IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE ZYNGA INC. SECURITIES LITIGATION

No. C 12-04007 JSW

This Document Relates To:
All Actions

**ORDER DENYING DEFENDANTS' MOTION TO DISMISS**

Now before the Court is the motion to dismiss filed by defendants Zynga, Inc. ("Zynga"), Mark Pincus, David M. Wehner, and John Schappert (collectively "Defendants"). Having carefully reviewed the parties' papers and considered their arguments and the relevant legal authority, and good cause appearing, the Court DENIES Defendants' motion to dismiss.

**BACKGROUND**

Founded in 2007, Zynga develops, markets, and operate online social games played on social networking sites like Facebook and on mobile devices. (First Amended Complaint ("FAC") at ¶¶ 3, 38.) Plaintiffs assert two claims under the Securities and Exchange Act of 1934 for violations of Sections 10(b) and 20(a) in connection with Zynga's initial and secondary public offerings. Plaintiffs allege that leading up to Zynga's initial public offering and continuing throughout the class period, Defendants engaged in a deliberate scheme to mislead investors by portraying the online gaming company as financially strong in order to bring the company public and then allowing a select few Zynga insiders to reap proceeds from

the sale of their personally-held stock before the stock price collapse. Plaintiffs allege that Defendants concealed internal, non-public information demonstrating that Zynga's bookings were declining and that there were significant product release delays and a planned platform change at Facebook that Defendants knew would negatively affect the company's business.

On July 30, 2012, Plaintiff Mark H. DeStefano, individually and on behalf of others similarly situated, filed a complaint against Zynga and its officers for violation of Section 11, 12(a)(2), and 15 of the Securities Act of 1933, and Section 10(b) and 20(a) of the Security Exchange Act of 1934, and Rule 10b-5 promulgated thereunder. After the Court related matters and lead plaintiff and lead counsel were selected, the Plaintiffs filed an amended consolidated complaint asserting three claims under the Securities Act of 1933, for violations of Section 11, 12(a)(2) and 15, in connection with Zynga's initial and secondary public offerings and three claims under the Securities and Exchange Act of 1934, for violations of Sections 10(b), 20(a), and 20A. In February, this Court dismissed the consolidated complaint with leave to amend.

On March 31, 2014, Plaintiff filed a first amended consolidated complaint which shortened the class period, abandoned the claims under the Securities Act of 1933, and removed reference to five of eleven former confidential witnesses. On May 2, 2014, Defendants filed a motion to dismiss the first amended consolidated complaint.

The Court will address additional facts as necessary in the remainder of this order.

## ANALYSIS

### A. Applicable Legal Standards on Motion to Dismiss.

A motion to dismiss is proper under Federal Rule of Civil Procedure 12(b)(6) where the pleadings fail to state a claim upon which relief can be granted. The Court's "inquiry is limited to the allegations in the complaint, which are accepted as true and construed in the light most favorable to the plaintiff." *Lazy Y Ranch LTD v. Behrens*, 546 F.3d 580, 588 (9th Cir. 2008). Even under the liberal pleading standard of Federal Rule of Civil Procedure 8(a)(2), "a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not

do." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)).

Pursuant to *Twombly*, a plaintiff must not merely allege conduct that is conceivable but must instead allege "enough facts to state a claim to relief that is plausible on its face." *Id.* at 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556). If the allegations are insufficient to state a claim, a court should grant leave to amend, unless amendment would be futile. *See, e.g., Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 296 (9th Cir. 1990); *Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv., Inc.*, 911 F.2d 242, 246-47 (9th Cir. 1990).

As a general rule, "a district court may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion." *Branch v. Tunnell*, 14 F.3d 449, 453 (9th Cir. 1994), *overruled on other grounds by Galbraith v. County of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002) (citation omitted). However, documents subject to judicial notice may be considered on a motion to dismiss. In doing so, the Court does not convert a motion to dismiss to one for summary judgment. *See Mack v. South Bay Beer Distrib.*, 798 F.2d 1279, 1282 (9th Cir. 1986), *overruled on other grounds by Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104 (1991).

