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SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

ROBERT LOWINGER, Individually and On
Behalf of All Others Similarly Situated,

Plaintiff,

v.

FUNKO, INC.; BRIAN MARIOTTI; RUSSELL
NICKEL; KEN BROTMAN; GINO
DELLOMO; CHARLES DENSON; DIANE
IRVINE; ADAM KRIGER; RICHARD
MCNALLY; GOLDMAN, SACHS & CO.; J.P.
MORGAN SECURITIES LLC; MERRILL
LYNCH, PIERCE, FENNER & SMITH
INCORPORATED; PIPER JAFFRAY & CO.;
JEFFERIES LLC; STIFEL, NICOLAUS &
COMPANY, INCORPORATED; BMO
CAPITAL MARKETS CORP.; SUNTRUST
ROBINSON HUMPHREY, INC.; and, JOHN
DOES 1 THROUGH 25,

Defendants.

No.

CLASS ACTION

COMPLAINT FOR VIOLATIONS
OF SECTIONS 11, 12 AND 15 OF THE
SECURITIES ACT OF 1933

Plaintiff Robert Lowinger (“Plaintiff”), individually and on behalf of all persons similarly situated, by his undersigned attorneys, for his complaint against Defendants alleges the following based upon personal knowledge as to his own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through his attorneys, which included, among other things, a review of Defendant Funko, Inc.’s (“Funko” or the “Company”)

1 United States Securities and Exchange Commission (“SEC”) filings, wire and press releases
2 published by and regarding Funko, and information readily obtainable from public sources.
3 Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein
4 after a reasonable opportunity for discovery.

5 **NATURE OF THE ACTION**

6 1. This is a class action on behalf of persons and/or entities who purchased or
7 otherwise acquired Funko, Inc. Class A Common Stock (“common stock”) pursuant to its initial
8 public offering and/or traceable to the Company’s Registration Statement (the “IPO” or the
9 “Offering”) and its November 3, 2017, prospectus filed on Form 424B4 with the SEC in
10 connection with its IPO (the “Prospectus”).

11 2. Funko is a pop culture consumer products company engaged in selling a broad
12 range of pop culture consumer products, featuring characters from a range of media and
13 entertainment content, including movies, TV shows, video games, music and sports. Its products
14 combine its proprietary brands and designs into properties it licenses from content providers.

15 3. The Company was founded in 2005, is headquartered in Everett, Washington, and
16 its shares trade on the NASDAQ under the ticker symbol “FNKO.” It has an additional warehouse
17 facility and offices located in Essex, England.

18 4. The claims in this action arise from the materially misleading Registration
19 Statement and Prospectus issued in connection with the Offering. In the IPO, the Company sold
20 10,416,666 shares of common stock at a price to the public of \$12.00 per share. According to the
21 Company, it received net proceeds of approximately \$116.4 million (or approximately \$133.9
22 million if the underwriters exercise in full their option to purchase additional shares of Class A
23 common stock) based upon the initial public offering price.

24 5. As detailed below, the Registration Statement and Prospectus contained materially
25 misleading statements and/or omitted material information in violation of Sections 11, 12 and 15
26 of the Securities Act of 1933 (the “Securities Act”), 15 U.S.C. §§ 77k, 77l and 77o.

1 **JURISDICTION AND VENUE**

2 6. The claims asserted herein arise under and pursuant to Sections 11, 12 and 15 of
3 the Securities Act (15 U.S.C. §§ 77k, 77o and 77l). This Court has jurisdiction over the subject
4 matter of this action pursuant to Wash. Rev. Code § 2.08.010 and Section 22 of the Securities
5 Act, 15 U.S.C. § 77v, which explicitly states that “[e]xcept as provided in section 16(c), no case
6 arising under this title and brought in *any State court* of competent jurisdiction shall be removed
7 to any court in the United States.” This is an action asserting federal law claims, thus, it does not
8 fall within the definition of a “covered class action” under § 16(c)¹ and therefore is not removable
9 to federal court under the Securities Litigation Uniform Standards Act of 1998 (“SLUSA”).

10 7. Defendants each have sufficient contacts with Washington, or otherwise
11 purposefully avail themselves of benefits from Washington, or reside or have property in
12 Washington, so as to render the exercise of jurisdiction over the action by this Court consistent
13 with traditional notions of fair play and substantial justice.

14 8. Venue is proper in this Court pursuant to Wash. Rev. Code § 4.12.025 and Section
15 22 of the Securities Act, 15 U.S.C. § 77v. Certain defendants reside in or conduct business in this
16 County, and many of the acts and transactions alleged herein occurred in this County.

