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CASE #: 17-2-29838-7 SEA

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

In re FUNKO, INC. SECURITIES LITIGATION	Case No. 17-2-29838-7 SEA (Consol. with Nos. 18-2-01264-3 SEA, 18-2-01582-1 SEA, 18-2-02535-4 SEA, 18-2-08153-0 SEA, 18-2-12229-5 SEA, 18-2-14811-1 SEA and 18-2-12229-5 SEA)
This Document Relates To: ALL ACTIONS.	CLASS ACTION FIRST AMENDED CONSOLIDATED COMPLAINT FOR VIOLATIONS OF THE SECURITIES ACT OF 1933

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Plaintiffs The Ronald and Maxine Linde Foundation, Robert Lowinger, Michael Surratt, Ernest Baskin, Carl Berkelhammer and Michael Lovewell ("plaintiffs"), on behalf of all others similarly situated, by plaintiffs' undersigned attorneys, for plaintiffs' complaint against defendants, alleges the following based upon personal knowledge as to plaintiffs and plaintiffs' own acts, and upon facts obtained through an investigation conducted by Lead Counsel, which included, among other things: review and analysis of U.S. Securities and Exchange Commission ("SEC") filings made by Funko, Inc. ("Funko" or the "Company"), Company press releases, public statements issued by defendants, analyst reports, media reports, industry reports and consultation with persons familiar with Funko's business. Plaintiffs believe that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. This is a securities class action on behalf of all persons who purchased shares of Funko Class A common stock in or traceable to the Company's November 1, 2017 initial public offering (the "IPO") seeking to pursue remedies under the Securities Act of 1933 (the "1933 Act") against Funko, certain of the Company's directors and officers, the private equity sponsors of the IPO and the IPO's underwriters.

2. Funko describes itself as a pop culture consumer products company. It develops products based on popular movies, TV shows, video games, musicians and sports teams. Its most familiar products include bobble head dolls based on pop culture icons known as Pop! collectibles.

3. The Registration Statement, which incorporated the Prospectus, for the Company's IPO (the "Registration Statement") contained material misstatements, omitted material facts necessary to make statements contained therein not materially misleading, and further, made materially misleading purported "risk factors" that omitted material facts, and failed to meet the rules and regulations governing the preparation of such documents.

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4. In this Court's order Granting Funko Defendants' Motion to Dismiss Consolidated Complaint dated August 2, 2019 (the "August 2019 Order"), the Court dismissed one of plaintiffs' allegations that was prominent in the Consolidated Complaint, holding that a *Bloomberg* article by Stephen Gandel "did not reveal any corrective disclosure revealing the falsity in the Registration Statement by Funko" and "Plaintiffs have not shown that any new information about Funko was revealed on November 2, 2017 to cause the price decline." In fact, statistical analysis of the price decline on November 2, 2019, reveals a statistically significant decline at the 1% level, meaning that there is a 99% chance that the stock price movement resulted from the release of Company-specific information that day, *i.e.*, the *Bloomberg* article, and not market factors.[1] ***Something*** was revealed to Funko investors that day. Regardless of whether it was a revelation of accounting issues or the clarification of a deceptive presentation of Funko's financial results that were already provided in the Registration Statement – plaintiffs have pleaded both – investors in the IPO got fleeced with a massive loss in their investment in just hours. And the law recognizes 1933 Act claims may stand in either instance.

5. The Consolidated Complaint alleged a number of bases for the false and misleading statements in the Registration Statement that were not raised in defendants' briefing on the motions to dismiss and not discussed in the August 2019 Order. Plaintiffs have continued their investigation with respect to those allegations, and have performed forensic accounting analyses, which also supports those claims.

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[1] After subscriptions for the IPO were complete and the Registration Statement was declared effective, *Bloomberg Gadfly* columnist Stephen Gandel revealed misleading statements and graphics that he had been investigating and that were repeated in the Registration Statement. "How the toymaker gets a loss of $10 million to reflect back as an 86 percent earnings increase is the latest example of fun-house accounting on Wall Street." In his article, "Funko Extends Playtime to Its Accounting," Gandel revealed that Funko's financial performance had been "Dress[ed] Up," showing that graphics such as an arrow pointing up to mislead investors into thinking earnings were on the rise and would continue to grow, were materially inconsistent with Funko's actual earnings trend. Stephen Gandel, *Funko Extends Playtime to Its Accounting*, Bloomberg Opinion (Nov. 2, 2017), https://www.bloomberg.com/gadfly/articles/2017-11-02/funko-ipo-maker-of-dolls-extends-playtime-to-accounting

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6. Without prejudicing plaintiffs' rights to demonstrate that the Registration Statement was materially misleading in its prominently displayed presentation of Adjusted EBITDA, this First Amended Complaint alleges that the Registration Statement made materially false and misleading statements and omitted material facts regarding, *inter alia*: (i) pro forma net income, Adjusted EBITDA and EBITDA, which was materially overstated because Funko, in violation of Generally Accepted Accounting Principles ("GAAP"), failed to write off its abandoned e-commerce sales platform, a capital asset improperly included on the Company's balance sheet, by September 30, 2017 (*see infra* ¶¶41-48); (ii) Funko's growth, strategies and ability to "dynamically manage" its business, which in reality was a function of the Company's channel stuffing for at least a year prior to the IPO, leaving Funko's retailers overloaded with inventory and causing heavy discounting, while the Company's warehouses were overloaded (*see infra* ¶¶49-62); (iii) Funko's inventory management system, which was ineffective and made tracking inventory impossible, as the Company maintained a warehouse full of excess and obsolete "dead stock" and failed to write-down the obsolete inventory in accordance with GAAP (*see infra* ¶¶63-67); (iv) the value of intangible assets, including intellectual property, which the Company had materially overstated as of the time of the IPO (*see infra* ¶¶68-69); and (v) purported "Risk Factors," which were generalized and misleading for multiple reasons, including that generally described events were portrayed as future possibilities that, ***if*** they occurred, ***could*** harm the Company, when the facts or events underlying the risks had ***already*** occurred and had ***already*** harmed the Company. *See infra* ¶¶70-78.

7. Those who invested in the IPO suffered one of the quickest and most substantial losses in history. As *Renaissance Capital* reported, "Funko plummets 41% in biggest IPO drop since 2000."[2] On November 8, 2017, *Comics Gaming Magazine* reported that Funko's IPO had

[2] *Funko plummets 41% in biggest IPO drop since 2000*, Renaissance Capital IPO Expert (Nov. 2, 2017), https://www.renaissancecapital.com/IPO-Center/News/52250/Funko-plummets-41-in-biggest-IPO-drop-since-2000