Federal Rule of Civil Procedure 8 requires plaintiffs to "plead a short and plain statement of the elements of his or her claim." *Bautista v. Los Angeles County,* 216 F.3d 837, 840 (9th Cir. 2000). Rule 8 requires each allegation to be "simple, concise, and direct." Fed. R. Civ. P. 8(d)(1). Where the allegations in a complaint are "argumentative, prolix, replete with redundancy and largely irrelevant," the complaint is properly dismissed for failure to comply with Rule 8(a). *McHenry v. Renne,* 84 F.3d 1172, 1177, 1178-79 (9th Cir. 1996); *see also Nevijel v. North Coast Life Ins. Co.,* 651 F.2d 671, 673-74 (9th Cir. 1981) (affirming dismissal of complaint that was " 'verbose, confusing and almost entirely conclusory'"). "Something labeled a complaint but . . . prolix in evidentiary detail, yet without simplicity, conciseness and

clarity as to whom plaintiffs are suing for what wrongs, fails to perform the essential functions of a complaint," and "impose[s] unfair burdens on litigants and judges." *McHenry,* 84 F.3d at 1179-80.

Where a plaintiff alleges fraud, however, Rule 9(b) requires the plaintiff to state with particularity the circumstances constituting fraud. *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541, 1547-49 (9th Cir. 1994) (en banc) (superseded by the Private Securities Litigation Reform Act ("PSLRA") on other grounds). In the securities context, the pleading requirements are even more stringent.

**B. Private Securities Litigation Reform Act Standards.**

"At the pleading stage, a complaint stating claims under section 10(b) and Rule 10b-5 must satisfy the dual pleading requirements of . . . Rule 9(b) and the PSLRA." *Zucco Partners, LLC v. Digimarc Corp.*, 552 F.3d 981, 990 (9th Cir. 2009). The PSLRA requires that "a complaint 'plead with particularity both falsity and scienter.'" *Id.* (quoting *Gompper v. VISX*, 298 F.3d 893, 895 (9th Cir. 2002), in turn quoting *Ronconi v. Larkin*, 253 F.3d 423, 429 (9th Cir. 2001)). Where a plaintiff asserts a Section 20(a) claim based on an underlying violation of section 10(b), the pleading requirements for both violations are the same. *See In re Ramp Networks, Inc. Sec. Litig.*, 201 F. Supp. 2d 1051, 1063 (N.D. Cal. 2002).

Under the PSLRA, actions based on allegations of material misstatements or omissions must "specify each statement alleged to have been misleading, the reason or reasons why the statement is misleading, and, if an allegation regarding the statement or omission is made on information and belief, the complaint shall state with particularity all facts on which that belief is formed." 15 U.S.C. §78u-4(b)(1). In order adequately to plead scienter, the PSLRA requires that the plaintiff "'state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind.'" *Zucco Partners*, 552 F.3d at 991 (quoting 15 U.S.C. § 78u-4(b)(2)). If the allegations are insufficient to state a claim, a court should grant leave to amend, "unless it is clear that the complaint could not be saved by any amendment." *Id.* at 989 (quoting *Livid Holdings Ltd. v. Solomon Smith Barney, Inc.*, 416 F.3d 940, 946 (9th Cir. 2005)).

**C. Sufficiency of Allegations of Rule 10(b) Violation.**

Section 10(b) of the Exchange Act provides, in part, that it is unlawful "to use or employ in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the [SEC] may prescribe." 15 U.S.C. § 78j(b). Rule 10b-5, promulgated under Section 10(b), makes it unlawful for any person to use interstate commerce: (a) to employ any device, scheme, or artifice to defraud; (b) to make any untrue statement of material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security. 17 C.F.R. § 240.10b-5.