17 **PARTIES**

18 9. *Plaintiff Robert Lowinger* (“Plaintiff”) purchased and acquired Funko securities
19 pursuant to the Registration Statement and Prospectus issued in connection with the Company’s
20 IPO and has incurred statutory damages.

21 10. *Defendant Funko, Inc.* is a Delaware corporation with its principal executive
22 offices located at 2802 Wetmore Avenue, Everett, Washington 98201. Funko’s common stock
23 trades on the NASDAQ under the ticker symbol “FNKO.”

24
25
26 ¹ Section 16(c) of the Securities Act refers to “covered class actions,” which are defined as lawsuits brought as class actions or brought on behalf of more than 50 persons asserting claims under state or common law.

1 11. **Defendant Brian Mariotti** (“Mariotti”) has served, at all relevant times, as the
2 Company’s Chief Executive Officer and Director. Mariotti signed the Company’s registration
3 statement, filed on Form S-1 with the SEC on October 6, 2017, as amended, and declared effective
4 by the SEC on November 1, 2017 (the “Registration Statement”).

5 12. **Defendant Russell Nickel** (“Nickel”) has served, at all relevant times, as the
6 Company’s Chief Financial Officer (Principal Financial Officer and Principal Accounting
7 Officer). Nickel signed the Company’s Registration Statement filed with the SEC.

8 13. **Defendant Ken Brotman** (“Brotman”) was a director of Funko at the time of the
9 filing of the part of the Registration Statement with respect to which his liability is asserted.
10 Brotman signed the Registration Statement.

11 14. **Defendant Gino Dellomo** (“Dellomo”) was a director of Funko at the time of the
12 filing of the part of the Registration Statement with respect to which his liability is asserted.
13 Dellomo signed the Registration Statement.

14 15. **Defendant Charles Denson** (“Denson”) was a director of Funko at the time of the
15 filing of the part of the Registration Statement with respect to which his liability is asserted.
16 Denson signed the Registration Statement.

17 16. **Defendant Diane Irvine** (“Irvine”) was a director of Funko at the time of the filing
18 of the part of the Registration Statement with respect to which his liability is asserted. Irvine
19 signed the Registration Statement.

20 17. **Defendant Adam Kriger** (“Kriger”) was a director of Funko at the time of the
21 filing of the part of the Registration Statement with respect to which his liability is asserted. Kriger
22 signed the Registration Statement.

23 18. **Defendant Richard McNally** (“McNally”) was a director of Funko at the time of
24 the filing of the part of the Registration Statement with respect to which his liability is asserted.
25 McNally signed the Registration Statement.

26

1 19. **Defendant Goldman, Sachs & Co.** (“Goldman”) served as an underwriter to
2 Funko in connection with the Offering. Goldman has offices located in Seattle, Washington.

3 20. **Defendant J.P. Morgan Securities LLC** (“JPM”) served as an underwriter to
4 Funko in connection with the Offering. JPM has offices located in Seattle and Bellevue,
5 Washington.

6 21. **Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated** (“Merrill”) served as an underwriter to Funko in connection with the Offering. Merrill has offices located in
7 Seattle, Washington.

8 22. **Defendant Piper Jaffray & Co.** (“Piper Jaffray”) served as an underwriter to
9 Funko in connection with the Offering. Piper Jaffray has offices located in Seattle, Washington.

10 23. **Defendant Jefferies LLC** (“Jefferies”) served as an underwriter to Funko in
11 connection with the Offering.

12 24. **Defendant Stifel, Nicolaus & Company, Incorporated** (“Stifel”) served as an
13 underwriter to Funko in connection with the Offering. Stifel has offices located in Seattle and
14 Bellevue, Washington.

15 25. **Defendant BMO Capital Markets Corp.** (“BMO”) served as an underwriter to
16 Funko in connection with the Offering. BMO has offices located in Seattle, Washington.

17 26. **Defendant SunTrust Robinson Humphrey, Inc.** (“SunTrust”) served as an
18 underwriter to Funko in connection with the Offering.

19 27. Defendants named above in ¶¶ 11-18 are referred to herein as the “Individual
20 Defendants.”

21 28. Defendants named above in ¶¶ 19-26 are referred to herein as the “Underwriter
22 Defendants.”

23 29. **Defendants John Does 1 through 25** (“Does 1 through 25”) are unknown to
24 Plaintiff at this time. The true names and capacities of Defendants sued herein as Does 1 through
25 25, inclusive, are presently not known to Plaintiff, who therefore sues these Defendants by such
26

1 fictitious names. Plaintiff will seek to amend this Complaint and include these Doe Defendants’
2 true names and capacities when they are ascertained. Each of the fictitiously named Defendants
3 is responsible in some manner for the conduct alleged herein and for the injuries suffered by
4 Plaintiff and the other members of the Class (defined below).