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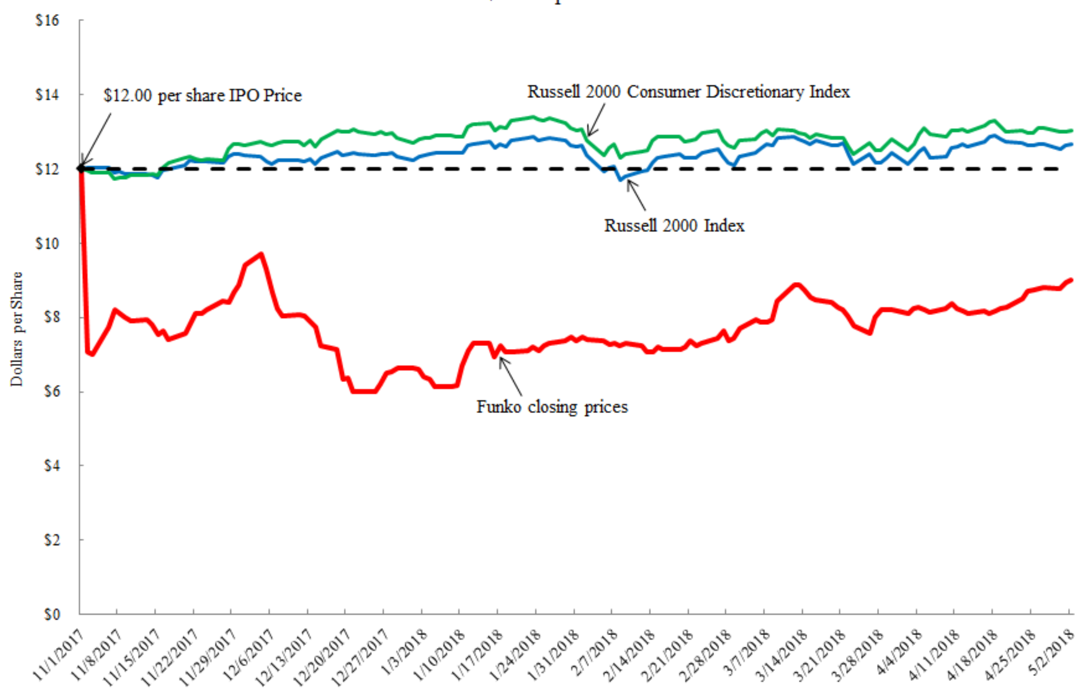
"flopped" and that "[e]xperts predict that part of the reason behind the incredibly poor debut stems from Funko's accounting practices, which *Bloomberg* columnists called the latest example of fun-house accounting on Wall Street." *Id.*[3] In fact, as *The Seattle Times* reported, "[m]ore than 9.7 million Funko shares traded hands" after the IPO as the stock price plummeted, "nearly equal to the 10.4 million shares sold in the offering."[4]

Funko, Inc. vs Russell 2000 & Russell 2000 Consumer Discretionary (1)
November 1, 2017 through May 2, 2018
Indexed to $12.00 per share IPO Price



(1) Russell 2000 and Russell 2000 Consumer Discetionary indices identified in Funko's 2017 Form 10-K, page 53.

8. That was just the beginning of revelations of certain material facts omitted or misrepresented in the Registration Statement. At the time the initial actions were filed in this case, Funko's stock traded in the range of $6-$7 per share, or approximately *50% below the Company's*

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[3] Zubi Khan, *Funko's IPO Flops, Worst First-Day Return in 17 Years*, Comics Gaming Magazine (Nov. 8, 2017), http://www.cgmagonline.com/2017/11/08/funko-ipo-worst-in-17-years/

[4] Seattle Times Staff, *Funko stock plunges in 'worst first-day return for an IPO in 17 years,'* The Seattle Times, (Nov. 2, 2017), https://www.seattletimes.com/business/funko-stock-plunges-in-ipo-shocker/

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IPO price of $12 per share, cementing substantial damages that were visited upon investors, pursuant to the federal securities laws. As shown above, Funko's trading price plummeted below comparable market and industry indices in response to the revelation of previously omitted significantly negative company-specific facts, which in turn destroyed stock purchaser investments and confidence in the Company shortly after the IPO.

JURISDICTION AND VENUE

9. The claims alleged herein arise under §§11, 12(a)(2) and 15 of the 1933 Act [15 U.S.C. §§77k, 77l(a)(2) and 77o].

10. This Court has jurisdiction over the subject matter of this action pursuant to RCW §2.08.010 and §22 of the 1933 Act [15 U.S.C. §77v]. Section 22 of the 1933 Act explicitly states that "[e]xcept as provided in section 77p(c) [16(c)], no case arising under this subchapter and brought in any State court of competent jurisdiction shall be removed to any court in the United States." Section 16(c) 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. This is an action asserting federal law claims. Thus, it does not fall within the definition of a "covered class action" under §16(b)-(c) and therefore is not removable to federal court under the Securities Litigation Uniform Standards Act of 1998.

11. Venue is proper in this County pursuant to RCW §4.12.025 and §22 of the 1933 Act because many of the acts and practices complained of herein occurred in substantial part in this County and certain defendants reside in or conduct business in this County.

PARTIES

12. Plaintiff The Ronald and Maxine Linde Foundation acquired shares of Funko Class A common stock in the IPO, from Defendant Goldman Sachs & Co. LLC, pursuant to the Registration Statement, and has been damaged thereby. The shares were purchased in response to being invited to submit an indication of interest to invest in the IPO by Defendant Goldman Sachs & Co. LLC at the behest of Funko.

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13. Plaintiff Robert Lowinger acquired shares of Funko Class A common stock in the IPO, from Defendant Goldman Sachs & Co. LLC, pursuant to the Registration Statement, and has been damaged thereby. The shares were purchased in response to being invited to indicate interest to invest in the IPO as well as the number of shares requested, through a web form, at the behest of Defendant Goldman Sachs & Co. LLC and Funko.

14. Plaintiff Michael Surratt acquired shares of Funko Class A common stock traceable to the IPO and pursuant to the Registration Statement, and has been damaged thereby.

15. Plaintiff Ernest Baskin acquired shares of Funko Class A common stock in the IPO, from Defendant Goldman Sachs & Co. LLC, pursuant to the Registration Statement, and has been damaged thereby. The shares were purchased in response to being invited to indicate interest to invest in the IPO as well as the number of shares requested, through a web form, at the behest of Defendant Goldman Sachs & Co. LLC and Funko.

16. Plaintiff Carl Berkelhammer acquired shares of Funko Class A common stock in the IPO, from Defendant Goldman Sachs & Co. LLC, pursuant to the Registration Statement, and has been damaged thereby. The shares were purchased in response to being invited to submit an order or indication of interest to invest in the IPO by Defendant Goldman Sachs & Co. LLC at the behest of Funko.

17. Plaintiff Michael Lovewell acquired shares of Funko Class A common stock traceable to the IPO and pursuant to the Registration Statement, and has been damaged thereby.

18. Defendant Funko, which calls itself a pop culture consumer products company, is based in Everett, Washington. Its Class A common stock trades on the Nasdaq Global Select Market ("Nasdaq") under the ticker symbol "FNKO." Funko is a "controlled company" under NASDAQ rules, for more than 50% voting power for Funko's governance rests with defendants ACON (defined in ¶¶21, 29, *infra*), Mariotti (defined in ¶19, *infra*), and Fundamental (defined in ¶¶224, 30, *infra*).

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19. Defendant Brian Mariotti ("Mariotti") was the Chief Executive Officer ("CEO") and a director of the Company at the time of the IPO. As one of Funko's executives in the IPO working group, Mariotti reviewed and approved, and participated in making, statements in the Registration Statement, and road show. He also reviewed, edited, and approved the road show PowerPoint presentation, road show talking points and script, in addition to pitching investors at the road show as Funko's CEO. Mariotti was motivated by the financial implications of an IPO given his financial stake in the Company. Immediately prior to the IPO, defendant Mariotti beneficially owned over 3.9 million shares of Class A common stock and over 3.7 million shares of Class B common stock, all of which constituted 23.2% of the Company's Class A shares and 15% of the Company's Class B shares. These shares provided him with an equivalent percentage of voting control at the IPO, and with well over $46 million in marketable securities as of the close of the IPO, not including unvested common units redeemable for an additional 484,538 shares of Class A common stock. Mariotti was also motivated by the financial implications of an IPO for Funko and Funko's private investors, which included the venture capital defendants herein.

