



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

WENDY LEE, individually and on behalf of all)
others similarly situated,)
)
Plaintiff,)
)
v.) C.A. No. 8458-CS
)
MARK PINCUS, JOHN SCHAPPERT,)
WILLIAM GORDON, REID HOFFMAN,)
JEFFREY KATZENBERG, STANLEY J.)
MERESMAN, SUNIL PAUL, OWEN VAN)
NATTA, MORGAN STANLEY & CO. LLC,)
GOLDMAN, SACHS & CO., and ZYNGA INC.,)
)
Defendants.)

VERIFIED AMENDED CLASS ACTION COMPLAINT

Plaintiff Wendy Lee (“Plaintiff”) alleges upon personal knowledge with respect to herself, and upon information and belief based, *inter alia*, upon the investigation of counsel as to all other allegations, as follows:

NATURE OF THE ACTION

1. This action challenges Defendants’ selective, discriminatory waiver of lockup agreements (the “Lockups”) that they required present and former employees and other shareholders of Zynga Inc. (“Zynga” or the “Company”) to enter into in connection with Zynga’s initial public offering (the “IPO”).

2. As disclosed in the registration statement on Form S-1/A filed by Zynga on December 15, 2011 (the “December S-1”), the Lockups barred sales by substantially all of the Company’s shareholders, including all of its officers and directors, for 165 days following its December 16, 2011 IPO.

3. Less than 90 days after the IPO, however, on March 14, 2012, Zynga announced that its Chairman, Chief Executive Officer and controlling shareholder, Defendant Mark Pincus (“Pincus”), together with other members of Zynga’s board of directors (the “Board”), and certain other senior executives and private equity investors, would sell over 40 million shares of stock in a secondary offering (the “Secondary Offering”), and that their Lockups would be waived to allow the sales to occur. In addition to selectively waiving the Lockups, the timing of the Secondary Offering required that Zynga waive its blackout policy (the “Blackout Policy”), which would have otherwise barred the sales by Pincus and other insiders. The Secondary Offering was completed two weeks later, yielding Pincus net proceeds of \$192 million and paying three other directors – collectively comprising half of the Board – more than \$17 million.

4. The Lockups had been imposed as a condition to underwriting the IPO by the Underwriter Defendants (as defined below), and the Underwriter Defendants selectively waived the Lockups as to Pincus and other selling shareholders to permit the Secondary Offering to occur.

5. While the Secondary Offering allowed members of Zynga’s senior management and Board to cash out early, the Board and Underwriter Defendants did not extend the same opportunity to Zynga’s non-executive and former employees.

6. For non-executive employees, the Lockups were waived but the Blackout Policy barred them from selling for over a month. For former employees, the Lockups remained in effect until their scheduled expiration date, approximately two months after the sales by Pincus and others in the Secondary Offering.

7. Beginning immediately after the Secondary Offering, Zynga’s share price began a precipitous decline. It dropped 29.5% from the Secondary Offering price by the time non-

executive employees were first permitted to sell, a month after the Secondary Offering occurred. By the time the Lockups expired and Plaintiff and other former employees were first allowed to dispose of their shares, Zynga's share price had dropped 49.3% from the Secondary Offering price.

8. By selling before the expiration of the Lockups, the selling Defendants thus nearly doubled the proceeds from their sales. Pincus alone received \$91.5 million more than if he had been required, like Plaintiff and other former employees, to hold through the end of the Lockup period; the other members of the Board similarly profited by more than \$9 million.

9. The Underwriter Defendants also profited from their selective waiver of the Lockups: each firm earned over \$5.3 million in fees and commissions from underwriting the Secondary Offering.

10. The Board members' discriminatory waiver of the Lockups to profit personally constituted a breach of their fiduciary duties to other Zynga shareholders. The Underwriter Defendants' agreement to waive the Lockups, thereby generating additional underwriting fees and commissions for themselves, aided and abetted the Board members' breach of fiduciary duties. All Defendants should be required to disgorge the proceeds of their self-interested and bad faith conduct.