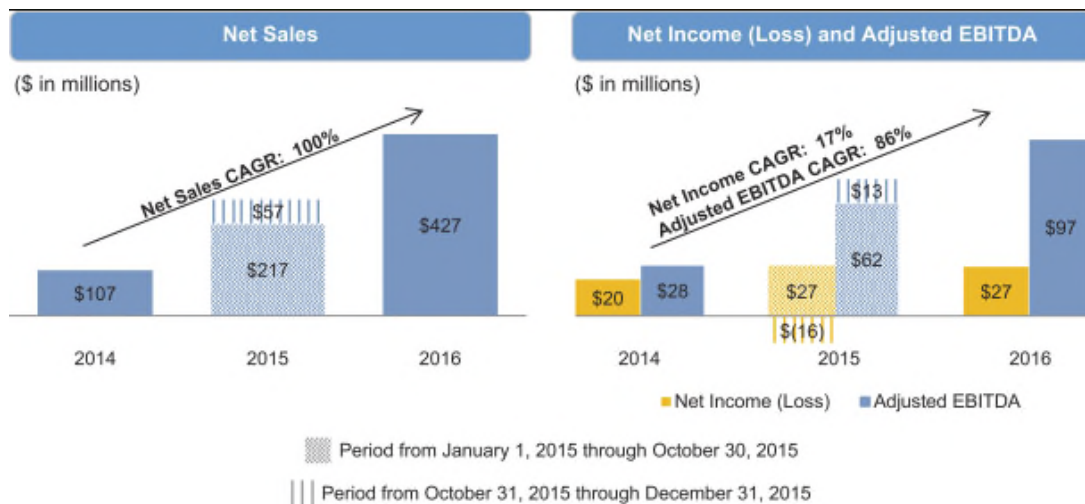
5 **MATERIALLY MISLEADING REGISTRATION STATEMENT AND PROSPECTUS**

6 30. The Prospectus was part of the Registration Statement. The Registration Statement
7 was signed by the Individual Defendants.

8 31. In the Prospectus, the Company reported certain financial and operating results for
9 itself and its predecessor.

10 32. The Prospectus includes the following representations regarding Funko’s
11 historical growth:

12 Our financial performance reflects the strong growth of our
13 business. From 2014 to 2016, we expanded our net sales, net
14 income and Adjusted EBITDA at a 100%, a 17% and an 86%
15 compound annual growth rate, or CAGR, respectively. We
16 achieved this growth without reliance on a singular “hit” property
17 as no single property accounted for more than 15% of annual net
18 sales during that period. We believe our strong growth and
19 profitability reflect our pop culture consumer products leadership.



25 Prospectus at p.3.

26 33. The Prospectus later lists the following about Funko’s net income and profitability:

	Pro Forma Funko, Inc.		Historical FAH, LLC Successor				Predecessor Period from January 1, 2015 through October 30, 2015
	Six Months Ended June 30, 2017 (unaudited)	Year Ended December 31, 2016	Six Months Ended June 30, 2016 (unaudited)		Year Ended December 31, 2016	Period from October 31, 2015 through December 31, 2015	
			2017	2016			
Consolidated Statements of Operations Data:							
(in thousands, except per share data and margins)							
Net sales	\$ 203,798	\$ 426,717	\$203,798	\$176,261	\$ 426,717	\$ 56,565	\$ 217,491
Cost of sales (exclusive of depreciation and amortization shown separately below)	130,066	280,396	130,066	125,799	280,396	44,485	131,621
Selling, general and administrative expenses	50,588	77,363	50,901	37,087	77,525	13,894	37,145
Acquisition transaction costs	3,086	1,140	3,086	349	1,140	7,559	13,301
Depreciation and amortization	14,322	23,509	14,322	11,174	23,509	3,370	5,723
Income (loss) from operations	5,736	44,309	5,423	1,852	44,147	(12,743)	29,701
Interest expense, net	11,244	7,997	14,677	7,879	17,267	2,818	2,202
Other income, net	(113)	3,304	(113)	—	—	—	—
Income (loss) before income taxes	(5,395)	33,008	(9,141)	(6,027)	26,880	(15,561)	27,499
Income tax expense (benefit)	81	5,772	1,024	—	—	—	—
Net income (loss)	\$ (5,476)	\$ 27,236	\$ (10,165)	\$ (6,027)	\$ 26,880	\$ (15,561)	\$ 27,499

Prospectus at p.27.