20. Defendant Russell Nickel ("Nickel") was the Chief Financial Officer ("CFO") of the Company at the time of the IPO. As one of Funko's executives in the IPO working group, Nickel reviewed and approved, and participated in making, statements in the Registration Statement, and road show. He also reviewed, edited, and approved the road show PowerPoint presentation, road show talking points and script, in addition to pitching investors at the road show as Funko's CFO. Nickel was motivated by the financial implications of an IPO given his financial stake in the Company. Immediately prior to the IPO, defendant Nickel beneficially owned over 281,000 shares of Class A common stock, and over 281,000 shares of Class B common stock, all of which constituted well over $3.3 million in marketable securities as of the close of the IPO, not including vested common units redeemable for an additional 87,927 shares of Class A common stock. In addition, Nickel held Subordinated Promissory Notes with an aggregate principal amount of $120,000, plus interest, owed by Funko. Nickel was also motivated by the financial implications

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of an IPO for Funko and Funko's private investors, which included the venture capital defendants herein.

21. Defendant Ken Brotman ("Brotman") was designated by defendant ACON Investments, L.L.C. ("ACON") as the Chairman of the Board of Directors of Funko (the "Board") at the time of the IPO, and he is a founder and managing partner of defendant ACON. ACON controlled the predecessor to Funko immediately prior to the IPO, defendant Funko Acquisition Holdings, L.L.C. ("FAH, LLC"), through entities it created, and beneficially owned 100% of Funko's Class A common stock and 42% of Funko's Class B common stock, immediately prior to the IPO. FAH, LLC was formed in part to create Funko and cause Funko's issuance of stock in the IPO, and Brotman was a director of FAH, LLC, serving at the favor of ACON as he had done on numerous other boards of ACON companies. Brotman controlled Funko as a member of the board of managers of ACON Funko Manager, L.L.C., which is the sole manager of, and exercises voting and investment power over, 10,495,687 and 4,971,870 common units of FAH, LLC held by ACON Funko Investors, L.L.C. and ACON Funko Investors Holdings 1, L.L.C., respectively. Brotman also controlled Funko as a member of the investment committee of ACON Equity GenPar, L.L.C., which is the sole manager of, and exercises voting and investment power over, 2,096,368 and 5,852,801 shares of Class A common stock held by ACON Funko Investors Holdings 2, L.L.C. and ACON Funko Investors Holdings 3, L.L.C., respectively.

22. Defendant Gino Dellomo ("Dellomo") was designated by defendant ACON to be a director and member of the Board at the time of the IPO, and he is a director of ACON. ACON controlled the predecessor to Funko immediately prior to the IPO, FAH, LLC, through entities it created, and beneficially owned 100% of Funko's Class A common stock and 42% of Funko's Class B common stock, immediately prior to the IPO. FAH, LLC was formed in part to create Funko and cause Funko's issuance of stock in the IPO, and Dellomo was a director of FAH, LLC, serving at the favor of ACON as he had done on numerous other boards of ACON companies. Dellomo controlled Funko as a member of the board of managers of ACON Funko Manager,

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L.L.C., which is the sole manager of, and exercises voting and investment power over, 10,495,687 and 4,971,870 common units of FAH, LLC held by ACON Funko Investors, L.L.C. and ACON Funko Investors Holdings 1, L.L.C., respectively. Dellomo also controlled Funko as a member of the investment committee of ACON Equity GenPar, L.L.C., which is the sole manager of, and exercises voting and investment power over, 2,096,368 and 5,852,801 shares of Class A common stock held by ACON Funko Investors Holdings 2, L.L.C. and ACON Funko Investors Holdings 3, L.L.C., respectively.

23. Defendant Adam Kriger ("Kriger") was designated by defendant ACON to be a director and member of the Board at the time of the IPO, and he is an executive partner at ACON, and Chairman of the Board of Directors of Funko Holdings LLC ("FHL"), an entity in which FAH, LLC acquired a controlling interest in 2015. ACON controlled the predecessor to Funko immediately prior to the IPO, FAH, LLC, through entities it created, and beneficially owned 100% of Funko's Class A common stock and 42% of Funko's Class B common stock, immediately prior to the IPO. FAH, LLC was formed in part to create Funko and cause Funko's issuance of stock in the IPO, and Kriger was a director of FAH, LLC, serving at the favor of ACON. Kriger controlled Funko as a member of the board of managers of ACON Funko Manager, L.L.C., which is the sole manager of, and exercises voting and investment power over, 10,495,687 and 4,971,870 common units of FAH, LLC held by ACON Funko Investors, L.L.C. and ACON Funko Investors Holdings 1, L.L.C., respectively. Kriger also controlled Funko as a member of the investment committee of ACON Equity GenPar, L.L.C., which is the sole manager of, and exercises voting and investment power over, 2,096,368 and 5,852,801 shares of Class A common stock held by ACON Funko Investors Holdings 2, L.L.C. and ACON Funko Investors Holdings 3, L.L.C., respectively.

24. Defendant Richard McNally ("McNally") was designated by defendant Fundamental Capital, LLC ("Fundamental") to be a director and member of the Board at the time of the IPO, is a founder and partner at defendant Fundamental, and member of the Board of Directors of FHL, an entity in which FAH, LLC acquired a controlling interest in 2015. FAH,

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LLC was formed in part to create Funko and cause Funko's issuance of stock in the IPO, and McNally was a director of FAH, LLC. McNally controlled Funko as a one of two sole members of Fundamental Capital Partners, LLC and held voting interests in that entity. Fundamental Capital Partners, LLC is the Manager of Fundamental Capital, LLC, which holds 1,243,138 common units of FAH LLC. In turn, Fundamental Capital, LLC is the General Manager of Funko International, LLC, which holds 5,686,538 common units of FAH LLC. Through his control of Fundamental's affiliated entities identified above, which held 34.9% of Funko's Class A common stock shares and 27.7% of Funko's Class B common stock shares immediately prior to the IPO, McNally controlled Funko.

25. Defendant Charles Denson ("Denson") was a director and member of the Board at the time of the IPO. Densen beneficially owned 16,058 Class A common stock shares and 16,058 Class A common stock shares in Funko as of the IPO. Denson also served as a director and member of the board of FAH LLC since 2016.

26. Defendant Diane Irvine ("Irvine") was a director and member of the Board at the time of the IPO. Irvine beneficially owned 16,058 Class A common stock shares and 16,058 Class A common stock shares in Funko as of the IPO. Irvine also served as a director and member of the board of FAH LLC since August 2017.

27. The defendants identified in ¶¶19-26 above signed the false and misleading Registration Statement used to conduct the IPO and are referred to herein as the "Individual Defendants." The Individual Defendants signed the Registration Statement and, as directors and/or executive officers of the Company, participated in the solicitation and sale of Funko Class A common stock to investors in the IPO for their own benefit and the benefit of Funko. The defendants referenced above in ¶¶19-20 are key members of the IPO working group and executives of Funko who pitched investors in the road show to sell the IPO at the behest of the Company and the Underwriter Defendants, and are sometimes referred to herein as the "Executive Defendants."

