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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

DAVID SOONTJENS, Individually and on  
Behalf of All Others Similarly Situated,

Plaintiff,

vs.

DYNAVAX TECHNOLOGIES  
CORPORATION, EDDIE GRAY, and  
MICHAEL S. OSTRACH,

Defendants

Case No.

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

JURY TRIAL DEMANDED

Plaintiff David Soontjens (“Plaintiff”), individually and on behalf of all other persons similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s complaint against Defendants (defined below), alleges the following based upon personal knowledge as to Plaintiff and Plaintiff’s own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through Plaintiff’s attorneys, which included, among other things, a review of the Defendants’ public documents, conference calls and announcements made by Defendants, United States Securities and Exchange Commission (“SEC”) filings, wire and press releases published by and regarding Dynavax Technologies Corporation (“Dynavax” or the “Company”), analysts’ reports and advisories about the Company, and information readily obtainable on the Internet. Plaintiff believes that

1 substantial evidentiary support will exist for the allegations set forth herein after a reasonable  
2 opportunity for discovery.

### 3 **NATURE OF THE ACTION**

4 1. This is a federal securities class action on behalf of a class consisting of all persons other  
5 than Defendants who purchased or otherwise acquired common shares of Dynavax between March 10,  
6 2014 and November 11, 2016, both dates inclusive (the “Class Period”). Plaintiff seeks to recover  
7 compensable damages caused by Defendants’ violations of the federal securities laws and to pursue  
8 remedies under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”)  
9 and Rule 10b-5 promulgated thereunder.  
10

11 2. Dynavax, a clinical-stage biopharmaceutical company, discovers and develops novel  
12 vaccines and therapeutics in the United States. The Company’s development programs focus on vaccine  
13 adjuvants, cancer immunotherapy, and autoimmune and inflammatory diseases. The Company’s lead  
14 products include HEPLISAV-B, an investigational adult hepatitis B vaccine, which is in Phase III  
15 clinical trials.  
16

17 3. Founded in 1996, the Company was formerly known as Double Helix Corporation and  
18 changed its name to Dynavax Technologies Corporation in September 1996. Dynavax Technologies is  
19 headquartered in Berkeley, California. The Company’s common stock trades on the Nasdaq Capital  
20 Market (“NASDAQ”) under the ticker symbol “DVAX.”  
21

22 4. Throughout the Class Period, Defendants made materially false and misleading  
23 statements regarding the Company’s business, operational and compliance policies. Specifically,  
24 Defendants made false and/or misleading statements and/or failed to disclose that: (i) there were  
25 significant adverse events associated with Dynavax’s HEPLISAV-B product, including an imbalance in  
26 the number of cardiac events during use; (ii) consequently, a commercial product launch of  
27  
28

1 HEPLISAV-B was less imminent than Dynavax had led investors to believe; and (iii) as a result,  
2 Dynavax's public statements were materially false and misleading at all relevant times.

3 5. On November 14, 2016, pre-market, the Company announced it had received a complete  
4 response letter ("CRL") from the U.S. Food and Drug Administration ("FDA"), requesting additional  
5 information on the Company's HEPLISAV-B product in connection with its Biologics License  
6 Application. The Company stated, in part:  
7

8 The CRL seeks information regarding several topics, including clarification regarding  
9 *specific adverse events of special interest (AESIs), a numerical imbalance in a small*  
10 *number of cardiac events in a single study (HBV-23), new analyses of the integrated*  
11 *safety data base across different time periods*, and post-marketing commitments. In the  
12 CRL, the FDA acknowledged that it has not yet completed its review of responses  
13 received from Dynavax in early October, including those pertaining to AESIs and the  
14 numerical imbalance in cardiac events. The responses included an extensive analysis that  
15 included independent expert consultation supporting our view that the imbalance was  
16 driven by an unexpectedly low number of events in the comparator arm. It would appear  
17 the Agency could not fully assess the responses in the current review period. In the CRL,  
18 there is no request for additional clinical trials and there are no apparent concerns with  
19 rare serious autoimmune events.

20 "The CRL is consistent with our opinion that HEPLISAV-B is approvable and we are  
21 seeking to meet with the FDA as soon as possible," said Eddie Gray, chief executive  
22 officer of Dynavax. "However, the time and resources that will be required to gain  
23 approval leads us to consider that we may not be able to advance this program on our  
24 own and we are moving swiftly to identify a potential pharmaceutical or financial  
25 partner."  
26

27 (Emphasis added.)

28 6. On this news, Dynavax's share price fell \$7.50, or 64.65%, to close at \$4.10 on  
November 14, 2016.

7. As a result of Defendants' wrongful acts and omissions, and the precipitous decline in  
the market value of the Company's common shares, Plaintiff and other Class members have suffered  
significant losses and damages.

**JURISDICTION AND VENUE**

1  
2 8. The claims asserted herein arise under and pursuant to §§10(b) and 20(a) of the  
3 Exchange Act (15 U.S.C. §§78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC (17  
4 C.F.R. §240.10b-5).

5 9. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §1331  
6 and §27 of the Exchange Act.

7  
8 10. Venue is proper in this Judicial District pursuant to §27 of the Exchange Act (15 U.S.C.  
9 §78aa) and 28 U.S.C. §1391(b). Dynavax’s principal executive offices are located within this Judicial  
10 District.

11 11. In connection with the acts, conduct and other wrongs alleged in this Complaint,  
12 Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce,  
13 including but not limited to, the United States mail, interstate telephone communications and the  
14 facilities of the national securities exchange.  
15

16 **PARTIES**

17 12. Plaintiff, as set forth in the accompanying Certification, purchased common shares of  
18 Dynavax at artificially inflated prices during the Class Period and was damaged upon the revelation of  
19 the alleged corrective disclosure.  
20

21 13. Defendant Dynavax Technologies Corporation is incorporated in Delaware, and the  
22 Company’s principal executive offices are located at 2929 Seventh Street, Suite 100, Berkeley,  
23 California 94710. Dynavax’s common stock trades on the NASDAQ under the ticker symbol  
24 “DVAX.”  
25

26 14. Defendant Eddie Gray (“Gray”) has served at all relevant times as the Company’s Chief  
27 Executive Officer (“CEO”) and Director.  
28

1 15. Defendant Michael S. Ostrach (“Ostrach”) has served at all relevant times as the  
2 Company’s Chief Financial Officer (“CFO”), Chief Business Officer, Senior Vice President, and  
3 Secretary.

4 16. The Defendants referenced above in ¶¶ 14-15 are sometimes referred to- herein as the  
5 “Individual Defendants.”