34. The Prospectus also reported regarding Funko's intangible assets subject to amortization that:

	December 31, 2016		
	Gross Carrying Amount	Accumulated Amortization	Intangible Assets, Net
Intangible assets subject to amortization			
Intellectual property	\$ 114,411	\$ (6,674)	\$ 107,737
Trade names	81,358	(4,746)	76,612
Customer relationships	63,129	(3,682)	59,447
Balance as of December 31, 2016	<u>\$258,898</u>	<u>\$ (15,102)</u>	<u>\$243,796</u>
	December 31, 2015		
	Gross Carrying Amount	Accumulated Amortization	Intangible Assets, Net
Intangible assets subject to amortization			
Intellectual property	\$ 114,411	\$ (953)	\$ 113,458
Trade names	81,358	(678)	80,680
Customer relationships	63,129	(526)	62,603
Balance as of December 31, 2015	<u>\$258,898</u>	<u>\$ (2,157)</u>	<u>\$256,741</u>

For the year ended December 31, 2016, the Successor 2015 Period, and the Predecessor 2015 Period, amortization of intangible assets was \$12.9 million, \$2.2 million, and \$1.4 million, respectively. Estimated amortization expense will be \$12.9 million for each of the next five years.

There was no impairment of goodwill and intangible assets for the year ended December 31, 2016 or for the Successor 2015 Period and the Predecessor 2015 Period.

35. The statements referenced above created materially misleading impressions, including that Funko's earnings growth trends were stronger than they actually were; that the EBITDA growth trend was representative of the Company's prospects which it was not; and that, as a result, Funko's Registration Statement and Prospectus were materially misleading at all relevant times.

1 **THE PROSPECTUS AND REGISTRATION STATEMENT WERE MISLEADING**

2 36. “Funko had aimed to sell 13.3 million shares or more, for as much as \$245 million,
3 although some of the proceeds would have gone to its private-equity owners, who were selling a
4 small slice of their stake. Instead it sold 10.4 million shares at \$12, meaning the total raised was
5 about \$125 million before the offering’s costs.” *See The Seattle Times*, “Funko stock plunges in
6 ‘worst first-day return for an IPO in 17 years.’” Nov. 2, 2017.²

7 37. *The Seattle Times* further reported the following:

8 Funko’s sales in 2016 totaled \$426 million, up from \$274 million a
9 year earlier and \$107 million in 2014.

10 Those numbers may have discouraged potential buyers. Traders
11 also may have been spooked by a column Thursday by Bloomberg
12 Gadfly columnist Stephen Gendel, who wrote the company’s
13 highlighting of a measure of adjusted earnings, as opposed to
14 regulators’ standard measure of net income, was “the latest
15 example of fun-house accounting on Wall Street.”

16 Funko could not be reached for comment after the market close
17 Thursday. Yahoo News reported that Funko CEO Brian Mariotti
18 had been scheduled to appear Thursday on its live show, “Midday
19 Movers,” “but canceled a few minutes after trading started.”

20 Such a first-day pounding can be a black mark for a stock[.]

21 38. Funko’s IPO “flopped” as its “IPO saw the worst first-day return for a Wall Street
22 IPO in 17 years, causing shares to drop a staggering 41% from their initial price of \$12 to close
23 at \$7.07[.]” according to *Comics Gaming Magazine*, “Funko’s IPO Flops, Worst First-Day Return
24 In 17 Years,” Nov. 8, 2017.³ This was, at least in part, because “Experts predict that part of the
25 reason behind the incredibly poor debut stems from Funko’s accounting practices, which
26 *Bloomberg* columnists called the latest example of fun-house accounting on Wall Street. *Id.*

 39. The *Bloomberg Gadfly* article referenced in *Comics Gaming Magazine* states:

² Available at <https://www.seattletimes.com/business/funko-stock-plunges-in-ipo-shocker/>

³ Available at <http://www.cgmagonline.com/2017/11/08/funko-ipo-worst-in-17-years/>

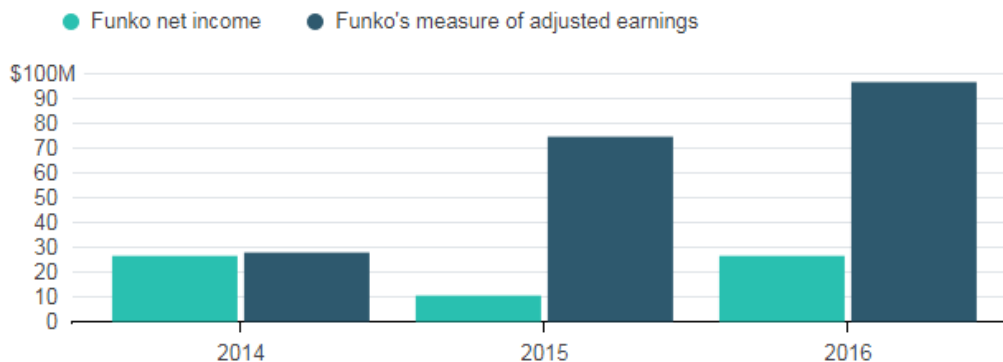
1 Funko, the purveyor of 2017's version of bobble-head dolls,
2 appears to have a big head when it comes to its financial results.