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Defendant Funko and the Individual Defendants are strictly liable for the false and misleading statements in the Registration Statement.

UNDERWRITER DEFENDANTS

28. Defendants Goldman Sachs & Co. LLC, J.P. Morgan Securities LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Piper Jaffray, Jefferies, Stifel, BMO Capital Markets, and SunTrust Robinson Humphrey (collectively referred to as the "Underwriter Defendants") served as lead underwriters for the IPO and sold millions of shares of Funko Class A common stock in the IPO, and collectively received over $8.5 million in fees and commissions for soliciting and selling the shares in the IPO. Pursuant to the 1933 Act, the Underwriter Defendants are liable for the false and misleading statements in the Registration Statement as follows:

(a) The Underwriter Defendants are investment banking houses which specialize, inter alia, in underwriting IPOs of securities. They served as the underwriters of the IPO and shared more than $8.5 million in fees collectively. The Underwriter Defendants determined that in return for their share of the IPO proceeds, they were willing to merchandize Funko stock in the IPO. In the bakeoff that determined the composition of the underwriting syndicate, the Underwriter Defendants extolled their ability to market Funko's stock. Each of the Underwriter Defendants designated personnel to the IPO working group, including investment bankers, analysts, associates, and counsel, to market Funko's stock, and those personnel worked on and approved the content of Funko's Registration Statement and road show presentation. The Underwriter Defendants arranged a multi-city road show prior to the IPO during which they, and the Executive Defendants, met with potential investors and presented highly favorable information about the Company, its operations, and its financial prospects. The Underwriter Defendants also promoted Funko's IPO to their bank's own clients and sold shares to online brokerage account holders.

(b) The Underwriter Defendants also demanded and obtained an agreement from Funko that Funko would indemnify and hold the Underwriter Defendants harmless from any

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liability under the federal securities laws. They also made certain that Funko had purchased millions of dollars in directors' and officers' liability insurance.

(c) Representatives of the Underwriter Defendants also assisted Funko and the Individual Defendants in planning the IPO, and purportedly conducted an adequate and reasonable investigation into the business and operations of Funko, an undertaking known as a "due diligence" investigation. The due diligence investigation was required of the Underwriter Defendants in order to engage in the IPO. During the course of their "due diligence," the Underwriter Defendants had continual access to confidential corporate information concerning Funko's operations and financial prospects.

(d) In addition to availing themselves of virtually unbridled access to internal corporate documents, agents of the Underwriter Defendants met with Funko's management, top executives, and outside counsel and engaged in "drafting sessions" in advance of the IPO. During these sessions, understandings were reached as to: (i) the strategy to best accomplish the IPO; (ii) the terms of the IPO, including the price range at which Funko stock would be sold; (iii) the language to be used in the Registration Statement; (iv) what disclosures about Funko would be made in the Registration Statement; and (v) what responses would be made to the SEC in connection with its review of the Registration Statement. As a result of those constant contacts and communications between the Underwriter Defendants' representatives and Funko's management and top executives, the Underwriter Defendants knew, or should have known, of Funko's existing problems as detailed herein.

(e) The Underwriter Defendants solicited and sold in the IPO Funko stock to plaintiffs and other members of the Class.

ACON AND FUNDAMENTAL DEFENDANTS

29. Defendant ACON (defined in ¶21, *supra*) is a Washington D.C.-based private equity firm. It controlled Funko, both before and after the IPO. As the Registration Statement admits, in "October 2015, ACON acquired a controlling interest in" Funko. Shortly before the

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IPO, but after giving effect to a series of intermediate transactions, ACON was the beneficial owner of 100% of Funko's Class A common stock. ACON controlled the predecessor to Funko immediately prior to the IPO, defendant FAH, LLC (defined in ¶21, *supra*), through entities it created that were (and are) members of FAH, LLC, and beneficially owned 100% of Funko's Class A common stock and 42% of Funko's Class B common stock, immediately prior to the IPO. FAH, LLC was formed in part to create Funko and cause Funko's issuance of stock in the IPO. As set forth in the Funko Acquisition Holdings, L.L.C. Second Amended and Restated Limited Liability Company Agreement ("FAH, LLC Agreement"), FAH, LLC "desire[d] to have Funko, Inc. . . . effect an initial public offering" and FAH, LLC set out in great detail the steps to be taken to effect the IPO in the FAH, LLC Agreement. Defendant ACON controlled Funko through directors identified above that it designated to serve at its benefit and defendant ACON Funko Manager, L.L.C., which is the sole manager of, and exercises voting and investment power over, 10,495,687 and 4,971,870 common units of FAH, LLC held by defendant ACON Funko Investors, L.L.C. and defendant ACON Funko Investors Holdings 1, L.L.C., respectively. In addition, ACON controlled defendant ACON Equity GenPar, L.L.C., which is the sole manager of, and exercises voting and investment power over, 2,096,368 and 5,852,801 shares of Class A common stock held by ACON Funko Investors Holdings 2, L.L.C. and ACON Funko Investors Holdings 3, L.L.C., respectively. The defendants identified in this paragraph are sometimes referred to herein as the "ACON Defendants."

30. Defendant Fundamental (defined in ¶24, *supra*) is a San Francisco-based private equity firm. Through its designated Funko director, defendant McNally, and entities it created and controlled that were (and are) members of FAH, LLC, Fundamental controlled Funko, both before and after the IPO. Defendant Fundamental Capital Partners, LLC is the Manager of Fundamental Capital, LLC, which holds 1,243,138 common units of FAH LLC. In turn, Fundamental Capital, LLC is the General Manager of Funko International, LLC, which holds 5,686,538 common units of FAH LLC. Through Fundamental Capital Partners, LLC's control of the affiliated entities

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identified above, which held 34.9% of Funko's Class A common stock shares and 27.7% of Funko's Class B common stock shares immediately prior to the IPO, Fundamental controlled Funko. The defendants identified in this paragraph are sometimes referred to herein as the "Fundamental Defendants."

31. The ACON Defendants, Fundamental Defendants and defendant Mariotti also possessed the power to influence and control Funko immediately prior to the IPO and cause the IPO to be effected as shown by their ability to secure, in advance of the IPO, post-IPO control of the Company through a Stockholders Agreement. This is admitted in the Registration Statement, which states, "we [are] a 'controlled company' within the meaning of the Nasdaq rules," and explains the reason for the admission is that pursuant to the terms of a "Stockholders Agreement," the ACON Defendants, Fundamental Defendants and defendant Mariotti "after the consummation of this offering will, in the aggregate, have more than 50% of the voting power for the election of directors."

32. In addition, Funko adopted a dual class share voting structure that allowed the ACON Defendants and the Fundamental Defendants to maintain voting control even with a diminished economic interest in the Company. According to the Registration Statement, following the IPO, outside Class A shareholders in the Company would have 44.6% of the economic interest in Funko, but only 21.6% of its voting interest. The remainder of the voting interest would be held by the ACON Defendants and the Fundamental Defendants, as well as certain other parties, by way of their ownership of voting Class B stock, which does not have any economic interest in the Company. In addition, the ACON Defendants would hold 12.9 million Class A shares, representing 55.4% of the economic interest in Funko.

