

Securities Regulation Daily Wrap Up, INITIAL PUBLIC OFFERINGS—N.D. Cal.: Investors lose a round in Zynga fraud suit, (Feb. 26, 2014)

[Click to open document in a browser](#)

Securities (Federal) > News & Current Awareness > Securities Regulation Daily > Securities Regulation Daily Wrap Up > 2014 > February 2014 > February 26, 2014 > INITIAL PUBLIC OFFERINGS—N.D. Cal.: Investors lose a round in Zynga fraud suit, (Feb. 26, 2014)

A federal judge in California has partially dismissed securities fraud claims against online gaming company Zynga Inc. and several underwriters in connection with Zynga's initial and secondary public offerings of stock. The court held that the lead plaintiffs lacked standing to pursue claims related to the secondary offering because they could not trace their shares as required under Sec. 11 of the Securities Act. Accordingly, the court dismissed the secondary offering claims with leave to amend (*In re Zynga Inc. Securities Litigation*, February 25, 2014, White, J.).

Background. The class action plaintiffs alleged that the defendants had engaged in a deliberate scheme to mislead investors by: (1) portraying Zynga as financially strong in order to bring the company public; and (2) allowing a select few Zynga insiders to reap large profits by selling their shares before the company's stock price collapsed. Specifically, the plaintiffs alleged that the defendants concealed information demonstrating that Zynga's bookings were declining and that there were significant product release delays and a planned platform change at Facebook that the defendants knew would negatively affect the company's business.

Lack of statutory standing. The court held, however, that the lead plaintiffs lacked standing to bring claims for any material misstatement of fact or omission in Zynga's registration statement because they did not allege that they purchased shares in the secondary offering. The court observed that to have standing to bring suit under Sec. 11, a plaintiff must have purchased a security actually issued in the offering for which the plaintiff claims there was misleading registration statement. As the named plaintiffs did not allege that they purchased shares in the secondary offering, and the certifications incorporated into the complaint demonstrated that they did not, their claims required dismissal.

"Prolix" complaint. The court also scolded the plaintiffs for their "excessively long and prolix" complaint. Despite containing 386 paragraphs in 110 pages, the complaint failed to include basic, relevant factual details and often grouped all of the defendants together, the court found. In addition, the statements alleged to be misleading and reasons for their alleged falsity were not alleged with the requisite level of specificity. Accordingly, the court exhorted the plaintiffs to redraft their complaint with simplicity in order that the merits of their remaining claims could be adjudicated.

The case is No. C 12-04007 JSW.

Companies: Zynga Inc.; Morgan Stanley & Co. LLC; Goldman, Sachs & Co.; J.P. Morgan Securities LLC; Merrill Lynch, Pierce, Fenner & Smith Inc.; Barclays Capital Inc.; Allen & Company LLC

LitigationEnforcement: IPOs FraudManipulation CaliforniaNews