## 6 **SUBSTANTIVE ALLEGATIONS**

### 7 **Background**

8  
9 17. Dynavax, a clinical-stage biopharmaceutical company, discovers and develops novel  
10 vaccines and therapeutics in the United States. The Company’s development programs focus on vaccine  
11 adjuvants, cancer immunotherapy, and autoimmune and inflammatory diseases. The Company’s lead  
12 products include HEPLISAV-B, an investigational adult hepatitis B vaccine, which is in Phase III  
13 clinical trials.  
14

### 15 **Materially False and Misleading Statements Issued During the Class Period**

16 18. The Class Period begins on March 10, 2014, when Dynavax filed an Annual Report for  
17 the quarter and year ended December 31, 2013 on Form 10-K with the SEC (the “2013 10-K”). For the  
18 quarter, Dynavax reported a net loss of \$13.06 million, or \$0.90 per diluted share, on revenue of \$2.85  
19 million, compared to a net loss of \$20.54 million, or \$1.10 per diluted share, on revenue of \$1.81  
20 million for the same period in the prior year. For 2013, Dynavax reported a net loss of \$66.72 million,  
21 or \$3.80 per diluted share, on revenue of \$11.25 million, compared to a net loss of \$69.95 million, or  
22 \$4.10 per diluted share, on revenue of \$9.71 million for 2012.  
23

24 19. In the 2013 10-K, Dynavax stated, in relevant part:

#### 25 **HEPLISAV-B Hepatitis B Vaccine**

26 HEPLISAV-B is an investigational adult hepatitis B vaccine that combines our  
27 proprietary TLR agonist, 1018, with HBsAg manufactured in our Dynavax facility in  
28 Düsseldorf, Germany (“Rhein” or “Dynavax Europe”). In Phase 3 trials, HEPLISAV-B

1 demonstrated higher and earlier protection with fewer doses than currently-licensed  
2 vaccines. Dynavax has worldwide commercial rights to HEPLISAV-B.

3 On February 25, 2013, we received a complete response letter (“CRL”) from the  
4 FDA indicating that it would not approve HEPLISAV-B for the indication proposed in  
5 our BLA. Following extensive discussions with the FDA, we finalized the design of an  
6 additional clinical study of HEPLISAV-B that is intended to provide a sufficiently-sized  
7 safety database for the FDA to complete its review of our BLA and make a final  
8 determination regarding the safety and immunogenicity of the product. The planned study  
9 will be a Phase 3, observer-blinded, randomized, active-controlled, multicenter trial of  
10 the safety and immunogenicity of HEPLISAV-B compared with Engerix-B in adults 18  
11 to 70 years of age. The study will include 5,500 HEPLISAV-B subjects and 2,500  
12 Engerix-B subjects, stratified by age and diabetes diagnosis. HEPLISAV-B subjects will  
13 receive two doses at 0 and 1 month, while Engerix-B subjects will receive three doses at  
14 0, 1 and 6 months.

15 The primary objectives of the study will be: (1) to evaluate the overall safety  
16 of HEPLISAV-B with respect to clinically significant adverse events and (2) to  
17 demonstrate the noninferiority of the peak seroprotection rate (“SPR”) induced by  
18 HEPLISAV-B versus Engerix-B in subjects with type 2 diabetes mellitus. HEPLISAV-B  
19 subjects will be evaluated for safety for one year following the second dose, all potential  
20 autoimmune events will be adjudicated by a Safety Evaluation and Adjudication  
21 Committee and safety will be monitored by a Data and Safety Monitoring Board. We  
22 intend to initiate this study in the first quarter of 2014 and conclude subject visits by the  
23 end of 2015. We estimate the external costs of the study to be in the range of \$50-55  
24 million.

25 20. The 2013 10-K contained signed certifications pursuant to the Sarbanes-Oxley Act of  
26 2002 (“SOX”) by Defendants Gray and Ostrach, stating that the financial information contained in the  
27 2013 10-K was accurate and disclosed any material changes to the Company’s internal control over  
28 financial reporting.

21 21. On May 5, 2014, Dynavax issued a press release and filed a Current Report on Form 8-K  
22 with the SEC, announcing certain of the Company’s financial and operating results for the quarter  
23 ended March 31, 2014 (the “Q1 2014 8-K”). For the quarter, Dynavax reported a net loss of \$13.84  
24 million, or \$0.50 per diluted share, on revenue of \$3.5 million, compared to a net loss of \$20.83 million,  
25 or \$1.10 per diluted share, on revenue of \$2.09 million for the same period in the prior year.

1 22. On May 5, 2014, Dynavax also filed a Quarterly Report on Form 10-Q with the SEC,  
2 reiterating the financial and operating results previously announced in the Q1 2014 8-K and reporting in  
3 full the Company's financial and operating results for the quarter ended March 31, 2014 (the "Q1 2014  
4 10-Q").

5 23. The Q1 2014 10-Q stated, in part:

6 **Recent Developments**  
7

8 On April 15, 2014, we announced the initiation of a new Phase 3 clinical trial of  
9 HEPLISAV-B (known as HBV-23). This safety and immunogenicity study was designed  
10 to address the Complete Response Letter regarding the HEPLISAV-B Biologics License  
11 Application that was issued to Dynavax by the U.S. Food and Drug Administration in  
12 February, 2013. This study is intended to significantly increase the number of vaccinated  
13 subjects and provide a sufficiently-sized safety database for the FDA to make a final  
14 determination regarding the safety and immunogenicity of the product. The study is a  
15 Phase 3, observer-blinded, randomized, active-controlled, multicenter trial at  
16 approximately 40 sites in the U.S. Approximately 8,250 adult subjects between the ages  
17 of 18 and 70 will be randomized in a 2:1 ratio to receive a 2-dose series of HEPLISAV-B  
18 or a 3-dose series of a control vaccine, Engerix-B. Enrollment will be stratified by site,  
19 age group and type 2 diabetes mellitus status.

20 The co-primary objectives of the study are: (1) to evaluate the overall safety of  
21 HEPLISAV-B with respect to clinically significant adverse events and (2) to demonstrate  
22 the noninferiority of the seroprotection rate ("SPR") induced by HEPLISAV-B compared  
23 with Engerix-B at week 28 in subjects with type 2 diabetes mellitus. All subjects will be  
24 evaluated for safety through study week 56. All potential autoimmune events will be  
25 reviewed by a Safety Evaluation and Adjudication Committee (SEAC) and overall safety  
26 will be monitored by a Data and Safety Monitoring Board (DSMB). We expect that all  
27 study subjects will be enrolled by the end of 2014 and all follow-up will be completed by  
28 the fourth quarter of 2015. We estimate the external costs of the study to be in the range  
of \$50-55 million.

22 24. The Q1 2014 10-Q contained signed certifications pursuant to SOX by Defendants Gray  
23 and Ostrach, stating that the financial information contained in the Q1 2014 10-Q was accurate and  
24 disclosed any material changes to the Company's internal control over financial reporting.

25 25. On August 7, 2014, Dynavax issued a press release and filed a Current Report on Form  
26 8-K with the SEC, announcing certain of the Company's financial and operating results for the quarter  
27 ended June 30, 2014 (the "Q2 2014 8-K"). For the quarter, Dynavax reported a net loss of \$24.78  
28



1 million, or \$0.90 per diluted share, on revenue of \$3.05 million, compared to a net loss of \$17.16  
2 million, or \$0.90 per diluted share, on revenue of \$3.39 million for the same period in the prior year.

3 26. The Q2 2014 8-K stated, in part:

4 In April 2014, Dynavax initiated HBV-23, a large safety and immunogenicity study of its  
5 investigational adult hepatitis B vaccine. The study was designed to provide a  
6 sufficiently-sized safety database for the U.S. Food and Drug Administration to complete  
7 its review of the HEPLISAV-B Biologics License Application. It is being conducted at  
8 40 sites in the U.S. and will include approximately 8,250 subjects. Dynavax expects that  
all HBV-23 study subjects will be enrolled by the end of 2014 and all follow-up visits  
will be completed by the fourth quarter of 2015.

9 27. On August 7, 2014, Dynavax also filed a Quarterly Report on Form 10-Q with the SEC,  
10 reiterating the financial and operating results previously announced in the Q2 2014 8-K and reporting in  
11 full the Company's financial and operating results for the quarter ended June 30, 2014 (the "Q2 2014  
12 10-Q").