3 Shares of the company priced on Wednesday night at \$12 and are
4 scheduled to begin trading on Thursday morning. The pricing was
5 below the indicated range of \$14 to \$16, but even that may have
6 been too high.

7 In Funko's IPO prospectus, in a chart with a big arrow pointing up,
8 the company says that an important measure of its income, which
9 it uses to determine the success of its operational strategies, rose by
10 an average of 86 percent in its past two full years. The actual bottom
11 line, though, was up an average of just 16 percent in 2015 and 2016
12 and has turned negative lately. Funko lost just more than \$10
13 million in the first half of this year. How the toymaker gets a loss
14 of \$10 million to reflect back as an 86 percent earnings increase is
15 the latest example of fun-house accounting on Wall Street.

16 Dress Up

17 *There's a big difference between Funko's earnings and what it
18 highlights as growing profits*



20 Source: Funko corporate filings

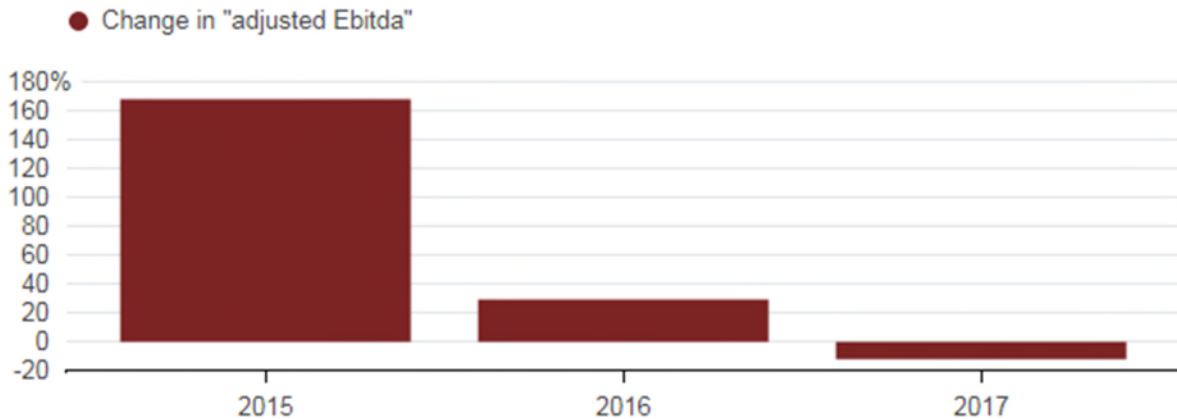
21 Based on GAAP net income and Funko's reported "adjusted
22 Ebitda."

23 Funko's main product, Pop! dolls, is hot. The plastic figures with
24 enlarged heads cost about \$10 each and are typically of popular
25 characters from kids' movies or TV shows. But there are also Pop!
26 figures based on athletes and characters from the popular HBO
series "Game of Thrones." They have become fixtures at Gamestop
and Barnes & Noble. (Full disclosure: My daughter's Pop!
collection is nearing the entire population of Hogwarts, with Moana
as a visiting student.) Sales of Pop! dolls grew an impressive 34
percent last year.

1 *The question is how profitable the \$10 figures are, if at all.* Funko
2 arrives at its 86 percent compounded annual earnings growth rate
3 by focusing on a figure that more and more companies point their
4 shareholders to called adjusted Ebitda, which excludes a number of
5 costs. Each company computes the figure slightly differently,
6 which is why many accounting experts hate it, but companies like
7 Funko say it is a better measure of their operations. Let's see.

8 **Party's Over**

9 Profits at toy maker Funko, even by its preferred measure, are
10 slowing



12 Source: Corporate filings

13 2017 is through June 30. Adjusted Ebitda is as defined by Funko in
14 its S-1 statement.

