

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, DC 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): **February 7, 2018 (February 6, 2018)**

INNOVIVA, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware

(State or Other Jurisdiction of Incorporation)

000-30319

(Commission File Number)

94-3265960

(I.R.S. Employer Identification Number)

**2000 Sierra Point Parkway
Suite 500
Brisbane, California 94005**

(650) 238-9600

(Addresses, including zip code, and telephone numbers, including area code, of principal executive offices)

(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 (see General Instruction A.2. below):

- 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 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

On February 7, 2018, Innoviva, Inc. (the "Company") announced the appointment of Eric d'Esparbes as the Company's interim Principal Executive Officer, effective February 6, 2018. Mr. d'Esparbes will succeed Michael Aguiar who has resigned as President and Chief Executive Officer of the Company and as a member of the Company's Board of Directors (the "Board") effective as of February 6, 2018. Mr. Aguiar's departure is not the result of any disagreement with the Company or the Board on any matter relating to the Company's operations, policies or practices. Mr. d'Esparbes will continue to serve as the Company's Senior Vice President and Chief Financial Officer while acting as interim Principal Executive Officer. The Board plans to commence a search for a new Chief Executive Officer.

Under the terms of an agreement between the Company and Mr. d'Esparbes dated February 7, 2018 (the "Agreement"), in the event that Mr. d'Esparbes' employment with the Company is terminated "without cause" (as defined in the Agreement), subject to signing a general release of claims, he will be entitled to receive (i) a lump sum payment equal to the sum of (a) 24 months' of his base salary and (b) his current target bonus, (ii) plus (x) a pro-rata bonus (based on the number of full months of employment completed) for the year of termination, subject to the terms and conditions of the bonus program and (y) continuation of his health and welfare benefits for the shorter of 12 months, the expiration of his coverage under COBRA or the date when he obtains new employment offering comparable health insurance coverage.

The other terms of Mr. d'Esparbes' employment with the Company remain unchanged from those previously disclosed in the Company's definitive proxy statement on Schedule 14A filed with the Securities and Exchange Commission (the "SEC") on March 22, 2017 (the "Proxy"). The prior business experience of Mr. d'Esparbes is included in the Proxy and such disclosure is incorporated herein by reference.

The foregoing description of the Agreement does not purport to be complete and is qualified in its entirety by reference to the complete text of the Agreement, a copy of which is attached as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated herein by reference in its entirety.

Mr. Aguiar's separation from the Company was at the request of the Board and is treated as a termination "without cause" within the meaning of that certain offer letter, dated August 5, 2014, between the Company and Mr. Aguiar (which agreement has previously been filed with the SEC). The Company entered into a separation letter with Mr. Aguiar dated February 6, 2018 (the "CEO Separation Letter"), which, among other things, provides that, pursuant to Mr. Aguiar's offer letter and in exchange for a mutual release of all claims, the Company will pay Mr. Aguiar a lump sum payment equal to 24 months of his base salary plus two times his current target bonus. In addition, the Company agreed to (i) pay Mr. Aguiar \$250,000 in lieu of his 2017 performance bonus that he would have been entitled to if he remained an employee of the Company through the payment date and (ii) accelerate the vesting of an aggregate of 164,045 shares of the Company's common stock underlying restricted stock awards previously awarded to Mr. Aguiar, which would have vested on February 20, 2018 if he remained with the Company through such date.

The foregoing summary of the CEO Separation Letter does not purport to be complete and is qualified in its entirety by reference to the complete text of the CEO Separation Letter, a copy of which is attached as Exhibit 10.2 to this Current Report on Form 8-K and is incorporated herein by reference in its entirety.

2

On February 7, 2018, the Company also announced that Michael Faerm has resigned as Chief Business Officer of the Company, effective February 7, 2018. Mr. Faerm's separation from the Company was under circumstances that are considered a termination for reasons other than "Misconduct," as defined in the Company's 2009 Severance Plan, as amended (the "Severance Plan") (which agreement has previously been filed with the SEC). Pursuant to the Severance Plan, provided Mr. Faerm executes a release of claims against the Company, the Company will (i) pay Mr. Faerm a lump sum payment equal to 12 months of his base salary plus one-twelfth of his current target bonus and (ii) continue his health and welfare benefits for the shorter of 12 months, the expiration of his coverage under COBRA or the date when he obtains new employment offering comparable health insurance coverage.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

10.1 [Agreement between Innoviva, Inc. and Eric d'Esparbes dated as of February 7, 2018.](#)

10.2 [Separation Letter between Innoviva, Inc. and Michael Aguiar dated as of February 6, 2018.](#)

3

SIGNATURE

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

INNOVIVA, INC.