PARTIES

11. Plaintiff is, and was at all times relevant hereto, a shareholder of Zynga. She was employed as a product manager at Zynga between 2009 and May 2011, when she resigned from the Company. In connection with her employment, Plaintiff was awarded incentive stock options in December 2009. On August 2, 2011, Plaintiff acquired 30,000 shares of Zynga through the exercise of her incentive stock options at an exercise price of \$3.805 per share.

Plaintiff liquidated substantially all of such shares after expiration of the Lockups, in September 2012, at a price of \$3.15 per share.

12. Defendant Pincus founded Zynga and has been its Chief Executive Officer (“CEO”), Chief Product Officer, and Chairman since April 2007. Pincus was formerly co-founder, CEO and Chairman at tribe.net, a social networking site, and worked at other technology firms earlier in his career. He sold 16,500,000 shares in the Secondary Offering for net proceeds of \$192,060,000.

13. Defendant John Schappert (“Schappert”) was Zynga’s Chief Operating Officer from May 2011 until August 2012 and was a member of its Board from July 2011 until August 2012. Schappert was formerly Chief Operating Officer of Electronic Arts Inc. He sold 322,350 shares in the Secondary Offering for net proceeds of \$3,752,154.

14. Defendant William “Bing” Gordon (“Gordon”) has been a member of Zynga’s Board since July 2008. Gordon has been a partner at Kleiner Perkins Caufield & Byers, a venture capital firm, since June 2008 and was a co-founder of Electronic Arts Inc., where he was Executive Vice President and Chief Creative Officer from March 1998 to May 2008.

15. Defendant Reid Hoffman (“Hoffman”) has been a member of Zynga’s Board of Directors since January 2008. Hoffman has been a partner at Greylock Partners, a venture capital firm, since November 2009, and was formerly CEO, President and Executive Chair of LinkedIn Corporation between 2003 and 2009. He sold 687,626 shares in the Secondary Offering for net proceeds of \$8,003,967.

16. Defendant Jeffrey Katzenberg (“Katzenberg”) has been a member of Zynga’s Board of Directors since February 2011. Katzenberg is CEO and a member of the board of

directors of DreamWorks Animation SKG Inc., the predecessor of which he co-founded in 1994. He was previously chairman of the board of The Walt Disney Studios.

17. Defendant Stanley J. Meresman (“Meresman”) has been a member of Zynga’s Board of Directors since June 2011. Meresman has been a member of a number of public company boards, and was Senior Vice President and Chief Financial Officer of Silicon Graphics, Inc. from 1989 to 1997.

18. Defendant Sunil Paul (“Paul”) has been a member of Zynga’s Board of Directors since November 2011. Paul has been a partner at Spring Ventures, a venture capital firm, since its formation in 2007, and was formerly the founder and CEO of several technology companies.

19. Defendant Owen Van Natta (“Van Natta”) has been a member of Zynga’s Board of Directors since August 2010. He was Zynga’s Executive Vice President and Chief Business Officer from August 2010 to November 2011 and previously held positions at other social media companies. He sold 505,267 shares in the Secondary Offering for net proceeds of \$5,881,308.

20. Defendant Morgan Stanley & Co. LLC (“Morgan Stanley”) is a Delaware limited liability company with its headquarters located at 1585 Broadway, New York, NY 10036. Morgan Stanley’s businesses include securities underwriting and distribution; financial advisory services; sales, trading, financing and market-making activities in equities, fixed income securities, and related products.

21. Defendant Goldman, Sachs & Co. (“Goldman”) is a New York limited partnership with its headquarters located at 200 West Street, New York, NY 10282. Goldman is a leading investment banking, securities and investment management firm.

22. Defendant Zynga is a Delaware corporation with its headquarters located at 699 Eighth Street, San Francisco, CA 94103. Its history and business are described below. Zynga is

named as a defendant herein solely because it is a party to agreements underlying and relating to the Secondary Offering.