33. Under the control of the ACON Defendants and the Fundamental Defendants, Funko paid these private equity firms more than $100 million in fees, special dividends, earn-out payments and other financial arrangements. Funko used debt to finance much of these payments and, as a result, the debt load of the Company increased significantly in the years leading up to the

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IPO. For example, the total debt load of Funko's predecessor entity increased from approximately $217.8 million as of December 31, 2016, to approximately $339.1 million as of June 30, 2017, an increase of more than 55%, in only six months. Funko stated that it would use the proceeds from the IPO to pay off a portion of this debt.

THE FALSE AND MISLEADING REGISTRATION STATEMENT

34. Defendant Funko describes itself as a pop culture consumer products company. It develops licensing relationships with a variety of content providers and creates figurines and other products based on well-known characters from movies, television, music, video games and from similar pop culture references. It then sells these products to consumers through a diverse network of retail channels, including specialty retailers, mass-market retailers and e-commerce sites.

35. The Company's most familiar products are its Pop! collectibles, which are bobblehead dolls based on popular culture characters and icons. Sales of Pop! collectibles accounted for approximately 68% of the Company's total net sales for the six months ended June 30, 2017.

36. On or about October 6, 2017, the Company filed with the SEC a registration statement on Form S-1 for the IPO, which was declared effective on November 1, 2017 (together with all amendments, the "Registration Statement"). The next day, the Company filed a free writing prospectus for the IPO on Form FWP. On November 3, 2017, Funko filed the prospectus for the IPO on Form 424B4 (the "Prospectus"), which incorporated and formed part of the Registration Statement. Together, the Registration Statement and Prospectus were used to sell to the investing public approximately 10.4 million shares of Funko Class A common stock in the IPO at $12 per share.

37. The Registration Statement contained untrue statements of material fact, omitted material facts necessary to make the statements contained therein not misleading, and failed to make adequate disclosures, as a result of being negligently prepared and failing to follow the rules and regulations governing the preparation of such documents. Consequently, defendants failed to

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comply with SEC Regulation S-K 17 C.F.R. §229.303(a)(3)(ii), Item 303; SEC Regulation S-K 17 C.F.R. §229.503(c), Item 503; SEC Staff Accounting Bulletin No. 104; and certain provisions of GAAP.

38. Defendants violated SEC Regulation S-K 17 C.F.R. §229.303(a)(3)(ii), Item 303, a regulation designed for the protection of investors that required defendants, in pertinent part, to "[d]escribe any known trends or uncertainties that have had or that the registrant reasonably expects will have a material favorable or unfavorable impact on the sales or revenues or income from continuing operations" and to "[d]escribe any known material trends, favorable or unfavorable, in the registrant's capital resources." Similarly, defendants also violated SEC Regulation S-K 17 C.F.R. §229.503, Item 503, by failing to sufficiently include in the "Risk Factor" section of the Registration Statement, "a discussion of the most significant factors that make the offering speculative or risky."

39. Defendants also failed to comply with SEC Staff Accounting Bulletin No. 104, which provided further explanation of managements' disclosure obligations for the Company's Management Discussion and Analysis ("MD&A") section of its SEC filing, as follows:

> MD&A requires a discussion of liquidity, capital resources, results of operations and other information necessary to an understanding of a registrant's financial condition, changes in financial condition and results of operations. This includes unusual or infrequent transactions, known trends or uncertainties that have had, or might reasonably be expected to have, a favorable or unfavorable material effect on revenue, operating income or net income and the relationship between revenue and the costs of the revenue. Changes in revenue should not be evaluated solely in terms of volume and price changes, but should also include an analysis of the reasons and factors contributing to the increase or decrease. The Commission stated in FRR [Financial Reporting Release] 36 that MD&A should "give investors an opportunity to look at the registrant through the eyes of management by providing a historical and prospective analysis of the registrant's financial condition and results of operations, with a particular emphasis on the registrant's prospects for the future."

40. Defendants also violated certain provisions of GAAP pertaining to Funko's obsolete inventory and its abandoned e-commerce platform as described below in detail.

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Materially Overstated Financial Results and Pro Forma Estimates

41. The Registration Statement provided Funko's historical financial results in 2017 as well as preliminary results for the most recent fiscal quarter, ending September 30, 2017, as follows:

> ***We estimate that net sales for the three months ended September 30, 2017 will range between $142.3 million and $142.8 million, an increase of approximately 21%***, compared to net sales of $118.0 million for the three months ended September 30, 2016. The increase in net sales for the three months ended September 30, 2017 relative to the prior year period was driven in part by an increase in international sales, primarily in Europe as a result of our Underground Toys Acquisition. ***We estimate that net income for the three months ended September 30, 2017 will range between $4.9 million and $5.9 million***, a decrease of approximately 69%, compared to net income of $17.2 million for the three months ended September 30, 2016. We estimate that gross margin (exclusive of depreciation and amortization) for the three months ended September 30, 2017 will range between 40.9% and 41.4%, compared to gross margin (exclusive of depreciation and amortization) of 39.2% for the three months ended September 30, 2016. . . . We estimate that Adjusted EBITDA for the three months ended September 30, 2017 will range between $23.8 million and $24.8 million, compared to Adjusted EBITDA of $31.0 million for the three months ended September 30, 2016. Included in our estimated net income and Adjusted EBITDA is the impact of a $4.9 million reserve on the outstanding accounts receivable balance for Toys 'R' Us, Inc., which filed for voluntary petitions for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code in September 2017.

	Three Months Ended September 30, 2017 (Estimated Low End of Range)	2017 (Estimated High End of Range)	2016 (Actual)
	(in millions)		
Net income	$ 4.9	$ 5.9	$ 17.2
Interest expense, net	9.1	9.1	4.2
Income tax expense	—	—	—
Depreciation and amortization	8.4	8.4	6.1
EBITDA	$ 22.4	$ 23.4	$ 27.5
Adjustments:			
Monitoring fees(a)	0.5	0.5	0.4
Equity-based compensation(b)	0.6	0.6	0.6
Earnout fair market value adjustment(c)	—	—	1.4
Inventory step-up(d)	—	—	—
Acquisition transaction costs and other expenses(e)	0.2	0.2	1.1
Foreign currency transaction (gain) loss(f)	0.1	0.1	—
Adjusted EBITDA	$ 23.8	$ 24.8	$ 31.0

(a) Represents monitoring fees paid pursuant to a management services agreement with ACON that was entered into in connection with the ACON Acquisition, which will terminate upon the consummation of this offering.
(b) Represents non-cash charges related to equity-based compensation programs, which vary from period to period depending on timing of awards.
(c) Reflects the increase in the fair value of contingent liabilities incurred in connection with the ACON Acquisition and the Underground Toys Acquisition.
(d) Represents a non-cash adjustment to cost of sales resulting from the ACON Acquisition and the Underground Toys Acquisition.
(e) Represents legal, accounting, and other related costs incurred in connection with this offering, the ACON Acquisition, the Underground Toys Acquisition, the Loungefly Acquisition and other potential acquisitions.
(f) Represents both unrealized and realized foreign currency (gains) losses on transactions other than in U.S. dollars.

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42. The Registration Statement also stated net income for the six months ended June 30, 2017, was $81,000, in addition to the financial information provided as alleged in the paragraph above. Those statements were materially false and misleading for omitting material facts pertaining to the accounting treatment of the Company's abandoned e-commerce sales platform, a capital asset that was included in the Company's balance sheet. Funko overstated its pro forma net income and Adjusted EBITDA by $1.4 million because it failed to write off its abandoned e-commerce sales platform by September 30, 2017.