15 Funko says it had \$97 million in adjusted Ebitda earnings in 2016,
16 up from just \$28 million in 2014, an increase of \$69 million. How
17 did it manage that increase? Two years ago, Funko was sold to a
18 private equity firm. Funko says acquisitions are a one-time expense,
19 even though it says it plans to do more deals in the future.
20 Nonetheless, exclude those costs, and the company's adjusted
21 Ebitda jumps nearly \$25 million. *Funko also contends it has
22 intellectual property worth \$250 million. That's odd for a
23 company whose main products are based on others' intellectual
24 property.* Anyway, the company stepped up write-offs of that
25 intellectual property last year. Depreciation costs rose \$19.5
26 million. But Funko says that cost is not part of its operations and
excludes it from its adjusted Ebitda, causing that figure to rise once
again. Funko has also piled on debt in the past two years, in part
because of its private equity ownership. Interest expense rose \$14.5
million, which is also excluded from adjusted Ebitda. You get the
picture; the higher cost is reflected back as better earnings once it's
excluded.

1 *The result, just \$7 million, or 10 percent, of Funko’s \$69 million*
2 *increase in adjusted Ebitda -- which led to that 86 percent*
3 *increase in growth from 2014 to 2016 -- was from actual earnings*
4 *growth. The other 90 percent came from higher costs that the*
5 *company says investors should just ignore. Funko Pop! dolls are*
6 *based on fantasy. Its accounting shares a similar trait.*

7 See *Bloomberg Gadfly*, “Funko Extends Playtime to Its Accounting,” Nov. 2, 2017 (emphasis
8 added).⁴

9 40. As a result of this news, Funko’s share price fell dramatically, on heavy volume.
10 *The Seattle Times* reported that “[m]ore than 9.7 million Funko shares traded hands on Thursday,
11 nearly equal to the 10.4 million shares sold in the offering.” Renaissance Capital further reported:

12 Pop culture figurine maker Funko (FNKO) fell 41% on Thursday
13 to close at \$7.07. That gave it the worst first-day return for an IPO
14 in 17 years, since June 2000 financial services IPO eChapman.com
15 (-43%). Funko priced a downsized IPO at \$12 per share, below its
16 range of \$14-\$16, to raise \$125 million at a market cap of \$580
17 million. Investors were likely concerned over slowing organic sales
18 growth and contracting margins in a hit-driven industry.

19 See Renaissance Capital, Funko Plummets 41% in Biggest IPO Drop Since 2000.⁵

20 41. The SEC has recognized that “certain adjustments, although not explicitly
21 prohibited, [can] result in a non-GAAP measure that is misleading” and “may violate Rule 100(b)
22 of Regulation G because they cause the presentation of the non-GAAP measure to be
23 misleading.”⁶

24 42. As noted in the *Bloomberg Gadfly* article, the “big arrow pointing up” in Funko’s
25 IPO prospectus is inconsistent with the data in ¶ 32, *supra*, which shows that net income for the
26 six months ended June 30, 2017, is significantly less than net income for the comparable period
27 of 2016. Simply stated, the strong growth and profitability touted on page 3 of the Prospectus is

28 ⁴ Available at <https://www.bloomberg.com/gadfly/articles/2017-11-02/funko-ipo-maker-of-dolls-extends-playtime-to-accounting>

29 ⁵ Available at <https://www.renaissancecapital.com/IPO-Center/News/52250/Funko-plummets-41-in-biggest-IPO-drop-since-2000>

30 ⁶ <https://www.sec.gov/divisions/corpfin/guidance/nongaapinterp.htm>

1 inconsistent with the purported trend in earnings. Moreover, the Prospectus includes the
2 following, which is also inconsistent with the purported trend depicted by the upward-pointing
3 arrow:

4 We estimate that Adjusted EBITDA for the three months ended
5 September 30, 2017 will range between \$23.8 million and \$24.8
6 million, compared to Adjusted EBITDA of \$31.0 million for the
7 three months ended September 30, 2016. Included in our estimated
8 net income and Adjusted EBITDA is the impact of a \$4.9 million
9 reserve on the outstanding accounts receivable balance for Toys ‘R’
10 Us, Inc., which filed for voluntary petitions for relief under Chapter
11 11 of Title 11 of the United States Bankruptcy Code in September
12 2017.

13 43. Additionally, the slope of the arrow creates the misleading impression that the
14 Company is poised to continue the trend in earnings growth suggested by the Adjusted EBITDA
15 presentation.