For a claim under Section 10(b) and Rule 10b-5 to be actionable, a plaintiff must allege: (1) a misrepresentation or omission; (2) of material fact; (3) made with scienter; (4) on which the plaintiff justifiably relied; (5) that proximately caused the alleged loss. *See Binder v. Gillespie*, 184 F.3d 1059, 1063 (9th Cir. 1999). A complaint must "specify each statement alleged to have been misleading, the reason or reasons why the statement is misleading, and, if an allegation regarding the statement or omission is made on information and belief, the complaint shall state with particularity all facts on which that belief is formed." 15 U.S.C. § 78u-4(b)(2). In order to avoid having the action dismissed, a plaintiff must "plead with particularity both falsity and scienter." *Ronconi*, 253 F.3d at 429.

To assist the Court in determining whether a plaintiff has satisfied this heightened pleading standard, "the Supreme Court has provided three points of instruction: (1) 'courts must, as with any [12(b)(6)] motion to dismiss . . ., accept all factual allegations in the complaint as true'; (2) 'courts must consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss'; and (3) 'in determining whether the pleaded facts give rise to a strong inference of scienter, the court must take into account plausible opposing inference.'" *In re NVIDIA Corp. Sec. Litig.*, 768 F.3d

1046, 1052 (9th Cir. 2014) (citing *Telltabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322-23 (2007)).

In the motion to dismiss, Defendants contend that Plaintiff fails to satisfy the heightened pleading requirements under the PSLRA. In particular, Defendants argue that, with regard to Plaintiff's first claim for relief: (1) Plaintiff has failed to plead with particularity that Defendants made false or misleading statements; (2) Plaintiff has failed to plead with particularity facts demonstrating a strong inference of scienter; and (3) Plaintiff has failed to plead loss causation.

**1. Falsity and Materiality of Statements.**

The PSLRA requires that a plaintiff allege with the requisite particularity each statement alleged to be false or misleading, the reason or reasons why the statement was false or misleading, and if those allegations are made on information and belief, all facts on which that belief is formed. *See* 15 U.S.C. § 78u-4(b)(1)(B); *see also Employers Teamsters Local Nos. 175 and 505 Pension Trust Fund v. Clorox Co.*, 353 F.3d 1125, 1134 (9th Cir. 2004). To be actionable under Section 10(b) and Rule 10b-5, an alleged omission must render some affirmative public statement misleading as to a material fact. In order for an omission to be misleading, "it must affirmatively create an impression of a state of affairs that differs in a material way from the one that actually exists." *See Brody v. Transitional Hospitals Corp.*, 280 F.3d 997, 1006 (9th Cir. 2002) (citing *McCormick v. The Fund American Cos.*, 26 F.3d 869, 880 (9th Cir. 1994)). To fulfill the materiality requirement, "'there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the total mix of information made available.'" *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988) (quoting *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976)).

In this matter, Plaintiff alleges that Defendants made false and misleading statements and omissions about: (1) assuring investors that its bookings were strong when there were declines in booking numbers; (2) representing that Zynga's new game pipeline was robust when it was suffering from substantial delays; (3) failing to disclose potential known changes to the

Facebook platform that would materially harm Zynga's business; and (4) issuing positive guidance and assurances for full year 2012 that were weighted toward the back half of the year.

**a. Representations About Bookings.**

Plaintiff alleges that Defendants misled investors by representing that the company "grew [its] audience and monetization to their highest levels and delivered a record quarter in terms of bookings." (FAC ¶ 90.) The company further represented that it was experiencing "solid growth" in bookings and "accelerating bookings growth on a sequential basis." (*Id.* ¶¶ 90, 106.) Defendants contend that their representations about the strength of their bookings were not false and misleading because their reported financial results were the highest in the company's history. (*See* Request for Judicial Notice ("RJN"), Ex. 2 at 37, Ex. 6 at 19.)[1] In this regard, however, Plaintiff disputes the positive representations of the strength of the company's booking during the class period. Plaintiff, citing the information from confidential witnesses with access to daily reports on Zynga's bookings, alleges that the bookings were in fact declining during the class period. (*See, e.g.,* FAC ¶¶ 69-72, 74, 82, 149-153.) Although the company may have reported large bookings after the fact, Plaintiff contends that the bookings declined significantly during the class period and yet Defendants continued to represent to the public that the bookings were strong. (*See id*. at ¶¶ 107-109, 115-117, 119-120.)