13 28. The Q2 2014 10-Q stated, in part:

#### 14 **Recent Developments**

15 On April 15, 2014, we announced the initiation of a new Phase 3 clinical trial of  
16 HEPLISAV-B (known as HBV-23). This safety and immunogenicity study was designed  
17 to address the Complete Response Letter regarding the HEPLISAV-B Biologics License  
18 Application that was issued to Dynavax by the U.S. Food and Drug Administration in  
19 February, 2013. This study is intended to significantly increase the number of vaccinated  
20 subjects and provide a sufficiently-sized safety database for the FDA to make a final  
21 determination regarding the safety and immunogenicity of the product. The study is a  
22 Phase 3, observer-blinded, randomized, active-controlled, multicenter trial at  
23 approximately 40 sites in the U.S. Approximately 8,250 adult subjects between the ages  
of 18 and 70 will be randomized in a 2:1 ratio to receive a 2-dose series of HEPLISAV-B  
or a 3-dose series of a control vaccine, Engerix-B. Enrollment will be stratified by site,  
age group and type 2 diabetes mellitus status.

24 The co-primary objectives of the study are: (1) to evaluate the overall safety of  
25 HEPLISAV-B with respect to clinically significant adverse events and (2) to demonstrate  
26 the noninferiority of the seroprotection rate ("SPR") induced by HEPLISAV-B compared  
27 with Engerix-B at week 28 in subjects with type 2 diabetes mellitus. All subjects will be  
28 evaluated for safety through study week 56. All potential autoimmune events will be  
reviewed by a Safety Evaluation and Adjudication Committee and overall safety will be  
monitored by a Data and Safety Monitoring Board. We expect that all study subjects will



1 be enrolled by the end of 2014 and all follow-up will be completed by the fourth quarter  
2 of 2015. We estimate the external costs of the study to be in the range of \$50-55 million.

3 29. The Q2 2014 10-Q contained signed certifications pursuant to SOX by Defendants Gray  
4 and Ostrach, stating that the financial information contained in the Q2 2014 10-Q was accurate and  
5 disclosed any material changes to the Company's internal control over financial reporting.

6 30. On November 5, 2014, Dynavax issued a press release and filed a Current Report on  
7 Form 8-K with the SEC, announcing certain of the Company's financial and operating results for the  
8 quarter ended September 30, 2014 (the "Q3 2014 8-K"). For the quarter, Dynavax reported a net loss  
9 of \$29.82 million, or \$1.10 per diluted share, on revenue of \$2.21 million, compared to net income of  
10 \$15.68 million, or \$0.90 per diluted share, on revenue of \$2.93 million for the same period in the prior  
11 year.  
12

13 31. On November 5, 2014, Dynavax also filed a Quarterly Report on Form 10-Q with the  
14 SEC, reiterating the financial and operating results previously announced in the Q3 2014 8-K and  
15 reporting in full the Company's financial and operating results for the quarter ended September 30,  
16 2014 (the "Q3 2014 10-Q").  
17

18 32. The Q3 2014 10-Q stated, in part:

19 **Recent Developments**

20 On September 22, 2014, we announced completion of planned enrollment in the  
21 ongoing Phase 3 clinical trial of HEPLISAV-B (known as HBV-23). More than 8,250  
22 adults, including over 1,100 diabetic subjects, have been enrolled at 40 sites in the U.S. In  
23 addition to providing an adequately-sized database of vaccinated subjects to enable the  
24 FDA to complete its review of the Company's pending BLA, the study is also designed to  
25 assess the immunogenicity of HEPLISAV-B in adults for whom approved hepatitis B  
26 vaccines are less effective, including those with type-2 diabetes mellitus. HBV-23 is an  
27 observer-blinded, randomized, active-controlled, multicenter trial. Adult subjects  
28 between the ages of 18 and 70 were randomized in a 2:1 ratio to receive a 2-dose series of  
HEPLISAV-B or a 3-dose series of a control vaccine, Engerix-B. Safety follow up will  
continue for twelve months following each subject's second vaccination. All study visits  
are expected to be completed by October, 2015.

1           33.     The Q3 2014 10-Q contained signed certifications pursuant to SOX by Defendants Gray  
2 and Ostrach, stating that the financial information contained in the Q3 2014 10-Q was accurate and  
3 disclosed any material changes to the Company’s internal control over financial reporting.

4           34.     On March 5, 2015, Dynavax filed an Annual Report for the quarter and year ended  
5 December 31, 2014 on Form 10-K with the SEC (the “2014 10-K”). For the quarter, Dynavax reported  
6 a net loss of \$22.29 million, or \$0.85 per diluted share, on revenue of \$2.28 million, compared to a net  
7 loss of \$13.06 million, or \$0.90 per diluted share, on revenue of \$2.85 million for the same period in the  
8 prior year. For 2014, Dynavax reported a net loss of \$90.72 million, or \$3.45 per diluted share, on  
9 revenue of \$11.03 million, compared to a net loss of \$66.72 million, or \$3.80 per diluted share, on  
10 revenue of \$11.25 million for 2013.  
11

12           35.     In the 2014 10-K, Dynavax stated, in relevant part:  
13

14           ***HEPLISAV-B***

15           Our lead vaccine product candidate is HEPLISAV-B™ (previously known as  
16 “HEPLISAV”), an investigational adult hepatitis B vaccine in Phase 3 clinical  
17 development. HEPLISAV-B combines 1018, a proprietary TLR9 agonist adjuvant, and  
18 recombinant hepatitis B surface antigen (“rHBsAg” or “HBsAg”) manufactured at our  
19 wholly-owned subsidiary in Düsseldorf, Germany (“Rhein” or “Dynavax Europe”). In  
20 Phase 3 trials, HEPLISAV-B demonstrated earlier protection with fewer doses than  
21 currently-licensed vaccines and an adverse event profile similar to a licensed hepatitis B  
22 vaccine. Based on those data, we submitted a Biologics License Application (“BLA”) to  
23 the U.S. Food and Drug Administration (“FDA”) in 2012. In 2013 the FDA issued a  
24 Complete Response Letter (“CRL”) indicating that it would not approve the BLA  
25 primarily because hypothetical risks of the novel adjuvant warranted a larger safety  
26 database to assess the possibility of rare autoimmune side effects.

27           In April, 2014 we initiated HBV-23, a clinical trial that will add more than 5,500  
28 additional subjects to the HEPLISAV-B safety database. HBV-23 is a Phase 3, observer-  
blinded, randomized, active-controlled, multicenter trial of the safety and  
immunogenicity of HEPLISAV-B compared with Engerix-B in adults 18 to 70 years of  
age. HEPLISAV-B subjects receive two doses at 0 and 1 month and Engerix-B subjects  
receive three doses at 0, 1 and 6 months.

          The primary objectives of HBV-23 are: (1) to evaluate the overall safety of  
HEPLISAV-B with respect to clinically significant adverse events; and (2) to  
demonstrate the noninferiority of the peak seroprotection rate (“SPR”) induced by

1 HEPLISAV-B compared to GlaxoSmithKline's ("GSK") Engerix-B in subjects with type  
2 diabetes mellitus. HEPLISAV-B subjects will be evaluated for safety for one year  
3 following the second dose, all potential autoimmune events will be adjudicated by a  
4 Safety Evaluation and Adjudication Committee and safety will be monitored by a Data  
5 and Safety Monitoring Board ("DSMB").