16 **PLAINTIFF’S CLASS ACTION ALLEGATIONS**

17 44. Plaintiff brings this action as a class action, pursuant to CR 23, on behalf of a Class
18 consisting of all persons and/or entities who purchased or otherwise acquired the common stock
19 of Funko pursuant and/or traceable to the Company’s misleading Registration Statement and
20 Prospectus issued in connection with the Company’s IPO, and who were damaged thereby (the
21 “Class”). Excluded from the Class are Defendants, the officers and directors of the Company, at
22 all relevant times, members of their immediate families and their legal representatives, heirs,
23 successors or assigns and any entity in which Defendants have or had a controlling interest.

24 45. The members of the Class are so numerous that joinder of all members is
25 impracticable. During the relevant period, Funko’s securities were actively traded on the
26 NASDAQ Stock Exchange (the “NASDAQ”). While the exact number of Class members is
unknown to Plaintiff at this time and can only be ascertained through appropriate discovery,
Plaintiff believes that there are hundreds or thousands of members in the proposed Class.
10,416,666 shares of Funko, Inc. Class A Common Stock were offered to the public in the IPO.
Record owners and other members of the Class may be identified from records maintained by

1 Funko or its transfer agent and may be notified of the pendency of this action by mail, using the
2 form of notice similar to that customarily used in securities class actions.

3 46. Common questions of law and fact exist as to all members of the Class and
4 predominate over any questions affecting only individual members of the Class. Among the
5 questions of law and fact common to the Class are:

6 (a) whether the Securities Act was violated by Defendants' acts as alleged
7 herein;

8 (b) whether statements made by Defendants to the investing public in the
9 Registration Statement and Prospectus created a misleading impression of Funko's value;

10 (c) to what extent Plaintiff and the other members of the Class have sustained
11 damages and the proper measure of damages; and

12 (d) to what extent Plaintiff and the other members of the Class are entitled to
13 rescission or rescissory damages.

14 47. Plaintiff's claims are typical of the claims of the members of the Class as all
15 members of the Class are similarly affected by Defendants' wrongful conduct in violation of
16 federal law that is complained of herein.

17 48. Plaintiff will fairly and adequately protect the interests of the members of the Class
18 and have retained counsel competent and experienced in class and securities litigation.

19 49. A class action is superior to other available methods for the fair and efficient
20 adjudication of the controversy. The interest of members of the Class in individually controlling
21 the prosecution of separate actions is minimal, because the damages suffered by individual Class
22 members may be relatively small, the expense and burden of individual litigation make it
23 impossible for members of the Class to individually redress the wrongs done to them. No other
24 litigation has been commenced by or against members of the Class to the best of Plaintiff's
25 knowledge. Claims should be concentrated in this forum because Funko is headquartered in the
26 State of Washington. There will be no difficulty in the management of this action as a class action.

1 50. This action was brought within one year after the discovery of the untrue
2 statements or omissions.

3 **FIRST CLAIM**

4 **Violation of Section 11 of the Securities Act**

5 **(Against All Defendants)**

6 51. Plaintiff repeats and re-alleges each and every allegation contained above, except
7 any allegation of fraud, recklessness or intentional misconduct.

8 52. This Count is brought pursuant to Section 11 of the Securities Act, 15 U.S.C § 77k,
9 on behalf of the Class, against all Defendants.

10 53. The Registration Statement for the IPO was materially misleading and omitted to
11 state material facts required to be stated therein.

12 54. Funko is the registrant for the IPO. Defendants named herein were responsible for
13 the contents and dissemination of the Registration Statement.

14 55. As issuer of the shares, Funko is strictly liable to Plaintiff and the other members
15 of the Class for the material misstatements and omissions in the Registration Statement.

16 56. None of the Defendants named herein made a reasonable investigation or
17 possessed reasonable grounds for the belief that the statements contained in the Registration
18 Statement were true and without omissions of any material facts and were not misleading.

19 57. By reasons of the conduct herein alleged, each Defendant violated, and/or
20 controlled a person who violated Section 11 of the Securities Act.

21 58. Plaintiff acquired Funko shares pursuant and/or traceable to the Registration
22 Statement for the IPO.

23 59. Plaintiff and the other members of the below-defined Class suffered statutory
24 damages, which are measured by the difference between the amount Plaintiff and the other
25 members of the Class paid for the their Funko stock and (1) the value thereof as of the time this
26 action was brought, or (2) the price at which the Funko stock was disposed of in the market before

1 suit (if it was); or, (3) the price of Funko stock disposed of after suit, but before judgment, if such
2 damages are less than the damages representing the difference between the amount paid for Funko
3 stock and the value of such stock as of the time this action was brought.

4 **SECOND CLAIM**

5 **Violation of Section 15 of the Securities Act**

6 **(Against the Individual Defendants)**

7 60. Plaintiff repeats and re-alleges each and every allegation contained above, except
8 any allegation of fraud, recklessness or intentional misconduct.