Defendants also argue that the allegations of declines in bookings during the class period lack the particularity necessary to show that Zynga's statements were false when made. Defendants argue that the confidential witnesses do not have sufficient personal knowledge of the company's company-wide financials to make representations with personal knowledge of the company's bookings during the relevant time period. However, the confidential witnesses specifically state that they had access the company's daily accounting of its user and spending

[1] The Court GRANTS Defendants' request for judicial notice of the company's SEC filings. *See* Fed. R. Evid. 201(b). However, because Plaintiff contests the accuracy of the contents of the company's public filings, the Court does not adopt the representations made in the documents for the truth of the matters asserted, but merely accepts that the public filings were made. *See In re Countrywide Fin. Corp. Sec. Litig.*, 588 F. Supp. 2d 1132, 1160 (C.D. Cal. 2008) ("Defendants assert that these documents put the truth on the market, thereby foreclosing the possibility that Plaintiffs 'relied' on the misrepresentations in paying a market price for the securities, The Court takes judicial notice of these prospectuses, but not for the truth of the matters asserted therein.") (citation omitted)).

numbers. (*See, e.g., id.* at ¶¶ 67-68, 70-72, , 74, 77-84, 86.) The Court finds that the confidential witnesses state sufficient personal knowledge of the daily reports of game users and money spent on games. *See Zucco Partners*, 552 F.3d at 995 (holding that a witness must have "personal knowledge of the events they report").

Lastly, Defendants argue that, contrary to Plaintiff's contentions, the company never represented that "declining DAU [daily active users] figures were not a concern because they have no impact on bookings." (Opp. Br. at 4.) Zynga maintains instead that it represented that "daily active users and monetization are not directly related." (Br. at 8; Reply at 4.) The Court finds that there is no dispute here – the complaint itself demonstrates that daily active user numbers and the bookings may, in fact, not align as users may try new games without staying with them long enough to spend money on game add-ons, which increases the bookings figure. (*See* FAC ¶¶ 57, 120.)

Accordingly, the Court finds that Plaintiff has made out sufficient allegations of misrepresentations about bookings.

**b. Representations About New Game Pipeline Growth.**

Plaintiff alleges that the Zynga Defendants represented that its existing game pipeline was "strong," "robust," and "very healthy." (*See id.* at ¶¶ 93, 94, 111, 122.) Plaintiff alleges that these statements were misleading because the game development pipeline was experiencing substantial delays and thus Zynga's pipeline of games that could be released in 2012 was materially weaker than represented. (*See id.* at ¶¶ 75, 84, 86, 95, 112, 123.)

Defendants argue that these statements are not materially false or misleading and cannot form the basis of the securities claim because (1) delays in launching certain games did not indicate that the pipeline was weak, (2) in fact, the pipeline was strong in 2012; and (3) the statements themselves are inactionable as business puffery. Defendants contend that delays in launching did not obviate the truth of the statements that the pipeline was robust and strong. In fact, Defendants proffer uncontested evidence that Zynga was able to launch 22 games in 2012, compared to only nine games the previous year. (RJN, Ex. 1 at 82-84; Ex. 5 at 39, 69-72; Ex. 8 at 44.) Although Plaintiff contends the delays occurred in the class period, the representations,

when made, appear to concern the 2012 full year. Accordingly, Defendants' general enthusiasm for its pipeline of games appears to be an assessment of the overall development of games for the year.