6 HBV-23 was fully enrolled in September 2014, with more than 8,250 subjects  
7 (more than 5,500 with HEPLISAV-B and more than 2,750 with active control), including  
8 more than 1,100 with type 2 diabetes mellitus. The first and second of three prespecified  
9 independent DSMB meetings occurred in October 2014 and February 2015. Following  
10 both meetings, the DSMB recommended that the study continue unchanged. We expect  
11 follow-up for the last patients to be complete in approximately October 2015.

12 36. The 2014 10-K contained signed certifications pursuant to SOX by Defendants Gray and  
13 Ostrach, stating that the financial information contained in the 2014 10-K was accurate and disclosed  
14 any material changes to the Company's internal control over financial reporting.

15 37. On May 7, 2015, Dynavax issued a press release and filed a Current Report on Form 8-K  
16 with the SEC, announcing certain of the Company's financial and operating results for the quarter  
17 ended March 31, 2015 (the "Q1 2015 8-K"). For the quarter, Dynavax reported a net loss of \$26.22  
18 million, or \$0.97 per diluted share, on revenue of \$0.63 million, compared to a net loss of \$13.84  
19 million, or \$0.50 per diluted share, on revenue of \$3.5 million for the same period in the prior year.

20 38. On May 7, 2015, Dynavax also filed a Quarterly Report on Form 10-Q with the SEC,  
21 reiterating the financial and operating results previously announced in the Q1 2015 8-K and reporting in  
22 full the Company's financial and operating results for the quarter ended March 31, 2015 (the "Q1 2015  
23 10-Q").

24 39. The Q1 2015 10-Q stated, in part:

25 Our vaccine research has focused on the use of TLR9 agonists as novel adjuvants. Our  
26 lead vaccine product candidate is HEPLISAV-B<sup>TM</sup>, an investigational adult hepatitis B  
27 vaccine in Phase 3 clinical development. HEPLISAV-B combines our proprietary TLR9  
28 agonist adjuvant and recombinant hepatitis B surface antigen ("rHBsAg") to elicit a  
response after two doses. In Phase 3 trials, HEPLISAV-B demonstrated earlier protection  
with fewer doses than currently-licensed vaccines and an adverse event profile similar to  
a licensed hepatitis B vaccine. Based on those data, we submitted a Biologics License  
Application ("BLA") to the U.S. Food and Drug Administration ("FDA") in 2012. In

1 2013, the FDA issued a Complete Response Letter (“CRL”) indicating that it would not  
2 approve the BLA because hypothetical risks of the novel adjuvant warranted a larger  
3 safety database to assess the possibility of rare autoimmune side effects. In April 2014,  
4 we initiated HBV-23, a Phase 3 study of HEPLISAV-B, in order to provide a  
5 sufficiently-sized database for the FDA to complete its review of our BLA. HBV-23 was  
6 fully enrolled in September 2014. We expect follow-up for the last patients to be  
7 complete in October 2015. In the first quarter of 2016, we intend to submit to FDA our  
8 revised BLA with answers to all questions raised and that submission is expected to be  
9 assigned a 6-month Prescription Drug User Fee Act (“PDUFA”) review period. If  
10 approved, we expect under current plans to launch HEPLISAV-B in the fourth quarter of  
11 2016.

12 40. The Q1 2015 10-Q contained signed certifications pursuant to SOX by Defendants Gray  
13 and Ostrach, stating that the financial information contained in the Q1 2015 10-Q was accurate and  
14 disclosed any material changes to the Company’s internal control over financial reporting.

15 41. On August 7, 2015, Dynavax issued a press release and filed a Current Report on Form  
16 8-K with the SEC, announcing certain of the Company’s financial and operating results for the quarter  
17 ended June 30, 2015 (the “Q2 2015 8-K”). For the quarter, Dynavax reported a net loss of \$23.59  
18 million, or \$0.80 per diluted share, on revenue of \$1.55 million, compared to a net loss of \$24.78  
19 million, or \$0.90 per diluted share, on revenue of \$3.05 million for the same period in the prior year.

20 42. On August 7, 2015, Dynavax filed a Quarterly Report on Form 10-Q with the SEC,  
21 reiterating the financial and operating results previously announced in the Q2 2015 8-K and reporting in  
22 full the Company’s financial and operating results for the quarter ended June 30, 2015 (the “Q2 2015  
23 10-Q”).

24 43. The Q2 2015 10-Q stated, in part:

25 Our vaccine research has focused on the use of TLR9 agonists as novel adjuvants. Our  
26 lead vaccine product candidate is HEPLISAV-B™, an investigational adult hepatitis B  
27 vaccine in Phase 3 clinical development. HEPLISAV-B combines our proprietary TLR9  
28 agonist adjuvant and recombinant hepatitis B surface antigen (“rHBsAg”) to elicit a  
response after two doses. In Phase 3 trials, HEPLISAV-B demonstrated earlier protection  
with fewer doses than currently-licensed vaccines and an adverse event profile similar to  
a licensed hepatitis B vaccine. Based on those data, we submitted a Biologics License  
Application (“BLA”) to the U.S. Food and Drug Administration (“FDA”) in 2012. In  
2013, the FDA issued a Complete Response Letter (“CRL”) indicating that it would not

1 approve the BLA because hypothetical risks of the novel adjuvant warranted a larger  
2 safety database to assess the possibility of rare autoimmune side effects. In April 2014,  
3 we initiated HBV-23, a Phase 3 study of HEPLISAV-B, in order to provide a  
4 sufficiently-sized database for the FDA to complete its review of our BLA. HBV-23 was  
5 fully enrolled in September 2014. All three prespecified reviews by the independent Data  
6 and Safety Monitoring Board (“DSMB”) charged with reviewing safety data from HBV-  
7 23 have been completed with recommendations that the study continue unchanged. Over  
8 2,200 subjects have completed their final study visit, and all study visits for HBV-23 are  
9 expected to be completed by October 2015. Top line results of this study are expected to  
10 be released by early 2016. In the first quarter of 2016, we intend to submit to FDA our  
11 revised BLA with answers to all questions raised and that submission is expected to be  
12 assigned a 6-month Prescription Drug User Fee Act (“PDUFA”) review period. If  
13 approved, we expect under current plans to launch HEPLISAV-B in the fourth quarter of  
14 2016.

15 44. The Q2 2015 10-Q contained signed certifications pursuant to SOX by Defendants Gray  
16 and Ostrach, stating that the financial information contained in the Q2 2015 10-Q was accurate and  
17 disclosed any material changes to the Company’s internal control over financial reporting.

18 45. On November 5, 2015, Dynavax issued a press release and filed a Current Report on  
19 Form 8-K with the SEC, announcing certain of the Company’s financial and operating results for the  
20 quarter ended September 30, 2015 (the “Q3 2015 8-K”). For the quarter, Dynavax reported a net loss  
21 of \$30.12 million, or \$0.82 per diluted share, on revenue of \$1.19 million, compared to a net loss of  
22 \$29.82 million, or \$1.10 per diluted share, on revenue of \$2.21 million for the same period in the prior  
23 year.

24 46. On November 5, 2015, Dynavax also filed a Quarterly Report on Form 10-Q with the  
25 SEC, reiterating the financial and operating results previously announced in the Q3 2015 8-K and  
26 reporting in full the Company’s financial and operating results for the quarter ended September 30,  
27 2015 (the “Q3 2015 10-Q”).