43. That discrete e-commerce platform project began in early 2017, did not – and could not – work, and had been abandoned. In 2016, Funko originally allocated $1.4 million to be used in 2017 to build, design, deliver, and connect cloud and e-commerce platforms. Funko previously used Shopify as its e-commerce platform. The Company wanted to replace Shopify with a newer product because Shopify would shut down or slow down when the Company released new products. Funko typically released new products all at once on the same day and at the same approximate time every week. But Shopify could not handle this traffic and, therefore, the Company sought to obtain what was thought to be a more effective and efficient e-commerce platform.

44. The contractor engaged to install the e-commerce platform used Microsoft Axure for the cloud-based environment and used Magento for the e-commerce platform. However, these two software platforms were not compatible because the systems did not use the same architecture and could not be made to function together. Consequently, the e-commerce platform project that began in early 2017 did not – and could not – work, and had to be abandoned. Indeed, as Funko attempted to launch the platform in connection with the 2017 Comic-Con convention held in July 2017 in San Diego, California, the platform failed. The Company internally concluded that the platform was not functioning or usable at all and returned to its old e-commerce platform.

45. But Funko failed to write down the $1.4 million investment in the e-commerce platform and, as a result, overstated pro forma net income, EBITDA, and Adjusted EBITDA as of

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the three months ended September 30, 2017 as reported in the Company's Registration Statement, in violation of GAAP. GAAP requires that "a long-lived asset to be abandoned [be] disposed of when it ceases to be used." Accounting Standards Codification ("ASC") 360-10-35-47. "When a long-lived asset ceases to be used, the carrying amount of the asset should equal its salvage value, if any. The salvage value of the asset shall not be reduced to an amount less than zero." ASC 360-10-35-48. In Funko's case, the abandoned e-commerce platform that ceased to be used (and was never really used at all) should have been written down to zero because it did not have any salvage value.

46. The required $1.4 million write-down was not included in the estimated low end or high end of range of net income or EBITDA for the three months ended September 30, 2017 shown in the Company's Registration Statement. Funko stated that the high end of range net income was estimated to be $5.9 million and the high end of the range of EBITDA was estimated to be $23.4 million. And Funko stated that the low end of range net income was estimated to be $4.9 million and the low end of range EBITDA was estimated to be $22.4 million. This pro forma financial information was materially false and misleading because had the Company complied with GAAP and corrected its estimated results by deducting the $1.4 million abandoned e-commerce platform project, Funko would have stated that it expected the high end of the range of net income to be $4.5 million, the high end of the range of EBITDA to be $22 million, as of the three months ended September 30, 2017. This meant that the estimated high end of the range of net income was overstated by 23.7% (*i.e.*, $1.4 million required write-down ÷ $5.9 million net income), and the estimated high end of the range of EBITDA was overstated by 5.9% (*i.e.*, $1.4 million required write-down ÷ $23.4 million EBITDA). Similarly, this meant that the estimated low end range net income was overstated by 28.6% (i.e., $1.4 million required write-down ÷ $4.9 million net income) and the estimated high end range EBITDA was overstated by 6.3% (i.e., $1.4 million required write-down ÷ $22.4 million EBITDA). Each of these overstatements is objectively material based on the magnitude of the overstatement. *See supra* ¶80 (5% or more of reported financial items are

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deemed to be material under Statement of Financial Accounting Concepts No. 8 and SEC Staff Accounting Bulletin No. 99).

47. Indeed, the loss was certain by June 30, 2017, if not September 30, 2017. The expenses not included in net income from the failure of that project alone, if reported as a write-off as they should have been, would have turned Funko's reported net income for the six months ended June 30, 2017, into an approximate seven-figure ***net loss***. Accordingly, the Company's net income for at least one of these periods was materially ***overstated***. The Registration Statement otherwise also did not specifically disclose that there was a write-off for the particular failed e-commerce project. Net income for the full year 2017 was merely \$7.3 million, meaning the expenditure on the failed e-commerce platform was material, not just for any interim period in 2017, but on an annual basis as well.

48. Furthermore, the \$1.4 million write-down would still need to be disclosed in the Registration Statement to show the differences between net income, EBITDA, and Adjusted EBITDA. The SEC's rules state that "Regulation G contains a general disclosure requirement and a specific requirement of a reconciliation of the non-GAAP financial measure to the most directly comparable GAAP financial measure." SEC Final Rule: Conditions for Use of Non-GAAP Financial Measures, 17 CFR Parts 228, 229, 244 and 249 [Release No. 33-8176; 34-47226; FR-65; File No. S7-43-02]. "Regulation G includes the general disclosure requirement that a registrant, or a person acting on its behalf, shall not make public a non-GAAP financial measure that, taken together with the information accompanying that measure, contains an untrue statement of a material fact or omits to state a material fact necessary in order to make the presentation of the non-GAAP financial measure, in light of the circumstances under which it is presented, not misleading." *Id.*

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Materially False and Misleading Statements and Omissions Regarding Funko's Growth, Strategy and Ability to "Dynamically Manage" the Business

49. The Registration Statement trumpeted the "strong growth" of Funko's business and attributed that growth to certain purported "strategies" but it omitted the true facts underlying that growth and misstated the strategies. According to the Registration Statement, Funko's:

> ***[F]inancial performance reflects the strong growth of [the Company's] business***. From 2014 to 2016, we expanded our net sales, net income and Adjusted EBITDA at a 100%, a 17% and an 86% compound annual growth rate, or CAGR, respectively. We achieved this growth without reliance on a singular "hit" property as no single property accounted for more than 15% of annual net sales during that period.

50. The Registration Statement also stated that the Company's diverse portfolio and unique production and design model insulated it from adverse trends in the toy and retail industry, stating in pertinent part:

> We have strong licensing relationships with many established content providers, such as Disney, HBO, LucasFilm, Marvel, the National Football League and Warner Brothers. We strive to license every pop culture property that we believe is relevant to consumers. ***We currently have licensed over 1,000 properties, which we believe represents one of the largest portfolios in our industry,*** and from which we can create multiple products based on each character within those properties. Content providers trust us to create unique, stylized extensions of their intellectual property that extend the relevance of their content with consumers through ongoing engagement, helping to maximize the lifetime value of their content. We believe we have benefited from a trend of content providers consolidating their relationships to do more business with fewer licensees. ***Our track record of obtaining licenses from content providers, together with our proven ability to renew and extend the scope of our licenses, demonstrates the trust content providers place in us***.
>
> * * *
>
> We have developed a nimble and low-fixed cost production model. The strength of our in-house creative team and relationships with content providers, retailers and third-party manufacturers allows us to move from product concept to pre-selling a new product in as few as 24 hours. We typically have a new figure on the store shelf between 110 and 200 days and can have it on the shelf in as few as 70 days. As a result, ***we can dynamically manage our business to balance current content releases and pop culture trends*** with content based on classic evergreen properties, such as Mickey Mouse or classic Batman. ***This has allowed us to deliver significant growth while lessening our dependence on individual content releases***.