23. The Defendants listed in paragraphs 12 to 19 are referred to herein collectively as the “Director Defendants.” By reason of their positions as members of the Zynga Board, the Director Defendants owe fiduciary duties of due care, good faith, fair dealing, candor and loyalty to Plaintiff and the Class.

24. The Defendants listed in paragraphs 20 and 21 are referred to herein together as the “Underwriter Defendants.” The Underwriter Defendants together underwrote a majority of Zynga’s IPO and the Secondary Offering and served as representatives for the other underwriters of such offerings (collectively, the “Underwriters”). On behalf of all of the Underwriters, they were granted rights under the Lockups by the Underwriting Agreement with the Company, dated December 15, 2011, and subsequently partially and selectively waived such rights in connection with the Secondary Offering.

SUBSTANTIVE ALLEGATIONS

A. Zynga’s Business and History

25. Zynga was originally formed in April 2007 and is a leading publisher of “social games” – games that are played over the internet and involve interaction among players who may not have known each other previously.

26. Zynga’s games are free to play, and are predominantly accessed via facebook.com, among other platforms. Zynga generates revenue primarily through the in-game sale of “virtual goods,” and advertising. Virtual goods are digital representations of real world goods, and are purchased by players to enhance the game-playing experience. Advertising includes branded virtual goods and sponsorships, engagement ads, and mobile ads.

27. Between 2008 and 2011, Zynga's revenues grew rapidly, increasing from \$19.4 million in 2008 to \$1.14 billion in 2011.

28. On December 16, 2011, Zynga conducted the IPO, and its shares became listed in the NASDAQ Global Select Market under the symbol "ZNGA." Zynga sold 100 million shares in its IPO for total proceeds of \$1.0 billion. At the \$10.00 per share IPO price, Zynga had an implied enterprise value of over \$7 billion.

B. Ownership and Control of Zynga

29. Ownership of Zynga is divided among Class A, B and C shares. Class A shares are publicly-traded and are entitled to one (1) vote per share; Class B shares were issued to certain members of management and pre-IPO investors and are entitled to seven (7) votes per share; Class C shares were issued only to Pincus and are entitled to seventy (70) votes per share. All classes vote together as a single class on all matters (including the election of directors) submitted to shareholders, other than certain matters that would differently affect the rights of Class B or Class C holders.

30. Based principally on his ownership of high-vote Class C shares, Pincus held 37.4% of the Company's voting power immediately after the IPO and 36.5% of the Company's voting power immediately prior to the Secondary Offering.

31. By virtue of his voting power and position as Chairman and Chief Executive Officer, Pincus was the controlling shareholder of Zynga at all relevant times, and accordingly owed Plaintiff and the Class fiduciary duties.

32. At all times between the dates of the IPO and the Secondary Offering, Zynga's Board was comprised of the eight Director Defendants.

33. As set forth in the following table, half of the Board's members lacked independence under NASDAQ's listing requirements and rules, and half of the Board's members

also participated in the Secondary Offering and therefore were financially interested in the transactions challenged hereby:

<u>Director</u>	<u>Lacks Independence Under NASDAQ Rules</u>	<u>Seller in Secondary Offering</u>	<u>Proceeds from Secondary Offering</u>
Mark Pincus	Yes (CEO and Chairman)	Yes	\$192,060,000
John Schappert	Yes (Chief Operating Officer)	Yes	\$3,752,154
William "Bing" Gordon	Yes (principal investor)		
Reid Hoffman		Yes	\$8,003,967
Jeffrey Katzenberg			
Stanley J. Meresman			
Sunil Paul			
Owen Van Natta	Yes (recent former executive)	Yes	<u>\$5,881,308</u>
Total			\$209,697,429

34. Because half of the members of the Zynga Board were financially interested in the transactions challenged hereby; and additionally because half of the members of the Zynga Board lacked independence; and additionally because the principal beneficiary of the transactions challenged hereby was Zynga's controlling shareholder, such transactions are not protected by the business judgment rule and are subject to review by the Court for entire fairness.