28 47. The Q3 2015 10-Q stated, in part:

Our vaccine research has focused on the use of TLR9 agonists as novel adjuvants. Our lead vaccine product candidate is HEPLISAV-B™, an investigational adult hepatitis B vaccine in Phase 3 clinical development. HEPLISAV-B combines our proprietary TLR9 agonist adjuvant and recombinant hepatitis B surface antigen (“rHBsAg”) to elicit

1 a response after two doses. In Phase 3 trials, HEPLISAV-B demonstrated earlier  
2 protection with fewer doses than currently-licensed vaccines and an adverse event profile  
3 similar to a licensed hepatitis B vaccine. Based on those data, we submitted a Biologics  
4 License Application (“BLA”) to the U.S. Food and Drug Administration (“FDA”) in  
5 2012. In 2013, the FDA issued a Complete Response Letter (“CRL”) indicating that it  
6 would not approve the BLA because hypothetical risks of the novel adjuvant warranted a  
7 larger safety database to assess the possibility of rare autoimmune side effects. In April  
8 2014, we initiated HBV-23, a Phase 3 study of HEPLISAV-B, in order to provide a  
9 sufficiently-sized database for the FDA to complete its review of our BLA. HBV-23 was  
10 fully enrolled in September 2014. All three prespecified reviews by the independent Data  
11 and Safety Monitoring Board (“DSMB”) charged with reviewing safety data from HBV-  
12 23 have been completed with recommendations that the study continue unchanged. All  
13 study visits for HBV-23 were completed in October 2015. Top line results of this study  
14 are expected to be released by early 2016. In the first quarter of 2016, we intend to  
15 submit to FDA our revised BLA with answers to all questions raised and that submission  
16 is expected to be assigned a 6-month Prescription Drug User Fee Act (“PDUFA”) review  
17 period. If approved, we expect under current plans to launch HEPLISAV-B in the fourth  
18 quarter of 2016.

19 48. The Q3 2015 10-Q contained signed certifications pursuant to SOX by Defendants Gray  
20 and Ostrach, stating that the financial information contained in the Q3 2015 10-Q was accurate and  
21 disclosed any material changes to the Company’s internal control over financial reporting.

22 49. On March 8, 2016, Dynavax filed an Annual Report for the quarter and year ended  
23 December 31, 2015 on Form 10-K with the SEC (the “2015 10-K”). For the quarter, Dynavax reported  
24 a net loss of \$28.86 million, or \$0.70 per diluted share, on revenue of \$0.69 million, compared to a net  
25 loss of \$22.29 million, or \$0.85 per diluted share, on revenue of \$2.28 million for the same period in the  
26 prior year. For 2015, Dynavax reported a net loss of \$106.79 million, or \$3.25 per diluted share, on  
27 revenue of \$4.05 million, compared to a net loss of \$90.72 million, or \$3.45 per diluted share, on  
28 revenue of \$11.03 million for 2014.

48. In the 2015 10-K, Dynavax stated, in relevant part:

***HEPLISAV-B***

Our lead vaccine product candidate is HEPLISAV-B™, an investigational adult hepatitis B vaccine. HEPLISAV-B combines 1018, a proprietary TLR9 agonist adjuvant, and recombinant hepatitis B surface antigen (“rHBsAg” or “HBsAg”) that is manufactured by Dynavax GmbH, our wholly-owned subsidiary in Düsseldorf, Germany.



1 In Phase 3 trials, HEPLISAV-B demonstrated earlier protection with fewer doses than  
2 currently approved vaccines and an adverse event profile similar to an approved hepatitis  
3 B vaccine. Based on those data, we submitted a Biologics License Application (“BLA”)  
4 to the U.S. Food and Drug Administration (“FDA”) in 2012. In 2013 the FDA issued a  
5 Complete Response Letter (“CRL”) indicating that it would not approve the BLA  
6 primarily because hypothetical risks of the novel adjuvant warranted a larger safety  
7 database to assess the possibility of rare autoimmune side effects.

8 In October 2015 we completed HBV-23, a clinical trial that added more than 5,000  
9 additional subjects to the HEPLISAV-B safety database in order to address the FDA’s  
10 need for a larger safety database. HBV-23 was a Phase 3, observer-blinded, randomized,  
11 active-controlled, multicenter trial of the safety and immunogenicity of HEPLISAV-B  
12 compared with GlaxoSmithKline’s (“GSK”) Enderix-B in adults 18 to 70 years of age.  
13 HEPLISAV-B subjects received two doses at 0 and 1 month and Enderix-B subjects  
14 received three doses at 0, 1 and 6 months.

15 The primary objectives of HBV-23 were: (1) to evaluate the overall safety of  
16 HEPLISAV-B with respect to clinically significant adverse events; and (2) to  
17 demonstrate the noninferiority of the peak seroprotection rate induced by HEPLISAV-B  
18 compared to Enderix-B in subjects with type 2 diabetes mellitus. HEPLISAV-B subjects  
19 were evaluated for safety for one year following the second dose.

20 Based on preliminary top-line results from HBV-23 released in January 2016, both  
21 co-primary endpoints were met. The rates of clinically significant adverse events were  
22 consistent with randomization and HEPLISAV-B provided a statistically significant  
23 higher rate of seroprotection than Enderix-B in diabetic participants and in all participants  
24 as a group.

25 51. The 2015 10-K contained signed certifications pursuant to SOX by Defendants Gray and  
26 Ostrach, stating that the financial information contained in the 2015 10-K was accurate and disclosed  
27 any material changes to the Company’s internal control over financial reporting.

28 52. On May 9, 2016, Dynavax issued a press release and filed a Current Report on Form 8-K  
with the SEC, announcing certain of the Company’s financial and operating results for the quarter  
ended March 31, 2016 (the “Q1 2016 8-K”). For the quarter, Dynavax reported a net loss of \$27.02  
million, or \$0.70 per diluted share, on revenue of \$0.94 million, compared to a net loss of \$26.22  
million, or \$0.97 per diluted share, on revenue of \$0.63 million for the same period in the prior year.

53. The Q1 2016 8-K stated, in part:

**Recent Progress**



1 At the end of the quarter, the U.S. Food and Drug Administration (FDA) accepted for  
2 review the Biologics License Application (BLA) for HEPLISAV-B, the company's  
3 vaccine for immunization against hepatitis B infection in adults 18 years of age and  
4 older. The FDA has established December 15th as the Prescription Drug User Fee Act  
(PDUFA) action date for the BLA.

5 “We are focused on working with the FDA to obtain approval of HEPLISAV-B before  
6 year end and on preparing for launch, including preparation for an advisory panel in case  
7 one is called, hiring of key commercial personnel, market and pricing research and  
8 manufacturing of launch inventory” said Dynavax Chief Executive Officer, Eddie Gray.

9 54. On May 9, 2016, Dynavax also filed a Quarterly Report on Form 10-Q with the SEC,  
10 reiterating the financial and operating results previously announced in the Q1 2016 8-K and reporting in  
11 full the Company’s financial and operating results for the quarter ended March 31, 2016 (the “Q1 2016  
12 10-Q”).

13 55. The Q1 2016 10-Q stated, in part:

14 In March 2016, the U.S. Food and Drug Administration (“FDA”) accepted for review the  
15 Biologics License Application (“BLA”) for HEPLISAV-B and established September 15,  
16 2016 as the Prescription Drug User Fee Act (“PDUFA”) action date. In April 2016, in  
17 response to an FDA request, Dynavax submitted individual trial data sets that had been  
18 provided as integrated data in the March 2016 BLA submission. FDA then determined  
19 that the addition of these large data sets represented a major amendment to the BLA and  
20 thus extended the PDUFA action date to December 15, 2016 to allow for a full review.  
21 The HEPLISAV-B BLA is based on the results from clinical trials that have generated  
22 data in more than 14,000 total patients. If the FDA elects to have an advisory committee  
23 meeting regarding our application, we currently anticipate the meeting likely would be in  
24 November 2016. If this timing is correct and HEPLISAV-B is approved upon completion  
25 of the review period, we expect to launch the product in the first quarter of 2017.