Date: February 7, 2018

By: /s/ Eric d'Esparbes
Eric d'Esparbes
Interim Principal Executive Officer

4



February 7, 2018

Eric d'Esparbes

Dear Eric:

On behalf of Innoviva, Inc. (the "Company"), I am pleased to offer you the exempt position of Interim Principal Executive Officer, effective as of February 6, 2018. This is a full-time position, reporting to the Company's Board of Directors. This letter supersedes and replaces the offer letter you executed with the Company, dated September 8, 2014.

You will continue to be paid your current base salary as of the date hereof. You will also be eligible to receive an annual discretionary bonus based on the Company's performance against its annual goals and a review of your individual performance, and determined at the sole discretion of the Board of Directors or its Compensation Committee. Your annual discretionary bonus will have a target amount of 50% (and a maximum amount of 200% of your base salary and each calendar year thereafter). You will be required to be an active employee in good standing at the time the bonus is paid in order to receive the bonus, which will be no later than 2½ months after the close of the calendar year.

As you know, the Company provides a comprehensive company-paid benefits package for its employees. Benefits are provided by the Company to you and your dependents at minimal cost. Included are medical, vision and dental coverage, life insurance, long-term disability insurance and a flexible spending plan. Additionally, we offer a 401(k) plan and an Employee Stock Purchase Plan.

You will continue to be subject to the Company's Proprietary Information and Inventions Agreement, which you previously signed, as well as the terms of the Company's Employee Handbook.

While we hope that your employment with the Company will continue to be mutually satisfactory, your employment status will remain at-will. As a result, both you and the Company are free to terminate the employment relationship at any time for any reason, with or without cause. This is the full and complete agreement between us on this term. Although your job duties, title, compensation and benefits, as well as the Company's personnel policies and procedures to which you will be subject, may change from time-to-time, the "at-will" nature of your employment may only be changed in an express writing signed by you and a Director of the Company. Notwithstanding the foregoing, if your employment is terminated by the Company without cause and you incur a separation, the Company will: (i) make a lump sum payment to you (less all applicable withholding taxes) of 24 months' base salary and target bonus (at the rate in effect at the time of your separation), (ii) pay you a pro-rata (based on number of full months completed in year of termination over 12) target bonus, subject to the terms and conditions of the bonus program and payable at the same time as bonuses are paid to active employees, and (iii) the Company will pay your monthly premium under COBRA until the earlier of 12 months following the month of termination, expiration of the COBRA continuation coverage or the date when you obtain new employment offering comparable health insurance coverage. As a condition to receiving such severance payments you must execute the Company's standard form of release required of all employees who receive any severance pay. The form of release will be delivered to you within 30 days after your separation and you must execute and return the release within the time period set forth in the form of release, which will in no event be later than 50 days after your separation. If you fail to return the release on or before the deadline set forth in the form of release, or if you revoke the release, then you will not be entitled to the severance payment. Provided you satisfy such release requirements, the severance payment will be paid within 60 days after your separation; however, if such 60-day period spans two calendar years, then the severance payment will in any event be made in the second calendar year.

For purposes of the above severance provision, a termination "without cause" shall mean termination for any reason other than: (i) unauthorized use or disclosure of the confidential information or trade secrets of the Company (or any parent or subsidiary), which use causes material harm to the Company (or any parent or subsidiary), (ii) conviction of a felony under the laws of the United States or any state thereof, (iii) gross negligence, or (iv) repeated failure to perform lawful assigned duties for thirty days after receiving written notification from the Company's Board of Directors. For purposes of the above severance provision, "separation" means a "separation from service," as defined in the regulations under Section 409A of the Internal Revenue Code of 1986, as amended (the "Code").

To the extent the severance payment described in this letter is deemed to be nonqualified deferred compensation that is subject to Section 409A of the Code and if the Company determines that you are a "specified employee" under Section 409A(a)(2)(B)(i) of the Code at the time of your separation, then the severance payment will be made on the first business day following (i) expiration of the six-month period measured from your separation or (ii) the date of your death.

* * *

This letter sets forth the terms of your employment with us and supersedes any prior representations or agreements, whether written or oral. A duplicate original of this offer is enclosed for your records. To accept this offer, please sign and return this letter to me.