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51. Similarly, the Registration Statement stated that Funko's diversity of product offerings drove revenue "[v]isibility and [g]rowth," while limiting the Company's exposure to any one single content provider or industry trend:

> **Dynamic Business Model Drives Revenue Visibility and Growth**
>
> Our business is diversified across content providers and properties, product categories, and sales channels. As a result, ***we can dynamically manage our business to capitalize on pop culture trends, which has allowed us to deliver significant growth while lessening our dependence on individual content releases***. Our content provider relationships are highly diversified. We generated only approximately 8% and 15% of net sales from our top property for the six months ended June 30, 2017 and the year ended December 31, 2016, respectively, and the portion of our net sales for the six months ended June 30, 2017 and the year ended December 31, 2016 attributable to our top five properties was 27% and 36%, respectively. Our products are balanced across our licensed property categories. In 2016, we generated approximately 43% of net sales from classic evergreen properties, approximately 24% from movie release properties, approximately 20% from current video game properties and approximately 12% from current TV properties. We have visibility into the new release schedule of our content providers and our expansive license portfolio allows us to dynamically manage new product creation. This allows us to adjust the mix of products based on classic evergreen properties and new releases, depending on the media release cycle. In addition, we sell our products worldwide through a diverse group of sales channels, including specialty retailers, distributors, mass-market retailers, e-commerce sites and direct-to-consumer.

52. The Registration Statement also listed the Company's strategies: (i) "Increase Sales with Existing Retail Customers"; (ii) "Add New Retail Customers and Expand Into New Channels"; (iii) "Broaden Our Product Offerings"; (iv) "Expand Internationally"; and (v) "Leverage the Funko Brand Across Multiple Channels."

53. Funko's Registration Statement also misleadingly represented that Funko's revenue growth, which had recently slowed to 16% in the first half of 2017, was in part due to "a retail inventory overhang." According to defendants, "Our rate of growth during the first half of 2017 was lower than prior periods, largely driven by the slow rate of growth in the second quarter. Our results in the second quarter were primarily impacted by a retail inventory overhang from prior periods which resulted in a slower pace of retail reorders during the second quarter[.]"

54. The Registration Statement also described Funko's revenue recognition practices, including the timing of revenue recognition, as follows:

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> Revenue from the sale of our products is recognized when all of the following criteria are met: persuasive evidence of an arrangement exists, there are no uncertainties regarding customer acceptance, the selling price is fixed or determinable, and collectability is reasonably assured. We routinely enter into arrangements with our customers to provide for markdown co-operation advertising and other various allowances and an estimate for those allowances is recorded when revenue is recognized. Sales terms typically do not allow for a right of return except in relation to a manufacturing defect.

55. It also stated:

> We routinely enter into arrangements with our customers to provide sales incentives, and provide allowances for returns and defective merchandise. Such programs are based primarily on customer purchases and specified factors relating to sales to consumers. While the majority of sales adjustments are readily determinable at period end and do not require estimates, certain sales adjustments require us to make estimates. In making these estimates, we consider all available information, including the overall business environment, historical trends and information from customers. Sales incentives and allowances for returns and defective merchandise are recorded as sales adjustments and reduce revenue in the period the related revenue is recognized.
>
> Amounts received prior to satisfying the revenue recognition criteria are recorded as deferred revenue on our consolidated balance sheets. Deferred revenue is classified as a current liability based on the expectation of recognition within 12 months following the date of each balance sheet.

56. The statements above, in ¶¶49-55, were false and misleading and omitted material information. The Company's actual primary growth strategy as of the IPO was a practice known as "channel stuffing" (also sometimes referred to as "pull-in sales"), which Funko had been engaging in for at least the twelve months leading up to the IPO. In fact, Funko's stated primary growth strategy above, was impotent – because Funko's channel stuffing had left the Company's retailers overstocked, while its warehouses were full. *See infra* ¶¶63-67 (alleging warehouse full of "dead stock" and GAAP violations regarding inventory writedowns). The Company's success was largely driven ***not*** by "dynamically manag[ing]" the business or the Company's purported strategies. Rather, the Company was pulling forward revenue from future periods, which had a significantly misleading effect on Funko's growth.

57. Channel stuffing has been defined by the American Institute of Certified Public Accountants as:

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> [A] marketing practice that suppliers sometimes use to boost sales by inducing distributors to buy substantially more inventory than they can promptly resell. Inducements to overbuy may range from deep discounts on the inventory to threats of losing the distributorship if the inventory is not purchased.

The SEC describes channel stuffing as: "[T]he pulling forward of revenue from future fiscal periods by inducing customers – through price discounts, extended payment terms or other concessions – to submit purchase orders in advance of when they would otherwise do so." *In the Matter of Sunbeam Corp.*, Securities Act Release No. 7976, Exchange Act Release No. 44305, Accounting and Auditing Enforcement Act Release No. 1393, File No. 3-10481, 001 SEC LEXIS 931, at *4 n.4 (May 15, 2001).

58. In sum, channel stuffing is the practice of bringing revenues into the current period that would otherwise be realized, if at all, in a later period by inducing customers to accept shipments of orders earlier than they would in the normal course of business. Identifying channel stuffing requires extensive analysis typically done by forensic accountants, who look for multiple indicators and probable evidence that a company is engaging in channel stuffing, including significant increases in accounts receivables relative to sales volume, extended customer payment terms, increases in the time it takes the company to collect payment after a sale has been made, and discounting by retailers to reduce excess inventories.

59. Here, as of the IPO, internally reported accounts receivable amounts had been accelerating for the past year and growing significantly faster than the rate of sales growth. As of the IPO, internally reported accounts receivable turnover ratio was dropping significantly – by hundreds of percent -- notwithstanding growing sales. It was internally recognized that the Company's accounts receivable was becoming less efficient and the Funko was extending payment terms as it stuffed its retail channels with product that could not be sold. Further, as of the IPO, internal reports indicated the Company's days sales outstanding over at least the past year had been significantly increasing – in double digits – as the Company saturated sales channels with its products. And, in the year prior to the IPO, it was internally recognized that inventory turnover had greatly decreased, again, by double digits, notwithstanding increasing days sales outstanding

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and decreasing accounts receivable turnover, as the Company stuffed sales channels with its products.

60. Critically for investors, channel stuffing generally leads to reduced revenues in succeeding periods because sales channels can only be stuffed so far. The process is not perpetually sustainable. Ultimately, a retailer will only purchase so much additional inventory necessary to satisfy its own customers' requirements in the normal course of business, regardless of the favorable terms the seller extends to the retailer. Although channel stuffing does not necessarily result in the improper recognition of revenue under GAAP, it must be disclosed. "While channel stuffing may not be inherently fraudulent, companies employing this device have duties to disclose both its use and the material impact it will likely have on future revenues… ." [C]ompanies engaged in undisclosed channel stuffing fraudulently distort investor perceptions and artificially inflate the market value of their securities." Manning Gilbert Warren III, *Revenue Recognition and Corporate Counsel*, 56 SMU Law Review 885, 921 (2003).

61. But Funko failed to disclose the nature or extent of its channel stuffing to inflate revenues reported in its Registration Statement, as required not to make the Company's statements false or misleading. In the SEC's Staff Accounting Bulletin ("SAB") 104, the SEC referred to the requirements under Financial Reporting Release ("FRR") No. 36, which noted that the following practice – which is analogous to channel stuffing as applied by Funko – ***must*** be disclosed in the MD&A section in SEC filings: "Shipments of product at the end of a reporting period that significantly reduce customer backlog and that reasonably might be expected to result in lower shipments and revenue in the next period." SAB 104 at 77 (referring to FRR No. 36 (§501), *Management's Discussion and Analysis of Financial Condition and Results of Operations; Certain Investment Company Disclosures*).