Regardless of the ultimate veracity of the company's enthusiasm, the type of representations about the pipeline of games as "strong," "robust," and "very healthy" is not actionable as a matter of law as business puffery. *See In re Cutera Sec. Litig.*, 610 F.3d 1103, 1110 (9th Cir. 2010) ("[M]ildly optimistic, subjective assessment hardly amounts to a securities violation."); *see also In re Syntax Corp. Sec. Litig.*, 855 F. Supp. 1086, 1095 (N.D. Cal. 1994) (holding as non-actionable puffing the phrases "we're doing well and I think we have a great future," "business will be good this year," and "new products are coming in a wave, not in a trickle . . . old products are doing very well."). The representations at issue here are similarly inactionable.[2]

**c. Representations About Changes to the Facebook Platform.**

The parties do not contest that Zynga warned investors that changes to the Facebook platform could materially adversely impact its business. However, Plaintiff contends that Defendants knew about the specific content of an impending change to the Facebook platform that would in fact considerably alter the gaming company's accessibility to users on Facebook. (*See* FAC ¶¶ 99, 102, 113.) Plaintiff alleges that one of its confidential witnesses indicated that Zynga was first informed about the specific changes to the platform for online gaming in April 2012 and that executives would have known about the change earlier. (*Id.* at ¶ 85.) The confidential witness states that Zynga knew Facebook was changing its platform in a way that would negatively impact bookings and that Zynga had in fact beta tested the specific platform changes. (*Id.*) The witness further alleges that the upcoming changes were included in weekly Executive Summary to Zynga's upper management. (*Id.*)

[2] To the extent Plaintiff contends that the enthusiastic forecasts about the game pipeline in 2012 were only partial information and choosing to speak about the Zynga pipeline required full disclosure, the Court finds that the subject of the disclosure about a robust pipeline was more akin to the volume of games, not the potential timing of their release, and is therefore remains not misleading or actionable. *See Brody*, 280 F.3d at1006.

Defendants argue that they cannot be required to disclose a third party's plans because "another company's plans cannot be known to a certainty." *In re Stacs Elecs. Sec. Litig.*, 89 F.3d 1399, 1407 (9th Cir. 1996). The claimed misrepresentation, however, is that Zynga knew about the specific changes to the Facebook gaming platform and had even beta tested the new platform, and failed to disclose the information it actually had to potential investors. At the motion to dismiss stage, the representations by the confidential witness that Zynga knew the specific contents of an adverse change to delivery of the company's games is sufficiently misleading as it "created an impression of a state of affairs that differ[ed] in a material way from the one that actually existed." *Reese v. Malone*, 747 F.3d 557, 570 (9th Cir. 2014); *see also Brody*, 280 F.3d at 1006.

Accordingly, the Court finds that Plaintiff has made out sufficient allegations of misrepresentations about changes to the Facebook platform.

**d. Representations About 2012 Full Year Guidance.**

Plaintiff challenges Zynga's 2012 projections and its statements that the company expected growth to be weighted toward the second half of the year. (*See* FAC ¶¶ 20-21, 96-97, 115-118.) Plaintiff alleges that on February 14, 2012, Zynga issued guidance for 2012, including that "[b]ookings are projected to be in the range of $1.35 billion to $1.45 billion. We expected that growth will be weighted towards the back-half of the year with slower sequential growth in the first half of the year." (*Id.* at ¶ 96.) Then, on April 26, 2012, Zynga raised its guidance, including raising bookings guidance from $1.425 to $1.5 billion. (*Id.* at ¶ 115.)

Defendants contend that these forward-looking statements are not actionable as Plaintiff has failed to demonstrate that at the time the prediction was made, (1) it was not genuinely believed, (2) there was not a reasonable basis for the prediction, or (3) the speaker was aware of undisclosed facts tending seriously to undermine the accuracy of the prediction. *See In re Rigel Pharm. Inc. Sec. Litig.*, 697 F.3d 869, 870 (9th Cir. 2012); *see also Stacs*, 89 F.3d at 1409. However, the Court has found that the statements about bookings and the failure to warn about known Facebook platform changes constitute potentially actionable misrepresentations. The 2012 projections, if premised upon those alleged misrepresentations, could form actionable

forward-looking statements. At the least, Plaintiff has adequately alleged that Defendants were "aware of undisclosed facts tending seriously to undermine" the accuracy of their financial guidance. *See Provenz v. Miller*, 102 F.3d 1478, 1487-88 (9th Cir. 1996).