Sincerely,

Innoviva, Inc.

By: /s/ Patrick G. LePore
Patrick G. LePore

I have read and accept this employment offer:

/s/ Eric d'Esparbes

Eric d'Esparbes

Date: February 7, 2018



February 6, 2018

Michael Aguiar

Dear Mike:

This letter (the "Agreement") confirms the agreement between you and Innoviva, Inc. (the "Company") regarding your resignation of employment with the Company at the request of the Company's Board of Directors (the "Board"). You acknowledge that the only payments and benefits that you are entitled to receive from the Company in the future are those specified in this Agreement.

1. **Termination Date.** Your employment with the Company terminated on February 6, 2018 (the "Termination Date"). Effective as of the Termination Date, you resigned as a member of the Board.

2. **Salary, Vacation and Bonus.** The Company paid you \$92,337.83 (less all applicable withholding taxes and other deductions). This amount represents all of your salary earned through the Termination Date and all of your accrued but unused vacation time or PTO. In addition, subject to you executing this Agreement and not revoking it in accordance with Section 8 below, the Company will pay you a lump sum amount of \$250,000.00 in lieu of your 2017 performance bonus that you would have been entitled to if you remained an employee through the payment date. The payment in lieu of bonus will be made at the time the Company makes bonus payments to current employees. All of your accrued salary deductions pursuant to the Company's employee stock purchase plan shall be refunded to you in accordance with such plan. Reimbursement for expenses incurred by you will be made pursuant to Company policy provided you submit required documentation by the close of business on the Termination Date.

3. **Unemployment Benefits.** You may elect to file a claim for unemployment compensation benefits. Your eligibility will be determined by the State of California.

4. **Severance Pay.** Subject to you executing this Agreement and not revoking it in accordance with Section 8 below and in accordance with your Offer Letter, dated August 5, 2014, the Company will pay you a lump sum severance in the amount of \$2,704,879; which constitutes 24 months' salary (at the rate in effect as of the Termination Date) plus 2 times your current target bonus. The payments will be subject to applicable federal and state tax withholdings.

Page 2

5. **Restricted Stock Awards.** Other than as set forth in this paragraph, as of the Termination Date, all unvested restricted stock awards or units held by you expired or were automatically forfeited. On January 14, 2016, the Company granted you a performance-based restricted stock award for a maximum of 144,668 shares of its Common Stock (the "2016 PRSA"). On June 2, 2014, the Company granted you a restricted stock award of 50,000 shares of its Common Stock (the "2014 RSA"). On August 15, 2014, the Company granted you a restricted stock award of 43,905 shares of its Common Stock (the "2014 CEO RSA"). On January 7, 2015, the Company granted you a restricted stock award of 176,056 shares of its Common Stock (the "2015 RSA"). On January 14, 2016, the Company granted you a restricted stock award of 144,666 shares of its Common Stock (the "2016 RSA"). On January 17, 2017, the Company granted you a restricted stock award of 166,747 shares of its Common Stock (the "2017 RSA" and, collectively with, the 2016 PRSA, the 2014 RSA, the 2014 CEO RSA, the 2015 RSA and the 2016 RSA, the "RSAs"). Subject to you executing this Agreement and not revoking it in accordance with Section 8 below and as additional consideration for your resignation as a member of the Board, as of the Termination Date, the Company has accelerated the vesting of (i) 96,445 of the shares underlying the 2016 PRSA; (ii) 3,125 of the shares underlying the 2014 RSA; (iii) 2,744 of the shares underlying the 2014 CEO RSA; (iv) 11,003 of the shares underlying the 2015 RSA; (v) 9,041 of the shares underlying the 2016 RSA; and (vi) 41,687 of the shares underlying the 2017 RSA. The remaining shares underlying the RSAs were automatically forfeited as of the Termination Date. You acknowledge that except for capital stock held by you prior to the Termination Date and except as described in this Section 5 you have no rights to the Company's capital stock.

