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Zynga Inks \$23M Investor Settlement Over Pre-IPO Claims

By **Tom Zanki**

Law360, New York (August 7, 2015, 9:10 PM ET) -- Zynga Inc. has reached a \$23 million settlement ending class action litigation with investors who accused the social media gamemaker of misleading shareholders about its prospects leading up to a 2011 initial public offering, according to a regulatory filing Friday.

The FarmVille creator said the preliminary agreement, reached Tuesday after a mediation session overseen by retired federal judge Edward Infante, still requires final approval in California federal court. The company said the settlement will be funded by insurance and will have no impact on its financial statements if finalized in its current form.

Zynga did not elaborate on terms of the settlement, which it disclosed in its quarterly Securities and Exchanges Commission filing. Court records Friday did not indicate a settlement.

"We are pleased with this significant step toward resolution of this litigation," Zynga said in a statement. "We believe it is beneficial to Zynga and its shareholders to remove the distraction of protracted litigation so that we can continue to focus on our forward-looking business. This settlement would have no financial impact on Zynga."

The agreement comes months after Judge Jeffrey S. White **refused to reconsider his denial** of Zynga's bid to dismiss the suit, ruling that investors who bought shares between February and July 2012 sufficiently alleged that the company's misrepresentations cost them money. Lawyers for the plaintiffs were also happy with the outcome.

"We are pleased with the result and believe it represents a significant win for class members," plaintiffs attorney Jeffrey Norton told Law360.

The class action, **first filed in 2012** by shareholder David Fee, claimed that Zynga misled investors about financial projections around time of its 2011 IPO, as well as its secondary offering in 2012.

Investors alleged Zynga leaders, including co-founder Mark Pincus, former Chief Financial Officer David M. Wehner and former Chief Operating Officer John Schappert, concealed the fact that the company's launch of its new Web games was delayed and misrepresented its booking numbers, which investors did not realize were fully dependent on Facebook's online gaming platform.

Investors also claimed the company promised they would see long-term growth in 2012 thanks to investments in international market development, mobile games and technology infrastructure.

That growth failed to happen, and investors say they lost money when Zynga's stock took a dive in 2012, plummeting more than 37 percent in one day, down from a close of \$5.08 per share on July 25 to \$3.18 on July 26. This was the result of an artificially inflated stock price, the investors say.

When Zynga went public in December 2011, it offered its stocks at \$11 a share, with a market valuation of \$10 billion. Shareholders of Zynga, which develops online social games including FarmVille, Mafia Wars and Words with Friends, said that before that stock dive, the company unloaded over half a billion dollars of personally held stock in a second offering in April.

Judge White first **rejected a motion** to dismiss by Zynga in March, stating that shareholder claims regarding the falsity and materiality of the company's statements could be supported. He also dismissed an earlier version of the consolidated class action in February 2014, allowing the plaintiffs a chance to amend their suit.

They then trimmed down their suit significantly by dropping certain defendants, shortening the class period, abandoning all claims they had raised under the Securities Act of 1933 and tossing references to certain confidential witnesses, court documents say.

Fee is represented by Nicole Lavalley, Joseph J. Tabacco Jr., Victor S. Elias and Kristin Moody of Berman DeValerio and Jeffrey Norton and Courtney Chenette of Newman Ferrara LLP.

Zynga is represented by Jordan Eth, Anna Erickson White and Kevin A. Calia of Morrison & Foerster LLP. Zynga counsel did not immediately return messages seeking comment.

The consolidated case In re: Zynga Inc. Securities Litigation, case number 4:12-cv-04007, in the U.S. District Court of the Northern District of California.

--Additional reporting by Maya Rajamani and Linda Chiem. Editing by Philip Shea.

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