Accordingly, the Court finds that Plaintiff has made out sufficient allegations of misrepresentations about 2012 guidance.

**2. Strong Inference of Scienter.**

"[T]o adequately plead scienter, the complaint must [ ] 'state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind.'" *Zucco Partners*, 552 F.3d at 991. A plaintiff must "state with particularity facts giving rise to a strong inference that defendants acted with the intent to deceive or with deliberate recklessness as to the possibility of misleading investors." *Berson v. Applied Signal Tech., Inc.*, 527 F.3d 982, 987 (9th Cir. 2008) (citations omitted). The Court must determine "whether *all* of the facts alleged, taken collectively, give rise to a strong inference of scienter, not whether any individual allegation, scrutinized in isolation, meets that standard." *Telltabs*, 551 U.S. at 322-23. "[T]he inference of scienter must be more than merely 'reasonable' or 'permissible'- it must be cogent and compelling, thus strong in light of other explanations." *Id.* at 324. "To determine whether the plaintiff has alleged facts that give rise to the requisite 'strong inference' of scienter, a court must consider plausible nonculpable explanations for the defendant's conduct, as well as inferences favoring the plaintiff." *Id*. at 323-24. A complaint will survive a Rule 12(b)(6) motion to dismiss "only if a reasonable person would deem the inference of scienter cogent and at least as compelling as any opposing inference one could draw from the facts alleged." *Id.* at 324.

A complaint relying upon statements from confidential witnesses must pass a two-step inquiry before satisfying the requirements for scienter under the PSLRA. *See Zucco Partners*, 552 F.3d at 995. "First, the confidential witnesses whose statements are introduced to establish scienter must be described with sufficient particularity to establish their reliability and personal knowledge." *Id.* (citing *In re Daou Systems, Inc. Sec. Litig*, 411 F.3d 1006, 1015-16 (9th Cir. 2005)). Second, the statements "must themselves be indicative of scienter." *Id.*

In this action, the confidential witnesses – who all detailed their job description and responsibilities – testify at length as to the accessibility of daily reports indicating in real time the company's bookings numbers. In addition, Plaintiff alleges that the officers at Zynga obsessively tracked bookings and game-operating metrics on an ongoing, real-time basis, with regular updates on the activity and purchases by every user of every Zynga game. (*See* FAC at ¶¶ 68, 71, 74, 78-80.) Numerous confidential witnesses also stated that the company's officers were aware of the bookings numbers on a consistent and daily basis. (*See id*. at ¶¶ 72, 74, 77, 80-84.) The confidential witnesses all corroborate that the updates on game users and spending data was readily accessible to Zynga's management and that the statistics were automatically reported to Zynga employees on a real-time basis. (*See id.*) With regard to the changes to the Facebook platform, a confidential witness stated that Defendants were informed of the developments relating to the implementation of the platform changes and the fact that Zynga had beta-tested the new platform. (*See id*. at ¶ 85.)

Accordingly, the Court finds that Plaintiffs have sufficiently alleged particularized facts to support a strong inference of scienter under Section 10(b).