6. **Release of Claims.**

(a) In exchange for the payment of the amount in lieu of the 2017 performance bonus as set forth in Section 2, the Severance Pay as set forth in Section 4 above and as partial consideration for the accelerated vesting of the RSAs as set forth in Section 5 above, and other consideration provided to you by this Agreement that you are not otherwise entitled to receive, to the fullest extent permitted by law, you hereby generally and completely release the Company and its current and former directors, officers, employees, shareholders, partners, agents, attorneys, predecessors, successors, parent and subsidiary entities, insurers, affiliates, and assigns from any and all claims, liabilities and obligations, both known and unknown, that arise out of or are in any way related to events, acts, conduct, or omissions occurring prior to your signing this Agreement. This general release includes, but is not limited to: (1) all claims arising out of or in any way related to your employment with the Company, or the termination of that employment; (2) all claims related to your compensation or benefits from the Company, including salary, bonuses (except as set forth in Sections 2 and 4 above), vacation pay, expense reimbursements, severance pay, fringe benefits, stock, stock options, or any other ownership interests in the Company; (3) all claims for breach of contract, wrongful termination, and breach of the implied covenant of good faith and fair dealing; (4) all tort claims, including claims for fraud, defamation, emotional distress, and discharge in violation of public policy; and (5) all federal, state, and local statutory claims, including claims for discrimination, harassment, retaliation, attorneys' fees, or other claims arising under Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act, the Fair Labor Standards Act, the National Labor Relations Act, the Family and Medical Leave Act, the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Workers Adjustment and Retraining Notification Act the California Fair Employment and Housing Act (as amended) and all other laws and regulations relating to employment.

(b) The Company voluntarily and irrevocably releases and discharges you and your executors and administrators generally from all charges, complaints, claims, promises, agreements, causes of action, damages, and debts that relate in any manner to your employment with or services for the Company, known or unknown which the Company has, claims to have, ever had, or ever claimed to have had against you through the date upon which you execute this Agreement. This general release of claims includes, without implication of limitation, all claims related to your services or termination as a director, officer, employee, agent, or fiduciary of the Company or your activities on behalf of the Company in any such capacity; provided however, that this general release of claims excludes any acts or omissions that would be excluded from exculpation under Section 102(b)(7)(ii) of the Delaware General Corporation Law.

7. Exceptions. You are not releasing any claim that cannot be waived under applicable state or federal law, and you are not releasing any rights that you have to be indemnified (including any right to reimbursement of expenses) arising under applicable law, the certificate of incorporation or bylaws (or similar constituent documents of the Company), the Indemnification Agreement dated February 17, 2012 between you and the Company (the "Indemnification Agreement"), or any directors' and officers' liability insurance policy of the Company or to bring an action to enforce your rights under this Agreement. You understand that nothing contained in this Agreement limits your ability to file a charge or complaint with the Equal Employment Opportunity Commission, the Department of Labor, California Fair Employment and Housing Commission, the National Labor Relations Board, the Occupational Safety and Health Administration, the Securities and Exchange Commission or any other federal, state or local governmental agency or commission ("Government Agencies"). You further understand that this Agreement does not limit your ability to communicate with any Government Agencies or otherwise participate in any investigation or proceeding that may be conducted by any Government Agency, including providing documents or other information, without notice to the Company. This Agreement does not limit your right to receive an award for information provided to any Government Agencies. However, you understand and agree that you shall not be entitled to, and shall not seek nor permit anyone to seek on your behalf, any personal, equitable or monetary relief for any claims or causes of action released by you in this Agreement, to the fullest extent permitted by law.

8. Consideration and Revocation Period. You acknowledge that you consulted with an attorney of your choice prior to signing this Agreement, and that you had at least 21 days to consider this Agreement before signing it. You acknowledge that if this Agreement is signed before the 21 days have elapsed from the date of delivery, by signing this Agreement you have expressly waived the 21-day consideration period. You acknowledge that you may revoke this Agreement within seven (7) days following its execution, and the Agreement shall not become effective until the revocation period has expired. If you do not revoke this Agreement, the eighth day after the date you sign the Agreement it will be the "Effective Date."

9. Waiver. You expressly waive and release any and all rights and benefits under Section 1542 of the California Civil Code (or any analogous law of any other state), which reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

In addition, pursuant to the Company's bylaws, you hereby waive all rights to notice of the meetings of the Board of Directors of the Company held on January 29, 2018, February 1, 2018, and February 6, 2018.

10. Representations. You hereby represent that you have been paid all compensation owed, including commission pay, and for all hours worked, have received all the leave and leave benefits and protections for which you are eligible, pursuant to the Family and Medical Leave Act or otherwise, and have not suffered any on-the-job injury for which you have not already filed a claim.

11. No Admission. Nothing contained in this Agreement will constitute or be treated as an admission by you or the Company of liability, any wrongdoing or any violation of law.

12. Other Agreements. At all times in the future, you will remain bound by your Proprietary Information and Inventions Agreement with the Company that you signed on March 11, 2005, a copy of which is attached as Exhibit A. You and the Company will also remain bound by the Indemnification Agreement. In addition, you acknowledge that you remain subject to the trading restrictions set forth in the Company's Insider Trading Policy (as amended and restated as of March 3, 2017) (the "Trading Policy") until the later of (i) such time that you no longer possess any material non-public information subject to the Trading Policy and (ii) the beginning of the second full trading day following the date of public disclosure of the Company's financial results for the year ended December 31, 2017. Except as expressly provided in this Agreement, this Agreement renders null and void all prior agreements between you and the Company and constitutes the entire agreement between you and the Company regarding the subject matter of this Agreement. This Agreement may be modified only in a written document signed by you and a duly authorized officer of the Company.

13. Confidential and Proprietary Information. You acknowledge your ongoing covenant under Proprietary Information and Inventions Agreement to preserve as confidential the Company's Confidential Information as that term is defined therein. You agree that you will not discuss your employment by the Company or circumstances of your departure with any non-governmental entity or person (other than information that is publicly available or in connection with the Company's filings with the Securities and Exchange Commission) unless (i) required to do so by a court of law, by any governmental agency having supervisory authority over the business of the Company or by any administrative or legislative body (including a committee thereof) with jurisdiction to order you to divulge, disclose or make accessible such Confidential Information; provided that you shall give prompt written notice to the Company of such requirement, disclose no more information than is so required, and reasonably cooperate with any attempts by the Company to obtain a protective order or similar treatment and (ii) to your spouse, attorney and/or personal tax and financial advisors as reasonably necessary or appropriate to assist in your tax, financial and other personal planning (each an "Exempt Person"), provided, however, that any disclosure or use of Confidential Information by an Exempt Person shall be deemed to be a breach of this Section 13 by you.

14. **Company Property.** You represent that you have permanently deleted or will by 5:00 p.m. California time on February 7, 2018 permanently delete all Company-related electronic information and files that are stored on your computer(s) and devices and that you will promptly return to the Company all other property and copies of documents that belong to the Company. In no event should this provision be construed to require you to return to the Company any document or other materials concerning your remuneration and benefits during your employment with the Company.

15. **Litigation Cooperation.** You agree to reasonably cooperate with the Company in the defense or prosecution of any claims or actions which already have been brought or which may be brought in the future on behalf of the Company or against the Company which relate to events or occurrences that you were involved in or which you gained knowledge of during your employment with the Company. Such cooperation shall be subject to any restrictions set forth in any subpoena or request or order of a Government Agency. Your reasonable cooperation in connection with such claims or actions shall include, without implication of limitation, being reasonably available to meet with counsel to prepare for discovery or trial and to testify truthfully as a witness when reasonably requested by the Company, at reasonable times. You agree that you will not voluntarily disclose any information to any non-governmental person or party that is adverse to the Company and that you will maintain the confidences and privileges of the Company.

16. **No Disparagement.** You agree that you will never make any negative or disparaging statements (orally or in writing) about the Company or its stockholders, directors, officers, employees, products, services or business practices, except as required by law. The Company will not, and will instruct its officers, directors and its investor relations personnel not to make any disparaging statements concerning you or your performance as an executive officer of the Company.

17. **Severability.** If any term of this Agreement is held to be invalid, void or unenforceable, the remainder of this Agreement will remain in full force and effect and will in no way be affected, and the parties will use their best efforts to find an alternate way to achieve the same result.

18. **Choice of Law.** This Agreement will be construed and interpreted in accordance with the laws of the State of California (other than its choice-of-law provisions).

19. **Execution.** This Agreement may be executed in counterparts, each of which will be considered an original, but all of which together will constitute one agreement. Execution of a facsimile copy will have the same force and effect as execution of an original, and a facsimile signature will be deemed an original and valid signature.

Page 6

Please indicate your agreement with the above terms by signing below.

Very truly yours,

INNOVIVA, INC.

By: /s/ Patrick G. LePore

Patrick G. LePore

Vice-Chairman of the Board of Directors

I agree to the terms of this Agreement, and I am voluntarily signing this release of all claims. I acknowledge that I have read and understand this Agreement, and I understand that I cannot pursue any of the claims and rights that I have waived in this Agreement at any time in the future.

/s/ Michael Aguiar

Signature of Michael Aguiar

Dated: 2/6/18