26 56. The Q1 2016 10-Q contained signed certifications pursuant to SOX by Defendants Gray  
27 and Ostrach, stating that the financial information contained in the Q1 2016 10-Q was accurate and  
28 disclosed any material changes to the Company’s internal control over financial reporting.

29 57. On August 8, 2016, Dynavax issued a press release and filed a Current Report on Form  
30 8-K with the SEC, announcing certain of the Company’s financial and operating results for the quarter  
31 ended June 30, 2016 (the “Q2 2016 8-K”). For the quarter, Dynavax reported a net loss of \$28.99

1 million, or \$0.75 per diluted share, on revenue of \$2.65 million, compared to a net loss of \$23.59  
2 million, or \$0.80 per diluted share, on revenue of \$1.55 million for the same period in the prior year.

3 58. The Q2 2016 8-K stated, in part:

4 During the quarter, the U.S. Food and Drug Administration (FDA) established December  
5 15, 2016 as the Prescription Drug User Fee Act (PDUFA) action date for its review of the  
6 Biologics License Application (BLA) for HEPLISAV-B™, the company's investigational  
7 vaccine for immunization against hepatitis B infection in adults 18 years of age and older.  
8 In August, the FDA informed the Company that its Vaccines and Related Biological  
9 Products Advisory Committee (VRBPAC) is scheduled to discuss HEPLISAV-B at its  
10 meeting on November 16, 2016. The FDA has indicated it will communicate questions  
11 for the VRBPAC to address closer in time to the meeting date.

12 Preparations for launch of HEPLISAV-B are continuing, including pre-commercial  
13 activities, manufacturing of launch inventory and continued infrastructure spending  
14 related to implementation of commercial development and information technology  
15 systems and capabilities and related increases in headcount.

16 59. On August 8, 2016, Dynavax also filed a Quarterly Report on Form 10-Q with the SEC,  
17 reiterating the financial and operating results previously announced in the Q2 2016 8-K and reporting in  
18 full the Company's financial and operating results for the quarter ended June 30, 2016 (the "Q2 2016  
19 10-Q").

20 60. The Q2 2016 10-Q stated, in part:

21 In March 2016, the U.S. Food and Drug Administration ("FDA") accepted for review the  
22 Biologics License Application ("BLA") for HEPLISAV-B and established September 15,  
23 2016 as the Prescription Drug User Fee Act ("PDUFA") action date. In April 2016, in  
24 response to an FDA request, Dynavax submitted individual trial data sets that had been  
25 provided as integrated data in the March 2016 BLA submission. The FDA then  
26 determined that the addition of these large data sets represented a major amendment to  
27 the BLA and thus extended the PDUFA action date to December 15, 2016 to allow for a  
28 full review. The HEPLISAV-B BLA is based on the results from clinical trials that have  
generated data in more than 14,000 patients. In August 2016 the FDA informed the  
Company that its Vaccines and Related Biological Products Advisory Committee  
("VRBPAC") is scheduled to discuss HEPLISAV-B at its meeting on November 16,  
2016. The FDA has indicated it will communicate questions for the VRBPAC to address  
closer in time to the meeting date. If this timing is correct and HEPLISAV-B is approved  
upon completion of the review period, we expect to launch the product in the first quarter  
of 2017.

1           61.     The Q2 2016 10-Q contained signed certifications pursuant to SOX by Defendants Gray  
2 and Ostrach, stating that the financial information contained in the Q2 2016 10-Q was accurate and  
3 disclosed any material changes to the Company's internal control over financial reporting.

4           62.     On November 7, 2016, Dynavax issued a press release and filed a Current Report on  
5 Form 8-K with the SEC, announcing certain of the Company's financial and operating results for the  
6 quarter ended September 30, 2016 (the "Q3 2016 8-K"). For the quarter, Dynavax reported a net loss  
7 of \$34.69 million, or \$0.90 per diluted share, on revenue of \$0.16 million, compared to a net loss of  
8 \$30.12 million, or \$0.82 per diluted share, on revenue of \$1.19 million for the same period in the prior  
9 year.  
10

11           63.     The Q3 2016 8-K stated, in part:

12           ***Recent Progress***

13           **HEPLISAV-B.** In late August, the U.S. Food and Drug Administration (FDA) cancelled  
14 its previously scheduled Vaccines and Related Biological Products Advisory  
15 Committee (VRBPAC) meeting to review the Biologics License Application (BLA) for  
16 HEPLISAV-B™ [Hepatitis B Vaccine, Recombinant (Adjuvanted)]. The FDA  
17 indicated that remaining questions on the BLA will be addressed between Dynavax and  
18 the FDA review team. The Company has since provided responses to information  
19 requests by the FDA related to remaining questions. The FDA also confirmed in August  
20 that it will not include in its review of the BLA the immunogenicity data submitted by the  
21 Company related to sub-populations, including results in individuals with diabetes. The  
22 Company plans to submit these data as a supplemental BLA.

23           The Prescription Drug User Fee Act (PDUFA) date for the HEPLISAV-B BLA  
24 is December 15, 2016.

25           In late October, we reported sub-group results from HBV-23, demonstrating that  
26 HEPLISAV-B, when administered as two doses over one month, induced significantly  
27 higher seroprotection rates than the approved hepatitis B vaccine Engerix-B®, when  
28 administered as three doses over six months. This result was observed in all prespecified  
groups of study participants, including those with characteristics that are known to have a  
reduced immune response to currently licensed hepatitis B vaccines, including older age,  
high body mass index, diabetes mellitus, male gender and persons who smoke. In the  
total Phase 3 trial population, the rates of adverse events, serious adverse events and  
deaths were similar between the HEPLISAV-B and Engerix-B groups. The data were  
presented at the Infectious Diseases Society of America's (IDSA) annual IDWeek 2016  
meeting in New Orleans.

1 Preparations for launch of HEPLISAV-B are continuing, including pre-commercial  
2 activities, manufacturing of launch inventory and continued infrastructure spending  
3 related to commercial development and information technology capabilities and related  
4 increases in headcount.

5 64. On November 7, 2016, Dynavax also filed a Quarterly Report on Form 10-Q with the  
6 SEC, reiterating the financial and operating results previously announced in the Q3 2016 8-K and  
7 reporting in full the Company's financial and operating results for the quarter ended September 30,  
8 2016 (the "Q3 2016 10-Q").

9 65. The Q3 2016 10-Q stated, in part:

10 In March 2016, the FDA accepted for review the Biologics License Application ("BLA")  
11 for HEPLISAV-B. The Prescription Drug User Fee Act ("PDUFA") action date is  
12 December 15, 2016. We are working with the FDA to resolve remaining questions  
13 regarding the BLA in order to enable the FDA to complete its review by the PDUFA  
14 action date. If HEPLISAV-B is approved by the scheduled PDUFA action date of  
15 December 15, 2016, we expect to launch the product in the first quarter of 2017.

16 66. The Q3 2016 10-Q contained signed certifications pursuant to SOX by Defendants Gray  
17 and Ostrach, stating that the financial information contained in the Q3 2016 10-Q was accurate and  
18 disclosed any material changes to the Company's internal control over financial reporting.

19 67. The statements referenced in ¶¶ 18-66 above were materially false and/or misleading  
20 because they misrepresented and/or failed to disclose the following adverse facts pertaining to the  
21 Company's business, operational and financial results, which were known to Defendants or recklessly  
22 disregarded by them. Specifically, Defendants made false and/or misleading statements and/or failed to  
23 disclose that: (i) there were significant adverse events associated with Dynavax's HEPLISAV-B  
24 product, including an imbalance in the number of cardiac events during use; (ii) consequently, a  
25 commercial product launch of HEPLISAV-B was less imminent than Dynavax had led investors to  
26 believe; and (iii) as a result, Dynavax's public statements were materially false and misleading at all  
27 relevant times.  
28

**The Truth Emerges**

1  
2 68. On November 14, 2016, pre-market, the Company announced it had received a CRL  
3 from the FDA, requesting additional information on the Company's HEPLISAV-B product in  
4 connection with its Biologics License Application. The Company stated, in part:

5 The CRL seeks information regarding several topics, including clarification regarding  
6 *specific adverse events of special interest (AESIs), a numerical imbalance in a small*  
7 *number of cardiac events in a single study (HBV-23), new analyses of the integrated*  
8 *safety data base across different time periods*, and post-marketing commitments. In the  
9 CRL, the FDA acknowledged that it has not yet completed its review of responses  
10 received from Dynavax in early October, including those pertaining to AESIs and the  
11 numerical imbalance in cardiac events. The responses included an extensive analysis that  
12 included independent expert consultation supporting our view that the imbalance was  
driven by an unexpectedly low number of events in the comparator arm. It would appear  
the Agency could not fully assess the responses in the current review period. In the CRL,  
there is no request for additional clinical trials and there are no apparent concerns with  
rare serious autoimmune events.

13 "The CRL is consistent with our opinion that HEPLISAV-B is approvable and we are  
14 seeking to meet with the FDA as soon as possible," said Eddie Gray, chief executive  
15 officer of Dynavax. "However, the time and resources that will be required to gain  
16 approval leads us to consider that we may not be able to advance this program on our  
17 own and we are moving swiftly to identify a potential pharmaceutical or financial  
partner."

(Emphasis added.)

18 69. On this news, Dynavax's share price fell \$7.50, or 64.65%, to close at \$4.10 on  
19 November 14, 2016.

20 70. As a result of Defendants' wrongful acts and omissions, and the precipitous decline in  
21 the market value of the Company's common shares, Plaintiff and other Class members have suffered  
22 significant losses and damages.

**PLAINTIFF'S CLASS ACTION ALLEGATIONS**

24  
25 71. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure  
26 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or otherwise acquired  
27 Dynavax common shares traded on the NASDAQ during the Class Period (the "Class"); and were  
28

1 damaged upon the revelation of the alleged corrective disclosures. Excluded from the Class are  
2 Defendants herein, the officers and directors of the Company, at all relevant times, members of their  
3 immediate families and their legal representatives, heirs, successors or assigns and any entity in which  
4 Defendants have or had a controlling interest.

5         72. The members of the Class are so numerous that joinder of all members is impracticable.  
6 Throughout the Class Period, Dynavax common shares were actively traded on the NASDAQ. While  
7 the exact number of Class members is unknown to Plaintiff at this time and can be ascertained only  
8 through appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the  
9 proposed Class. Record owners and other members of the Class may be identified from records  
10 maintained by Dynavax or its transfer agent and may be notified of the pendency of this action by mail,  
11 using the form of notice similar to that customarily used in securities class actions.  
12

13         73. Plaintiff's claims are typical of the claims of the members of the Class as all members of  
14 the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is  
15 complained of herein.  
16

17         74. Plaintiff will fairly and adequately protect the interests of the members of the Class and  
18 has retained counsel competent and experienced in class and securities litigation. Plaintiff has no  
19 interests antagonistic to or in conflict with those of the Class.  
20

21         75. Common questions of law and fact exist as to all members of the Class and predominate  
22 over any questions solely affecting individual members of the Class. Among the questions of law and  
23 fact common to the Class are:

- 24             • whether the federal securities laws were violated by Defendants' acts as alleged
- 25             • whether statements made by Defendants to the investing public during the Class
- 26             • whether statements made by Defendants to the investing public during the Class
- 27             • whether statements made by Defendants to the investing public during the Class
- 28             • whether statements made by Defendants to the investing public during the Class

- 1 • whether Defendants' public statements to the investing public during the Class  
2 Period omitted material facts necessary to make the statements made, in light of  
3 the circumstances under which they were made, not misleading;
- 4 • whether the Individual Defendants caused Dynavax to issue false and misleading  
5 SEC filings and public statements during the Class Period;
- 6 • whether Defendants acted knowingly or recklessly in issuing false and  
7 misleading SEC filings and public statements during the Class Period;
- 8 • whether the prices of Dynavax common shares during the Class Period were  
9 artificially inflated because of the Defendants' conduct complained of herein;  
10 and
- 11 • whether the members of the Class have sustained damages and, if so, what is the  
12 proper measure of damages.

13 76. A class action is superior to all other available methods for the fair and efficient  
14 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the  
15 damages suffered by individual Class members may be relatively small, the expense and burden of  
16 individual litigation make it impossible for members of the Class to individually redress the wrongs  
17 done to them. There will be no difficulty in the management of this action as a class action.

18 77. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-on-  
19 the-market doctrine in that:

- 20 • Defendants made public misrepresentations or failed to disclose material facts  
21 during the Class Period;
- 22 • the omissions and misrepresentations were material;
- 23 • Dynavax common shares are traded in efficient markets;
- 24 • the Company's shares were liquid and traded with moderate to heavy volume  
25 during the Class Period;
- 26 • the Company traded on the NASDAQ, and was covered by multiple analysts;
- 27 • the misrepresentations and omissions alleged would tend to induce a reasonable  
28 investor to misjudge the value of the Company's common shares; and
- Plaintiff and members of the Class purchased and/or sold Dynavax common  
shares between the time the Defendants failed to disclose or misrepresented  
material facts and the time the true facts were disclosed, without knowledge of  
the omitted or misrepresented facts.

78. Based upon the foregoing, Plaintiff and the members of the Class are entitled to a  
presumption of reliance upon the integrity of the market.



1 79. Alternatively, Plaintiff and the members of the Class are entitled to the presumption of  
2 reliance established by the Supreme Court in *Affiliated Ute Citizens of the State of Utah v. United*  
3 *States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as Defendants omitted material information in their Class  
4 Period statements in violation of a duty to disclose such information, as detailed above.

5 **COUNT I**

6 **Violation of Section 10(b) of The Exchange Act and Rule 10b-5**  
7 **Against All Defendants**

8 80. Plaintiff repeats and realleges each and every allegation contained above as if fully set  
9 forth herein.

10 81. This Count is asserted against Dynavax and the Individual Defendants and is based upon  
11 Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder by the  
12 SEC.  
13

14 82. During the Class Period, Dynavax and the Individual Defendants, individually and in  
15 concert, directly or indirectly, disseminated or approved the false statements specified above, which  
16 they knew or deliberately disregarded were misleading in that they contained misrepresentations and  
17 failed to disclose material facts necessary in order to make the statements made, in light of the  
18 circumstances under which they were made, not misleading.  
19

20 83. Dynavax and the Individual Defendants violated §10(b) of the 1934 Act and Rule 10b-5  
21 in that they:

- 22
- 23 • employed devices, schemes and artifices to defraud;
  - 24 • made untrue statements of material facts or omitted to state material facts  
25 necessary in order to make the statements made, in light of the circumstances  
26 under which they were made, not misleading; or
  - 27 • engaged in acts, practices and a course of business that operated as a fraud or  
28 deceit upon plaintiff and others similarly situated in connection with their  
purchases of Dynavax common shares during the Class Period.

1 84. Dynavax and the Individual Defendants acted with scienter in that they knew that the  
2 public documents and statements issued or disseminated in the name of Dynavax were materially false  
3 and misleading; knew that such statements or documents would be issued or disseminated to the  
4 investing public; and knowingly and substantially participated, or acquiesced in the issuance or  
5 dissemination of such statements or documents as primary violations of the securities laws. These  
6 Defendants by virtue of their receipt of information reflecting the true facts of Dynavax, their control  
7 over, and/or receipt and/or modification of Dynavax allegedly materially misleading statements, and/or  
8 their associations with the Company which made them privy to confidential proprietary information  
9 concerning Dynavax, participated in the fraudulent scheme alleged herein.  
10

11 85. Individual Defendants, who are the senior officers and/or directors of the Company, had  
12 actual knowledge of the material omissions and/or the falsity of the material statements set forth above,  
13 and intended to deceive Plaintiff and the other members of the Class, or, in the alternative, acted with  
14 reckless disregard for the truth when they failed to ascertain and disclose the true facts in the statements  
15 made by them or other Dynavax personnel to members of the investing public, including Plaintiff and  
16 the Class.  
17

18 86. As a result of the foregoing, the market price of Dynavax common shares was artificially  
19 inflated during the Class Period. In ignorance of the falsity of Dynavax's and the Individual  
20 Defendants' statements, Plaintiff and the other members of the Class relied on the statements described  
21 above and/or the integrity of the market price of Dynavax common shares during the Class Period in  
22 purchasing Dynavax common shares at prices that were artificially inflated as a result of Dynavax's and  
23 the Individual Defendants' false and misleading statements.  
24

25 87. Had Plaintiff and the other members of the Class been aware that the market price of  
26 Dynavax common shares had been artificially and falsely inflated by Dynavax's and the Individual  
27 Defendants' misleading statements and by the material adverse information which Dynavax's and the  
28

1 Individual Defendants did not disclose, they would not have purchased Dynavax's common shares at  
2 the artificially inflated prices that they did, or at all.

3 88. As a result of the wrongful conduct alleged herein, Plaintiff and other members of the  
4 Class have suffered damages in an amount to be established at trial.

5 89. By reason of the foregoing, Dynavax and the Individual Defendants have violated  
6 Section 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder and are liable to the plaintiff and  
7 the other members of the Class for substantial damages which they suffered in connection with their  
8 purchase of Dynavax common shares during the Class Period.  
9

10 **COUNT II**

11 **Violation of Section 20(a) of The Exchange Act**  
12 **Against The Individual Defendants**

13 90. Plaintiff repeats and realleges each and every allegation contained in the foregoing  
14 paragraphs as if fully set forth herein.

15 91. During the Class Period, the Individual Defendants participated in the operation and  
16 management of Dynavax, and conducted and participated, directly and indirectly, in the conduct of  
17 Dynavax's business affairs. Because of their senior positions, they knew the adverse non-public  
18 information regarding the Company's capacity to bring HEPLISAV-B to market.  
19

20 92. As officers and/or directors of a publicly owned company, the Individual Defendants had  
21 a duty to disseminate accurate and truthful information with respect to Dynavax's financial condition  
22 and results of operations, and to correct promptly any public statements issued by Dynavax which had  
23 become materially false or misleading.  
24

25 93. Because of their positions of control and authority as senior officers, the Individual  
26 Defendants were able to, and did, control the contents of the various reports, press releases and public  
27 filings which Dynavax disseminated in the marketplace during the Class Period. Throughout the Class  
28

1 Period, the Individual Defendants exercised their power and authority to cause Dynavax to engage in  
2 the wrongful acts complained of herein. The Individual Defendants therefore, were “controlling  
3 persons” of Dynavax within the meaning of Section 20(a) of the Exchange Act. In this capacity, they  
4 participated in the unlawful conduct alleged which artificially inflated the market price of Dynavax  
5 common shares.

6  
7 94. By reason of the above conduct, the Individual Defendants are liable pursuant to Section  
8 20(a) of the Exchange Act for the violations committed by Dynavax.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff demands judgment against Defendants as follows:

11 A. Determining that the instant action may be maintained as a class action under Rule 23 of  
12 the Federal Rules of Civil Procedure, and certifying Plaintiff as the Class representative;

13  
14 B. Requiring Defendants to pay damages sustained by Plaintiff and the Class by reason of  
15 the acts and transactions alleged herein;

16 C. Awarding Plaintiff and the other members of the Class prejudgment and post- judgment  
17 interest, as well as their reasonable attorneys’ fees, expert fees and other costs; and

18  
19 D. Awarding such other and further relief as this Court may deem just and proper.

20 **DEMAND FOR TRIAL BY JURY**

21 Plaintiff hereby demands a trial by jury.

22 Dated: November 18, 2016

23 Respectfully submitted,

24 **POMERANTZ LLP**

25 By: /s/ Jennifer Pafiti  
26 Jennifer Pafiti (SBN 282790)  
27 468 North Camden Drive  
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*Attorneys for Plaintiff*

Submission Date

2016-11-15 04:15:35

## **CERTIFICATION PURSUANT TO FEDERAL SECURITIES LAWS**

1. I make this declaration pursuant to Section 27(a)(2) of the Securities Act of 1933 ("Securities Act") and/or Section 21D(a)(2) of the Securities Exchange Act of 1934 ("Exchange Act") as amended by the Private Securities Litigation Reform Act of 1995.
2. I have reviewed a Complaint against Dynavax Technologies Corporation ("Dynavax" or the "Company") and, authorize the filing of a comparable complaint on my behalf.
3. I did not purchase or acquire Dynavax securities at the direction of plaintiffs' counsel or in order to participate in any private action arising under the Securities Act or Exchange Act.
4. I am willing to serve as a representative party on behalf of a Class of investors who purchased or acquired Dynavax securities during the class period, including providing testimony at deposition and trial, if necessary. I understand that the Court has the authority to select the most adequate lead plaintiff in this action.
5. To the best of my current knowledge, the attached sheet lists all of my transactions in Dynavax securities during the Class Period as specified in the Complaint.
6. During the three-year period preceding the date on which this Certification is signed, I have not sought to serve as a representative party on behalf of a class under the federal securities laws.
7. I agree not to accept any payment for serving as a representative party on behalf of the class as set forth in the Complaint, beyond my pro rata share of any recovery, except such reasonable costs and expenses directly relating to the representation of the class as ordered or approved by the Court.
8. I declare under penalty of perjury that the foregoing is true and correct.

# Name

Print Name

David Soontjens

# Acquisitions

(redacted)

Signature

A handwritten signature in blue ink, appearing to be 'DS', is centered on the page.

Full Name

David Soontjens

(redacted)



**DYNAVAX TECHNOLOGIES CORPORATION (DVAX)**

**Soontjens, David**

**LIST OF PURCHASES AND SALES**

<b>DATE</b>	<b>PURCHASE OR SALE</b>	<b>NUMBER OF SHS/UTS</b>	<b>PRICE PER SH/UT</b>
10/4/2016	Purchase	50	\$12.6000