**3. Loss Causation.**

Lastly, Defendants contend that Plaintiff fails to plead loss causation, arguing that it is not enough to allege a stock drop following a disappointing news. Rather, Defendants contend, the complaint must "allege that the practices that the plaintiff contends are fraudulent were revealed to the market" and that such revelation, rather than "reports of the defendant's poor financial health generally," caused the plaintiff's losses. *See Metzler Inv. GMBH v. Corinthian Colls., Inc.*, 540 F.3d 1049, 1063 (9th Cir. 2008); *see also Ambassador Hotel Co. v. Wei-Chuan Inv.*, 189 F.3d 1017, 1027 (9th Cir. 1999) (To prove loss causation, [the plaintiff] must demonstrate a causal connection between the deceptive acts that form the basis for the claim of securities fraud and the injury suffered by the [Plaintiff].''). Here, Defendants contend that there is no allegation that the market ever learned that the company's prior public statements had been false or that the market was reacting to revelations of falsity, as opposed to reports of Zynga's worse-than-anticipated financial performance. *See id.* In addition, Defendants contend

that any losses that occurred were caused by the materialization of risks that were known and had been previously disclosed. *See Lattanzio v. Deloitte & Touche LLP*, 476 F.3d 147, 158 (2d Cir. 2007).

However, the requirements for pleading loss causation are "not meant to impose a great burden upon a plaintiff." *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 347 (2005). Rather, a plaintiff must be able to provide a "short plain statement: that "provide[s] a defendant with some indication of the loss and the causal connection that the plaintiff has in mind." *Id*. at 346-47. This test is satisfied by a plaintiff alleging that "(1) the plaintiff paid an artificially inflated price for the company's stock and (2) the stock price fell 'after the truth became known.'" *Atlas v. Accredited Home Lenders Holding Co.*, 556 F. Supp. 2d 1142, 1157 (S.D. Cal. 2008) (citing *Dura*, 544 U.S. at 346).

Plaintiff alleges that on July 25, 2012, Zynga announced its financial results for the second quarter of 2012, "reporting substantially lower than expected earnings and issued a dismal forecast for the rest of the year, sharply lowering its 2012 guidance." (FAC ¶ 149.) Plaintiff contends that the "drastic changes in 2012 guidance offered a conspicuously different assessment from Zynga's management only three months after Zynga had raised in 2012 guidance in Q1 2012 earnings announcement, consistently stressing that bookings and game monetization would be weighted more heavily in the second half of 2012." (*Id*. at ¶ 156.) Finally, Plaintiff alleges that "[u]pon announcement of Zynga's Q2 2012 results and drastically lowered outlook for the remainder of 2012, shares of Zynga common stock plummeted over 37% in one day down from a July 25, 2012 close of $5.08 to a July 26, 2012 close of $3.18 per share on extremely high volume." (*Id.* at ¶ 157.)

As the Court has already found that the representations about bookings and changes to the Facebook platform may form the basis for a claim of material and misleading representations, and that at the announcement of the true results and guidance, the stock price fell considerably, the Court finds that there is a triable issue of loss causation. *See In re Gilead Sci. Sec. Litig*., 536 F.3d 1049, 1057 (9th Cir. 2008) (holding that "[s]o long as the complaint

alleges facts that, taken as true, plausibly establish loss causation, a Rule 12(b)(6) dismissal is inappropriate.").

**D. Sufficiency of Allegations of 20(a) Violation.**

Section 20(a) of the Securities Exchange Act of 1934 provides for liability of a controlling person." 15 U.S.C. § 78t(a). To establish a cause of action under Section 20(a), a plaintiff must initially prove a primary violation of underlying securities laws, such as Section 10(a) or Rule 10b-5, and then show that the defendant exercised actual power over the primary violator. *Howard v. Everex Sys., Inc.*, 228 F.3d 1057, 1076 (9th Cir. 2000). Whether the Section 20(a) claim should be dismissed is premised entirely upon whether Plaintiff has pled a primary violation of the federal securities law. *See Rigel*, 697 F.3d at 886. Because the Court finds that Plaintiff has made out sufficient allegations to maintain a cause of action for a primary violation of the federal securities law, the cause of action for violation of Section 20(a) similarly withstands Defendants' motion to dismiss.

**CONCLUSION**

For the foregoing reasons, the Court DENIES Defendants' motion to dismiss.

**IT IS SO ORDERED.**

Dated: March 25, 2015

JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE