

DYNAVAX TECHNOLOGIES CORP

FORM 8-K (Current report filing)

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Address	2929 SEVENTH STREET SUITE 100 BERKELEY, CA, 94710
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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM 8-K

**Current Report
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): September 1, 2017

Dynavax Technologies Corporation

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-34207
(Commission File No.)

33-0728374
(IRS Employer
Identification No.)

2929 Seventh Street, Suite 100
Berkeley, CA 94710-2753
(Address of principal executive offices, including zip code)

(510) 848-5100
(Registrant's telephone number, including area code)

Not Applicable
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 8.01. Other Events.

On August 21, 2017, the Superior Court of the State of California, County of Alameda (the “Superior Court of California”), entered an order preliminarily approving a proposed settlement of (i) the state derivative lawsuit entitled *Truglio v. Oronsky et al.*, Case No. RG13686266, pending in the Superior Court of California (the “State Derivative Action”), (ii) the federal derivative lawsuit entitled *Drabek v. Dina et al.*, Case No. 13CV3705, pending in the United States District Court, Northern District of California (the “Federal Derivative Action”), and (iii) a stockholder demand pursuant to Delaware law made by Raymond Hersh, a current owner of Dynavax common stock (the “Stockholder Demand”). The State Derivative Action, Federal Derivative Action and Stockholder Demand are referred to collectively as the “Derivative Actions.” The proposed settlement is subject to final approval by the Superior Court of California.

As required by the preliminary approval order, the Notice of Proposed Settlement and Settlement Hearing (the “Notice”) is attached to this Current Report on Form 8-K as Exhibit 99.1.

The Notice and Stipulation of Settlement are also available on Dynavax Technologies Corporation’s (the “Company” or “Dynavax”) website at <http://investors.dynavax.com/index.cfm>. Other information contained in or accessible through the Company’s website does not constitute part of, and is not incorporated into, this Current Report on Form 8-K.

The proposed settlement does not involve the stockholder class actions consolidated under the caption *In re Dynavax Securities Litigation*, Case No. 4:16-cv-06690-YGR, which is currently pending in the United States District Court, Northern District of California.

Use of Forward-Looking Statements

Except for the historical information contained herein, this Form 8-K contains forward-looking statements made pursuant to the “safe harbor” provisions of the Private Securities Litigation Reform Act of 1995. Investors are cautioned that statements in this Form 8-K regarding: (i) the proposed settlement, (ii) the impact of such proposed settlement, including related activities, approvals and payments, and (iii) other statements that are not historical facts, constitute forward-looking statements. These statements involve risks and uncertainties that can cause actual results to differ materially from those in such forward-looking statements. These risks and uncertainties, include, without limitation, risks and uncertainties related to: (i) the proposed settlement not receiving the requisite final approval; (ii) the proposed settlement not having the expected impact, including resolving the Derivative Actions; and (iii) the proposed settlement requiring more activity or expense than expected. Additional information on the above risks and uncertainties and additional risks, uncertainties and factors that could cause actual results to differ materially from those in the forward-looking statements are contained in the Company’s periodic reports filed with the Securities and Exchange Commission under the heading “Risk Factors,” including Dynavax’s quarterly report on Form 10-Q for the quarter ended June 30, 2017. Undue reliance should not be placed on forward-looking statements, which speak only as of the date they are made, and the facts and assumptions underlying the forward-looking statements may change. Except as required by law, Dynavax disclaims any obligation to update these forward-looking statements to reflect future information, events or circumstances.

Item 9.01. Financial Statements and Exhibits

(d) Exhibits. The following exhibit is filed herewith:

99.1 [Notice of Proposed Settlement and Settlement Hearing](#)

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: September 1, 2017

DYNAVAX TECHNOLOGIES CORPORATION

By: /s/ STEVEN N. GERSTEN

Steven N. Gersten

Vice President, General Counsel and Chief Ethics and Compliance
Officer

If you bought common stock of Dynavax Technologies Corporation (“Dynavax” or the “Company”) as of May 19, 2017, your rights may be affected.

The California Superior Court for the County of Alameda authorized this notice. This is not a solicitation from a lawyer.