9 61. This count is asserted against the Individual Defendants and is based upon Section
10 15 of the Securities Act.

11 62. Individual Defendants, by virtue of their offices, directorship and specific acts,
12 were, at the time of the wrongs alleged herein and as set forth herein, controlling persons of Funko
13 within the meaning of Section 15 of the Securities Act. The Individual Defendants had the power
14 and influence and exercised the same to cause Funko to engage in the acts describe herein.

15 63. Individual Defendants' positions made them privy to and provided them with
16 actual knowledge of the conduct alleged herein.

17 64. By virtue of the conduct alleged herein, the Individual Defendants are liable for
18 the aforesaid wrongful conduct and are liable to Plaintiff and the Class for damages suffered.

19 **THIRD CLAIM**

20 **Violation of Section 12(a)(2) of the Securities Act**

21 **(Against the Funko and the Underwriter Defendants)**

22 65. Plaintiff repeats and re-alleges each and every allegation contained above, except
23 any allegation of fraud, recklessness or intentional misconduct with respect to the untrue
24 statements of material fact in, or omissions of material fact from, the Prospectus.

1 66. This Count is brought by Plaintiff pursuant to Section 12(a)(2) of the Securities
2 Act, 15 U.S.C. § 77l(a)(2), on his own behalf and on behalf of the other members of the Class
3 against Funko and the Underwriter Defendants.

4 67. The statements referred to herein were each made in a “prospectus” as that term is
5 defined in Section 2(a)(10) of the Securities Act, 15 U.S.C. § 77b(a)(10), created materially
6 misleading impressions and omitted to state other facts necessary to make the statements made
7 not misleading. The Defendants sued in this count sold common shares of Funko by way of the
8 Prospectus dated November 3, 2017, for their personal financial gain. Those actions included
9 participating in the preparation of the Prospectus and other materials used in the sale of Funko
10 common stock.

11 68. The Defendants named in this Count sold and/or solicited the sale of Funko
12 common stock offered pursuant to the Prospectus for their individual financial gain.

13 69. Plaintiff and the other members of the Class purchased or acquired Funko common
14 stock pursuant to a Prospectus. Plaintiff and the other members of the Class, did not know, or in
15 the exercise of reasonable care, could not have known of the misleading nature of the Prospectus.

16 70. Plaintiff and the other members of the Class have sustained injury and suffered
17 damages.

18 71. By reason of the conduct alleged herein, the Defendants named in this Count
19 violated Section 12(a)(2) of the Securities Act. Accordingly, Plaintiff and the other members of
20 the Class who hold Funko common stock pursuant to the Prospectus have the right to rescind and
21 recover the consideration paid for the Company’s shares and hereby elect to rescind and tender
22 their shares of the Company to the Defendants sued herein. Class members who have sold their
23 Funko common stock are entitled to rescissory damages.

24 **PRAYER FOR RELIEF**

25 **WHEREFORE**, Plaintiff prays for relief and judgment, as follows:

26 (a) Determining that this action is a proper class action under CR 23;

1 (b) Awarding compensatory statutory damages in favor of Plaintiff and the
2 other Class members against all Defendants, jointly and severally, in an amount to be
3 proven at trial, including interest thereon;

4 (c) Awarding Plaintiff and the Class their reasonable costs and expenses
5 incurred in this action, including counsel fees and expert fees;

6 (d) Awarding rescission or a rescissory measure of damages; and

7 (e) Such other and further relief as the Court may deem just and proper.

8 DATED this 15th day of November, 2017.

9 KELLER ROHRBACK L.L.P.

10
11 *s/ T. David Copley*

12 T. David Copley, WSBA #19379
13 Juli E. Farris, WSBA #17593
14 Elizabeth A. Leland, WSBA #23433
15 1201 Third Avenue, Ste. 3200
16 Seattle, WA 98101
17 Phone: (206) 623-1900
18 Fax: (206) 623-3384
19 dcopley@kellerrohrback.com
20 jfarris@kellerrohrback.com
21 bleland@kellerrohrback.com

22 Aaron L. Brody (*Pro Hac Vice Forthcoming*)
23 Michael J. Klein (*Pro Hac Vice Forthcoming*)
24 STULL, STULL & BRODY
25 6 East 45th Street
26 New York, NY 10017
Phone: (212) 687-7230
Fax: (212) 490-2022
abrody@ssbny.com
mklein@ssbny.com

Attorneys for Plaintiff and the Class

4839-9358-7029, v. 1

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This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit: Stockholder Blames Funko's Failed IPO on Funky Accounting Practices](#)