C. The IPO and the Lockups

35. Prior to its IPO, Zynga entered into the Lockups with Pincus, the other members of its Board, all executive officers, and its non-executive employees, including Plaintiff. The Lockups barred the sale of Zynga stock for 165 days following the December 15, 2011 IPO prospectus, and therefore were scheduled to expire on May 28, 2012. Zynga agreed with the Underwriter Defendants not to waive the sale restrictions imposed thereby without their consent.

As explained in the December S-1 (at 144):

All of our officers and directors and the holders of substantially all of our capital stock have entered into lock-up agreements with us which provide that they will not offer, sell or transfer any shares of our common stock beneficially owned by them for 165 days, subject in certain cases to extension under certain circumstances, following the date of this

prospectus. We have agreed with Morgan Stanley & Co. LLC and Goldman, Sachs & Co. not to waive these lock-up restrictions without their prior consent.

36. The agreement with Morgan Stanley and Goldman, acting as representatives of all of the Underwriters, was set forth in Section 7 of the Underwriting Agreement dated December 15, 2011 between the Company and the Underwriters, which provided:

The Company covenants with each Underwriter as follows: . . . (j) Not to amend, modify or terminate, or waive any provision of, any of the “lock-up” agreements with the officers, directors or stockholders of the Company described in Section [1(ii)] above without the prior written consent of Morgan Stanley & Co. LLC and Goldman, Sachs & Co. on behalf of the Underwriters.

37. The December S-1 explicitly warned that additional stock sales could harm Zynga’s trading price. The Company cautioned, among the “Risks Related to This Offering and Ownership of Our Class A Common Stock” (at 30) that:

Future sales of our Class A common stock in the public market could cause our share price to decline. Sales of a substantial number of shares of our Class A common stock in the public market after this offering, or the perception that these sales might occur, could depress the market price of our Class A common stock and could impair our ability to raise capital through the sale of additional equity securities.

38. Elsewhere in the December S-1 (at 143), Zynga further noted the existence of the Lockups and other restrictions on resale, and cautioned that “sales of our Class A common stock in the public market after such restrictions lapse, or the perception that those sales may occur, could adversely affect the prevailing market price at such time and our ability to raise equity capital in the future.”

39. The academic literature confirms the negative impact of post-IPO insider sales. As reported in a paper by Daniel J. Bradley, et. al., *Venture Capital and IPO Lockup Expiration: An Empirical Analysis*, 24 J. FIN. RES. 465 (2001), “[b]ased on a sample of 2,529 IPOs for the

ten-year period ending in 1997, we find that lockup expirations are associated with significant price declines.”

40. Bradley et al. further explain:

Because the lockup expiration date represents the first opportunity for insiders to sell, significant share price revisions are possible as market participants infer private information from insider activity. In addition, the percentage of shares subject to lockup often exceeds 100 percent of the shares in public hands. As a result, the possibility of a large, sudden increase in supply exists, which may also impact share values.

See also Alon Brav & Paul A. Gompers, *Insider Trading Subsequent to Initial Public Offerings: Evidence from Expirations of Lock-Up Provisions*, 16 REV. FIN. STUD. 1, 3 (2003) (finding statistically significant stock price declines on lockup expiration and noting that the number of shares sold by insiders and existence of venture capital financing were associated with greater price declines); Laura Casares Field & Gordon Hanka, *The Expiration of IPO Lockups*, 56 J. FIN. 471 (2001) (finding statistically significant stock price declines on lockup expiration and that such declines were strongly correlated with the existence of venture capital financing).

41. Thus, according to both the Company’s own statement and the relevant scholarship, the ability to sell before the expiration of the Lockups provided a material benefit to the selling shareholders, at the expense of other shareholders who remained subject to the Lockups.

D. The Secondary Offering

42. On March 14, 2012, Zynga filed a new registration statement on Form S-1 for the Secondary Offering. The Secondary Offering was underwritten by the same group of underwriters as the IPO.

43. As set forth in the Form S-1/A filed by the Company on March 23, 2012 (the “March S-1”), Zynga disclosed that “[c]ertain stockholders of Zynga Inc. are offering

42,969,153 shares of Class A common stock. We will not receive any proceeds from the sale of shares in this offering.” Zynga itself therefore did not benefit from the Secondary Offering.

44. By far the single largest seller in the Secondary Offering was Pincus, who received proceeds, net of underwriting discounts and commissions, of \$192,060,000 – nearly 40% of the total proceeds from the offering.

45. Three other members of the Board, Schappert, Hoffman and Van Natta, each received multi-million dollar payouts – over \$3.7 million, \$8.0 million, and \$5.8 million, respectively.

46. The other beneficiaries were various venture capital firms and other Company insiders.

47. As the March S-1 stated, Pincus, Schappert, Hoffman, Van Natta and the other selling shareholders were the beneficiaries of a selective waiver of the Lockups by the Board and the Underwriter Defendants. The March S-1 explained (at 29):

Substantially all of our outstanding shares, other than those sold in our initial public offering, are subject to lock-up agreements from that offering that expire on May 28, 2012. We are releasing the selling stockholders from these lock-ups to permit them to sell up to 49,414,526 shares (including the underwriters’ option to purchase additional shares) in this offering.

48. The Underwriters Defendants’ waiver of the Lockups for the participants in the Secondary Offering was memorialized in an underwriting agreement dated on or about March 28, 2012.

49. The Company’s other, non-executive employees and former employees did not receive the same favored treatment. Non-executive employees were released from their Lockups, but not from Zynga’s Blackout Policy, which barred sales for over a month. As explained in the March S-1:

In addition, we are releasing non-executive employees holding an aggregate of approximately 114,000,000 shares from the lock-up, effective upon closing of this offering. However, these employees are subject to our trading window “blackout” policy and thus will not be able to sell such shares until the third business day following our earnings release for the first quarter, which we currently expect to occur in the last week of April 2012, and as a result expect these shares to first be available for sale on or about April 30, 2012.

50. The blackout period later expired more than a month after the sales in the Secondary Offering, on May 1.

51. Former employees received no relief from the Lockups, and remained barred from selling their Zynga shares until May 29, 2012.

52. Half of the Board, by participating in the Secondary Offering, directly benefitted from the selective, discriminatory waiver of the Lockups to which they were subject. The Underwriter Defendants also directly profited. By agreeing to waive the Lockups applicable to members of the Board, senior management and the other selling shareholders, they each received fees and commissions totaling more than \$5.3 million in connection with underwriting the Secondary Offering.

53. While Zynga itself offered no shares in the Secondary Offering and derived no proceeds from it, the Secondary Offering was possible only because the Board and the Underwriter Defendants approved it. As the foregoing description makes clear, the Secondary Offering occurred only after the Company (i) partially and selectively waived the Lockups, (ii) waived its Blackout Policy for the members of the Board and senior management who participated, and (iii) prepared and filed the March S-1.

E. Pre-IPO Sales Opportunities Extended to Zynga Employees Illustrate the Viability of a Non-Discriminatory Offering

54. The viability of extending sales opportunities in a non-discriminatory manner to all Zynga employees is reflected by pre-IPO offers to purchase directed to them.

55. In late 2009, DST Global Limited, an investment firm, announced an Offer to Purchase up to 580,000 shares of Zynga stock from employees with at least one year of tenure (the “DST Offer”).

56. Under the DST Offer, each qualifying employee was eligible to tender up to 10% of his or her vested holdings of Zynga stock. Zynga facilitated the administration of the DST Offer by transmitting the offering documents to employees, preparing disclosure materials, and holding informational meetings for employees.

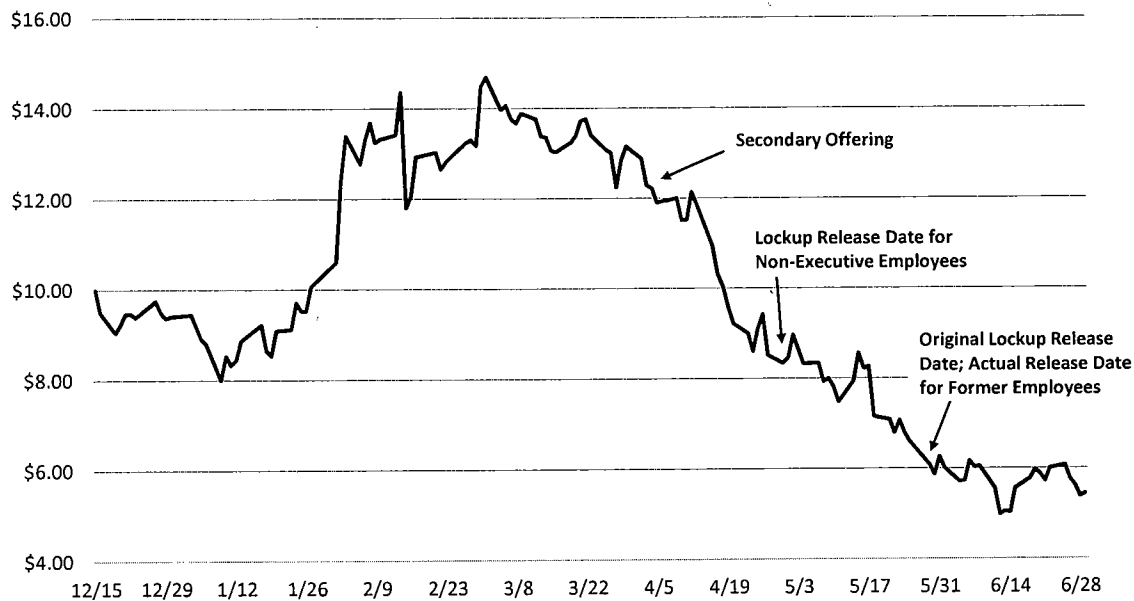
57. In August 2010, a similar Offer to Purchase was made to Zynga employees by affiliates of Silver Lake Partners, a private equity firm that subsequently participated in the Secondary Offering (the “Silver Lake Offer”).

58. The Silver Lake Offer, for up to 10,127,580 shares, was also open to employees with one year of tenure at Zynga and was capped at approximately 77,500 shares (worth \$1,000,000) per employee. Zynga facilitated the administration of the Silver Lake Offer by transmitting the offering documents to employees, preparing disclosure materials, and holding informational meetings for employees.

59. Zynga’s ability to administer a non-discriminatory offering was further assisted by its requirement that employees hold their Zynga shares in accounts maintained at Morgan Stanley, permitting uniform administration of matters such as the Lockups, the Blackout Policy, stock option exercise, restricted stock unit conversion, and Zynga’s Employee Stock Purchase Plan.

F. The Subsequent Rundown in Zynga’s Share Price

60. Immediately following the Secondary Offering, Zynga shares began a precipitous decline, losing more than half their value between March 29 and May 29, 2012:



61. As shown above, the Secondary Offering price of \$12.00 was 42% higher than Zynga’s closing price on May 1, the first opportunity that non-executive employees had to sell, and the Secondary Offering price was nearly *double* Zynga’s share price on May 29 – the first date on which former employees, including Plaintiff, were permitted to sell their shares.

62. Had Pincus and the other Director Defendants been required to wait until the Lockups expired – as Plaintiff and other former Zynga employees were required to do – they would have realized barely more than half the amount they received through the Secondary Offering. As set forth in the following table, the early Lockup waiver that they approved for themselves was worth nearly one hundred million dollars:

<u>Director</u>	<u>Profit from Lockup Waiver</u>
Mark Pincus	\$91,575,000
John Schappert	\$1,789,043
Reid Hoffman	\$3,816,324
Owen Van Natta	\$2,804,232
Total	\$99,984,599

63. By selectively waiving the Lockups for themselves and favoring their own interests over those of other similarly-situated shareholders, the Director Defendants breached their fiduciary duties to Plaintiff and the Class.

64. By consenting to the selective and discriminatory waiver of the Lockups in connection with the Secondary Offering, the Underwriter Defendants aided and abetted the Director Defendants' breaches of fiduciary duties.

CLASS ACTION ALLEGATIONS

65. Plaintiff brings this action as a class action pursuant to Court of Chancery Rule 23 on behalf of all Zynga shareholders who were subject to the Lockups, and who were not permitted to sell shares in the Secondary Offering (the "Class"). Excluded from the Class are Defendants and any person, firm, trust, corporation, or other entity related to or affiliated with any Defendants.

66. This action is properly maintainable as a class action.

67. The Class is so numerous that joinder of all members is impracticable. The number of Zynga shareholders who were subject to the Lockups but who were not permitted to sell shares in the Secondary Offering is believed to exceed 1,000. Members of the Class are therefore so numerous that it is impracticable to bring them all before this Court.

68. Questions of law and fact exist that are common to the Class and which predominate over questions affecting any individual Class member including, among others:

(a) Whether the Director Defendants breached the fiduciary duties they owe to Plaintiff and the Class in connection with waiver of the Lockups and the Blackout Policy;

(b) Whether the Underwriter Defendants knowingly participated in, and thereby aided and abetted, the breaches of fiduciary duties by the Director Defendants; and

(c) The damages suffered by the members of the Class.

69. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. Plaintiff's claims are typical of the claims of the other members of the Class and Plaintiff has the same interests as the other members of the Class. Accordingly, Plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class.

70. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendants, or adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members not party to the adjudications or substantially impair or impede their ability to protect their interests. Plaintiff anticipates that there will be no difficulty in the management of this litigation as a class action.

CLAIMS FOR RELIEF

COUNT I For Breach of Fiduciary Duty (Against the Director Defendants)

71. Plaintiff repeats and realleges the allegations in paragraphs 1 through 70.

72. As directors of Zynga, the Director Defendants owed Plaintiff and the Class, as shareholders, a fiduciary duty of loyalty.

73. The Secondary Offering was initiated by the self-interested Director Defendants. As shown above, the purpose and effect of the Secondary Offering was to give preferential treatment to Zynga's controlling shareholder, certain of the other Director Defendants, and other members of management so as to allow them to reap large profits from the sale of Zynga stock in advance of the expiration of the Lockups. The timing of the Secondary Offering was also set by the Director Defendants and enabled them to sell Zynga stock at higher prices, in advance of the

expiration of the Lockups, than would have otherwise been possible. The structure of the Secondary Offering was designed to favor the Directors Defendants at the expense of Zynga's other shareholders. There were no procedural protections for Zynga's other shareholders. There was no negotiation by disinterested representatives of those shareholders and the Secondary Offering was approved by a self-interested board of directors, acting to serve the interests of its own members and the Company's controlling shareholder.

74. By selectively releasing the Lockups, selectively waiving the Blackout Policy, and authorizing the Secondary Offering to benefit themselves, the Director Defendants breached their fiduciary duty of loyalty.

75. The Secondary Offering, by favoring members of the Board and other senior executives at the expense of Plaintiff and the other similarly-situated shareholders comprising the Class, was not entirely fair.

76. The Director Defendants and other shareholders participating in the Secondary Offering were unjustly enriched by the Director Defendants' fiduciary breaches, and Plaintiff and the Class were damaged thereby.

COUNT II
For Aiding and Abetting Breach of Fiduciary Duty
(Against the Underwriter Defendants)

77. Plaintiff repeats and realleges the allegations in paragraphs 1 through 76.

78. The Director Defendants breached their fiduciary duties to Plaintiff and the Class as set forth above.

79. Such breaches of fiduciary duties could not and would not have occurred but for the conduct of the Underwriter Defendants in waiving the Lockups to which the participants in the Secondary Offering were subject.

80. The Underwriter Defendants had knowledge that they were aiding and abetting the Director Defendants' breaches of fiduciary duty.

81. The Underwriter Defendants profited from aiding and abetting the Director Defendants' breaches of fiduciary duty through the receipt of over \$10.6 million in fees and commissions from underwriting the Secondary Offering.

82. The Underwriter Defendants, together with the shareholders participating in the Secondary Offering and the other Underwriters, were unjustly enriched by the Director Defendants' fiduciary breaches, and Plaintiff and the Class were damaged thereby.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and the Class, demands judgment as follows:

- A. Declaring this action properly maintainable as a class action and certifying Plaintiff as Class representative and her counsel as Class counsel;
- B. Directing Defendants, jointly and severally, to disgorge the amounts by which they and the other Underwriters were unjustly enriched, and account to Plaintiff and the Class for all damages suffered by them, as a result of the wrongs complained of herein;
- C. Awarding Plaintiff the costs and disbursements of this action, including a reasonable allowance for the fees and expenses of Plaintiff's attorneys and experts; and
- D. Granting Plaintiff and the other members of the Class such other and further relief as is just and equitable.

PRICKETT, JONES & ELLIOTT, P.A.

By: /s/ Elizabeth M. McGeever

Elizabeth M. McGeever (DE Bar I.D. 2057)

J. Clayton Athey (DE Bar I.D. 4378)

1310 King Street

Wilmington, DE 19801

(302) 888-6500

OF COUNSEL:

WOHL & FRUCHTER LLP

Ethan D. Wohl

570 Lexington Avenue, 16th Floor

New York, New York 10022

(212) 758-4000

Attorneys for Plaintiff

Dated: January 17, 2014

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of January, 2014, I caused a copy of the foregoing **Verified Amended Class Action Complaint** to be served through File & ServeXpress upon the following counsel of record:

Danielle Gibbs
Nicholas J. Rohrer
Paul J. Loughman
YOUNG CONAWAY STARGATT & TAYLOR, LLP
Rodney Square
1000 North King Street
Wilmington, DE 19801

*Attorneys for Defendants Zynga Inc., Mark
Pincus, John Schappert, William Gordon, Reid
Hoffman, Jeffrey Katzenberg, Stanley J.
Meresman, Sunil Paul, and Owen Van Natta*

Gregory V. Varallo
Thomas A. Uebler
Robert L. Burns
RICHARDS, LAYTON & FINGER, P.A.
One Rodney Square
920 North King Street
Wilmington, Delaware 19801

*Attorneys for Defendants Morgan Stanley & Co.
LLC and Goldman, Sachs & Co.*

/s/ Elizabeth M. McGeever
Elizabeth M. McGeever (ID No. 2057)



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

WENDY LEE, individually and on behalf of all)
others similarly situated,)

Plaintiff,)

v.)

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Defendants.)

VERIFICATION AND RULE 23(aa) AFFIDAVIT OF WENDY LEE

STATE OF NEVADA)

) SS:

COUNTY OF CLARK)


Wendy Lee, having first been duly sworn according to law, states:

1. I am the plaintiff in this action.

2. I have read the foregoing Verified Amended Class Action Complaint and the matter contained therein insofar as it concerns my acts and deeds is true, and insofar as it relates to the acts and deeds of other persons is believed by me to be true and correct.

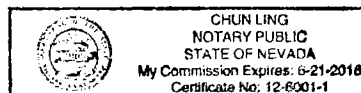
3. I have not received, been promised or offered and will not accept any form of compensation, directly or indirectly, for prosecuting or serving as a representative

party in this litigation, except for (i) such damages or other relief as the Court may award me as a member of the class, (ii) such fees, costs and other payments as the Court expressly approves to be paid to me or on my behalf, or (iii) reimbursement, paid by my attorneys, of actual and reasonable out-of-pocket expenditures incurred directly in connection with the prosecution of this action.



Wendy Lee

SWORN TO AND SUBSCRIBED
before me, a notary public for the state
and county aforesaid, this 16 day of
January, 2014





NOTARY PUBLIC