- A proposed Settlement has been reached between the Settling Parties to the following shareholder derivative actions brought on behalf of Dynavax: (i) *Truglio v. Oronsky*, Case No. RG13686266 (the “Action”); (ii) *Drabek v. Dina*, Case No. 13CV3705 (the “Federal Derivative Action”); and (iii) Stockholder Demand Plaintiff Raymond Hersh (the “Stockholder Demand”) (collectively, the Action, the Federal Derivative Action, and the Stockholder Demand are referred to as the “Derivative Actions”).
- The Settlement provides for corporate governance reforms that are designed to strengthen Dynavax’s internal controls and protect the Company going forward. If approved by the Court, the Settlement will fully resolve the Derivative Actions on the terms set forth in the Stipulation and summarized in this Notice, including the dismissal of the Derivative Actions with prejudice.
- Since the Settlement will result in changes to the Company’s corporate governance, not in payment to individuals, there will be no claims procedure.
- Your legal rights are affected whether you act, or do not act. If the Court approves the Settlement, you will be forever barred from contesting the approval of the proposed Settlement and from pursuing the Released Claims. Please read this notice carefully and in its entirety.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS

OBJECT	Write to the Court about why you do not like the Settlement
GO TO A HEARING	Ask to speak in Court about the fairness of the Settlement
DO NOTHING	Give up rights.

- These rights and options – and the deadlines to exercise them- are explained below in this notice.
- The Court in charge of this case still has to decide whether to approve the settlement.

I. BASIC INFORMATION**1. What is this Lawsuit About?**

The lawsuit was brought by Plaintiffs solely on behalf of and for the benefit of Dynavax and against the Individual Defendants. Plaintiffs generally allege, among other things, that the Individual Defendants breached their fiduciary duties, wasted corporate assets, and were unjustly enriched in connection with allegedly improper statements between April 2012 and June 2013 regarding HEPLISAV-B.

2. Why is there a Settlement?

The Court did not decide in favor of Plaintiffs or Defendants. Instead, both sides agreed to a settlement in order to avoid the cost and risk of continued litigation. Counsel for the Settling Parties believe that the Settlement is in the best interests of the Plaintiffs, Individual Defendants, Dynavax and its shareholders.

3. Why is this a derivative action?

The lawsuit was brought by Plaintiffs solely on behalf of and for the benefit of Dynavax and against the Individual Defendants.

II. THE SETTLEMENT BENEFITS**4. What Does the Settlement Provide?**

As a direct result of the filing, prosecution, and settlement of the Derivative Actions, Dynavax has agreed to adopt and implement the Corporate Governance Reforms set forth in Exhibit A to the Stipulation. These Corporate Governance Reforms constitute the consideration for the Settlement, and the Dynavax Board acknowledges and agrees that Plaintiffs' prosecution of the

Derivative Actions was the primary factor in Dynavax's decision to adopt, implement, and/or maintain the Reforms. Dynavax also acknowledges and agrees that the Settlement confers a substantial benefit upon Dynavax and its shareholders. The Corporate Governance Reforms shall be maintained for a minimum of three years from the date they are implemented, respectively, unless abrogated by law. For a complete description of all of the Corporate Governance Reforms, please see Exhibit A to the Stipulation.

III. REASONS FOR THE SETTLEMENT

Counsel for the Settling Parties believe that the Settlement is in the best interests of the Plaintiffs, Individual Defendants, Dynavax and its shareholders.

5. Why Did the Plaintiffs Agree to Settle?

Plaintiffs believe that the Derivative Actions have substantial merit, and Plaintiffs' entry into the Stipulation and this Settlement is not intended to be and shall not be construed as an admission or concession concerning the relative strength or merit of the claims alleged in the Derivative Actions. Plaintiffs and their counsel also acknowledge the significant risk, expense, and length of continued proceedings necessary to prosecute the Derivative Actions against the Defendants through trial and through possible appeals. Plaintiffs' Counsel have also taken into account the substantial risks, costs, and delays involved in complex shareholder derivative litigation, generally, as well as the unique challenges presented by the Derivative Actions, including establishing that demand on the Board would be futile and the exculpation and indemnification rights afforded the director Defendants pursuant to Delaware General Corporate Law §102(b)(7).

Based on Plaintiffs' Counsel's thorough review and analysis of the relevant facts and the circumstances, allegations, defenses, and controlling legal principles, Plaintiffs' Counsel have determined that the Settlement set forth in the Stipulation is fair, reasonable, and adequate, and confers substantial benefits upon Dynavax and its shareholders. Based on their evaluation, Plaintiffs and their counsel believe that the Settlement is in the best interests of Dynavax and its shareholders and have agreed to settle the Derivative Actions upon the terms and subject to the conditions set forth herein.

6. Why Did the Defendants Agree to Settle?

Defendants have denied and continue to deny each and all of the claims, contentions, and allegations made against them or that could have been made against them in the Derivative Actions, and believe the Derivative Actions have no merit. The Individual Defendants expressly assert that they have satisfied their fiduciary duties and have acted in good faith and in the best interest of Dynavax and its shareholders at all relevant times. Defendants have entered into the Stipulation to avoid continuing expense, inconvenience, and distraction of the Derivative Actions, as well as the risks and uncertainties inherent in the lawsuits. Nevertheless, Defendants have determined that it is desirable and beneficial that the Derivative Actions be settled in the manner and upon the terms and conditions set forth in the Stipulation because, among other things, it will allow the Company to conclude this litigation on terms that are just and reasonable, including the adoption and maintenance of the Corporate Governance Reforms. Further, Dynavax, through its Board, acknowledges that the Settlement is fair, reasonable, and adequate, and in the best interests of Dynavax and its shareholders.

IV. THE LAWYERS REPRESENTING YOU

7. Do I Have a Lawyer in the Case?

Plaintiffs' Counsel represents the named plaintiffs and brings this case on behalf of and for the benefit of Dynavax. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

8. How will the Lawyers be Paid?

After negotiating the Corporate Governance Reforms, Plaintiffs' Counsel and counsel for Defendants separately negotiated the attorneys' fees and expenses to be paid to Plaintiffs' Counsel. As a result of these negotiations, and in light of the substantial benefits conferred upon Dynavax and its shareholders by the Settlement, Dynavax's Board has agreed and shall instruct Dynavax's and the

Individual Defendants' insurers to pay \$925,000 for Plaintiffs' attorneys' fees and expenses, subject to court approval. Plaintiffs' Counsel shall request approval by the Court of the fees and expenses at the Settlement Hearing. To date, Plaintiffs' Counsel have neither received any payment for their services in conducting the Derivative Actions, nor have Plaintiffs' Counsel been reimbursed for their out-of-pocket litigation expenses incurred. Plaintiffs' Counsel believe that the agreed-upon fees and expenses is within the range of fees and expenses awarded to plaintiffs' counsel under similar circumstances in litigation of this type.

9. How will the Plaintiffs be paid?

Plaintiffs may also apply for Court approval of service awards in the amount of \$1,500 for the Federal and State Plaintiffs (the "Service Awards"), in light of the benefits they have helped to create for Dynavax and Current Dynavax Shareholders.

V. OBJECTING TO THE SETTLEMENT

You can tell the Court you do not agree with the Settlement or some part of it.

10. How Do I Tell the Court that I Do Not Like the Settlement?

You may object to the proposed Settlement in writing. You may also appear at the Settlement Hearing, in person or through an attorney at your own expense, provided you notify the Court of your intent to do so. All written objections, supporting papers and/or notices of intent to appear at the Settlement Hearing must:

- (a) clearly identify the case name and number (*Truglio v. Oronsky*, Case Number RG13686266);
- (b) include your name, address, and telephone number;
- (c) include an account statement evidencing that you held shares of Dynavax common stock as of May 19, 2017;

(d) contain a statement of objections to any matters before the Court, the grounds therefore, or the reasons for such Person desiring to appear and be heard, as well as all documents or writings such Person desires the Court to consider

(e) the identities of any witnesses you plan on calling at the Settlement Hearing, along with a summary description of their likely testimony;

(f) be submitted to the Court either by mailing the objection to: Clerk of Court, Superior Court of California, County of Alameda, Rene C. Davidson Alameda County Courthouse, 1225 Fallon Street, Oakland, California 94612, or by filing in person at any location of the Superior Court, County of Alameda that includes a facility for civil filings;

(g) be mailed to both law firms identified:

Counsel for Plaintiffs

William B. Federman,
Federman & Sherwood
10205 N. Pennsylvania Ave.
Oklahoma City, OK 73120

Counsel for Defendants:

Jeffrey M. Kaban
Cooley, LLP
3175 Hanover St.
Palo Alto, CA 94304

(h) be filed or postmarked on or before October 3, 2017.

Any Person or entity who fails to object or otherwise request to be heard in the manner prescribed above will be deemed to have waived the right to object to any aspect of the Settlement or otherwise request to be heard (including the right to appeal) and will be forever barred from raising such objection or request to be heard in this or any other action or proceeding.

VI. THE COURT'S SETTLEMENT HEARING

11. When and Where Will the Court Decide Whether to Approve the Settlement?

On October 17, 2017, at 3:00 p.m., the Court will hold the Settlement Hearing before the Honorable Brad Seligman, in Department 30 of the Superior Court of the State of California, Alameda

County, located at U.S. Post Office Building, 201 Thirteenth Street, Oakland, CA 94613. The Settlement Hearing may be continued by the Court without further notice. At the Settlement Hearing, the Court will consider: (i) whether the terms of the Settlement are fair, reasonable and adequate and should be finally approved by the Court; (ii) whether a final judgment should be entered; (iii) whether the Court should award the agreed-to attorneys' fees and reimbursement of expenses for Plaintiffs' Counsel and a service award to Plaintiffs; and (iv) such other matters as may be necessary or proper under the circumstances.

12. Do I Have to Come to the Hearing?

You have the right, but are not required, to appear in person or through counsel at the Settlement Hearing to object to the terms of the proposed Settlement or otherwise present evidence or argument that may be proper and relevant.

13. May I Speak at the Hearing?

You may ask the Court for permission to speak at the Settlement Hearing. To do so, you must send a letter stating that it is your notice of intention to appear in *Truglio v. Oronsky*, Case Number RG13686266. Your notice of intention to appear must be postmarked no later than October 3, 2017, and be sent to the Clerk of Court, Plaintiff's Counsel and Defense Counsel at the three addresses in question 10.

VII. IF YOU DO NOTHING

14. What Happens if I do Nothing at All?

If you do nothing, you will not be able to start, continue with a lawsuit, or be part of any other lawsuit on behalf of Dynavax about the legal issues in this case, ever again. Upon the Effective Date, Plaintiffs, all other Current Dynavax Shareholders, Plaintiffs' Counsel, and Dynavax shall be deemed to have, and by operation of the Judgment shall have fully, finally, and forever released, relinquished, and discharged the Released Claims (including Unknown Claims of Plaintiffs and Dynavax) against

Dynavax, the Individual Defendants, and their Related Persons. Further, upon the Effective Date, Dynavax, the Individual Defendants, and their Related Persons shall be deemed to have, and by operation of the Judgment shall have fully, finally, and forever released, relinquished, and discharged Plaintiffs, Plaintiffs' Counsel, and Dynavax from all claims (including Unknown Claims of Plaintiffs and Dynavax), arising out of, relating to, or in connection with the institution, prosecution, assertion, settlement, or resolution of the Derivative Actions or the Released Claims.

VIII. GETTING MORE INFORMATION

15. Are there More Details About the Settlement?

This Notice summarizes the Stipulation. It is not a complete statement of the events of the Derivative Actions or the Stipulation. There is additional information concerning the Settlement available in the Stipulation.

16. How Do I Get More Information?

For a more detailed statement of the matters involved in the Derivative Actions, the Settlement, and the terms discussed and definitions used in this Notice, the Stipulation may be inspected online at the Alameda County Superior Court's website, known as 'DomainWeb,' at <https://publicrecords/alameda.courts.ca.gov/PRS/>. After arriving at the website, click 'Search by Case Number' and enter RG13686266 as the case number and click 'SEARCH.' Images of each document filed in the case may be viewed through the 'Register of Actions' at a minimal charge. You may also view the images of each document filed in the case free of charge via one of the computer terminal kiosks available at each court location that has a facility for civil filings, including at the Clerk of Court's office at the Alameda Superior Courthouse, 1225 Fallon St, Oakland, CA 94612. The Stipulation is also available for viewing on the websites of:

- a) Federman & Sherwood at <http://www.federmanlaw.com/oklahoma-settlements;>
- b) Robbins Arroyo LLP at <http://www.robbinsarroyo.com/notices;>

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- c) the Shuman Law Firm at <http://www.shumanlawfirm.com/notices/>; and
 - d) Dynavax at <http://investors.dynavax.com/index.cfm>.

For additional information concerning the Settlement, you may also call or write to: Federman & Sherwood, c/o William B. Federman, 10205 North Pennsylvania Avenue, Oklahoma City, Oklahoma 73120, Telephone: (405) 235-1560.

DATED August 21, 2017

BY ORDER OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

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NOTICE OF PROPOSED SETTLEMENT AND SETTLEMENT HEARING