary duty by, among other things, offering their support for the incumbent

Forte directors in a hotly contested election in exchange for the benefits associated with an exceedingly generous Private Placement.

93. As a result of the actions of the White Squire Defendants, Plaintiff will be harmed.

94. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

- a. Declaring that the Director Defendants breached their fiduciary duties;
- b. Declaring that the White Squire Defendants aided and abetted the Director Defendants' breaches of fiduciary duty;
- c. Enjoining the Defendants from counting votes cast by the White Squire Defendants for shares obtained through the Private Placement at the Annual Meeting or in any subsequent director election contest;
- d. Awarding damages in an amount to be determined at trial;
- e. Awarding to Plaintiff the costs and disbursements of the action, including reasonable attorney fees and expenses; and
- f. Granting such other and further relief as the Court deems just and proper.

Dated: August 10, 2023

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Counsel for Plaintiff Camac Fund, LP

CERTIFICATE OF SERVICE

I, Robert Erikson, hereby certify that, on August 15, 2023, I caused a true and correct copy of the foregoing *Public Version of Verified Complaint* to be served electronically upon the following counsel:

Brad D. Sorrels, Esquire
Shannon E. German, Esquire
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/s/ Robert Erikson
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