62. Ultimately, retailers will take steps to reduce inventories that have become bloated from channel stuffing back to normal levels. This can be accomplished through returning excess product to the manufacturer and/or putting the excess product on clearance at deeply discounted

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prices. But the Company's Registration Statement failed to disclose these risks to investors. Indeed, when deep discounting was revealed just weeks after the IPO, investors reacted negatively as securities analysts sounded warning bells. On November 27, 2017, just weeks after the IPO, BMO Capital Markets analyst Gerrick Johnson published a report on Funko noting that Funko claims to take pride in its management of the channel citing as an example that when Wal-Mart ordered 250,000 units of product Funko shipped only 80,000 to ensure sell-throughs without resorting to discounting. But in his November 27 report, Johnson stated: "[W]e are concerned about a growing inventory. Our observations at retail run contrary to company's commentary. First, we see what appears to be a lot of product. We've also observed more items on clearance, particularly at major retailers." Then, on December 19, 2017, he wrote: "We have already begun to see clearance sales, something Funko's core collector customers are very sensitive to. . . . At Walmart, for example, using data from the Walmart Savings Showcase (a collection of clearance and rollback items), we found 205 SKUs of Funko products (primarily Pop! figures), from a broad range of licenses such as Disney Princess and Star Wars, with discounts ranging from -10% to -85%, with an average discount of -40%." *See also supra* ¶¶79-85 (alleging additional facts demonstrating materiality).

Materially False and Misleading Statements and Omissions Regarding the Company's Inventories and Internal Controls

63. The Registration Statement represented that:

> We maintain reserves for excess and obsolete inventories to reflect the inventory balance at the lower of cost or market value. This valuation requires us to make judgments, based on currently available information, about the likely method of disposition, such as through sales to customers, or liquidation, and expected recoverable value of each disposition category. We estimate obsolescence based on assumptions regarding future demand. Inventory costs include direct product costs and freight costs.

But the statement above was false and misleading and omitted material information because Funko did not have a functioning system to adequately track obsolete inventory, the Company maintained a warehouse specifically for excess and obsolete inventory (internally referred to as "dead stock") that was four to five months old (which is significantly out of date for pop culture merchandise),

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and inventory values were overstated. In fact, the Company had an ineffective inventory management system and maintained a warehouse consisting of "dead stock" that was not written down to market value in accordance with GAAP at the time of the IPO. Leading up to the IPO, Funko had been moving inventory between warehouses and once moved, it would vanish on Microsoft Dynamics tracking systems, leaving it extremely difficult if not impossible for the Company to track. Indeed, as of the IPO, Funko was transferring inventory to Underground Toys, a company it acquired in the UK, but recording those shipments as revenue, in violation of its own revenue recognition policies.

64. Furthermore, internal reports at the Company as of the IPO indicated that Funko's inventory included significant amounts of obsolete merchandise. Indeed, inventory turnover was slowing by double digits while sales were growing, further indicating the existence of very large amounts of obsolete inventory on the Company's books at the time of the IPO.

65. The Registration Statement overstated Funko's inventories by continuing to maintain the inventory asset balance at cost because the Company failed to write-down inventories to market value as required by GAAP. "A departure from the cost basis of pricing the inventory is required when the utility of the goods is no longer as great as their cost. Where there is evidence that the utility of goods, in their disposal in the ordinary course of business, will be less than cost, whether due to physical deterioration, obsolescence, changes in price levels, or other causes, the difference shall be recognized as a loss of the current period. This is generally accomplished by stating such goods at a lower level commonly designated as market." ASC 330-10-35-1.

66. Having such a functioning inventory system in place is obviously an antecedent to the proper, timely write-downs of obsolete inventory to market value that GAAP requires. Funko maintained three warehouses and the Company used the third, auxiliary "dead stock" warehouse to store older stock that the Company tried to sell with discounts, but could not move. The approximate age of the "dead stock" inventory was at least four to five months old, which is significantly out of date for pop culture merchandise. At the time of the IPO, Funko did not even

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have a functioning system to adequately track obsolete inventory. Funko was moving inventory between warehouses and once moved, it would vanish on Funko's Microsoft Dynamics tracking system, making it extremely difficult, if not impossible, for the Company to track. Obsolete inventory remaining in the auxiliary warehouse was not written-down to market value in accordance with GAAP.

67. Consequently, Funko's internal controls over inventories were also weak at the time of the IPO, which caused the Company to improperly postpone write-downs of obsolete inventory into future periods. Although Funko's auditor, Ernst & Young LLP, would normally be in a position to identify such internal control weaknesses over the Company's financial reporting for inventories during a normal annual audit engagement, Funko did not engage its auditor to perform an audit of the Company's internal control over financial reporting when the Company prepared for its IPO. As Ernst and Young LLP stated, "We were not engaged to perform an audit of the Company's internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion." Registration Statement, Ernst & Young LLP's Report of Independent Registered Public Accounting Firm Report, dated April 28, 2017.

Materially False and Misleading Statements and Omissions Regarding Value of Intellectual Property

68. The Registration Statement stated that Funko had more than $243 million in net intangible assets subject to amortization as of December 31, 2016, including more than $114 million in intellectual property assets, as reflected in the following chart (in thousands):

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	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	$258,898	$(15,102)	$243,796

69. The Registration Statement further claimed that the amount of Funko's net intangible assets had increased to approximately $258 million and its goodwill to $106.5 million by June 30, 2017, despite the fact that the Company largely relied on the intellectual property of third-party content providers. These statements and the statements in ¶38, above, were materially false and misleading and omitted material information. In truth the Company had warehouses full of unsaleable inventory, showing that the value of its intellectual property rights, trade names and customer relationships was worth less than what it claimed.

Materially False and Misleading Statements and Omissions Regarding the Company's "Risk Factors"

70. The Registration Statement contained pages and pages of numerous generalized possible "Risk Factors" that might occur and "[i]n case" they did actually occur, then Funko's financial condition and results of operation "***could*** be materially and adversely affected." Those statements were false or misleading and omitted material information. For example, the Registration Statement listed a host of factors and stated "***[i]f*** demand or future sales do not reach forecasted levels, we could have excess inventory that we may need to hold for a long period of time, write down, sell at prices lower than expected or discard." Likewise the Registration Statement said "***[i]f*** we are not successful in managing our inventory, our business, financial condition and results of operations ***could*** be adversely affected." What the Registration Statement described as future possibilities had ***already*** occurred. As of the IPO, Funko had been channel stuffing for at least the prior year. Demand was already down as a result of that. Retailers were overstocked and Funko had warehouses full of excess and outdated inventory (referred to

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internally as “dead stock”) and its inventory management system was ineffective. Funko was moving inventory between warehouses and once moved, it would vanish on Microsoft Dynamics tracking systems, leaving it extremely difficult if not impossible for the Company to track.

71. The Registration Statement also included as possible “Risk Factors”:

> ***Our success depends on our ability to execute our business strategy***.
>
> Our net sales and profitability have grown rapidly in recent periods; however, this should not be considered indicative of our future performance. Our future growth, profitability and cash flows depend upon our ability to successfully execute our business strategy. . . .

The Registration Statement then went on to list “a number of factors” that could possibly influence Funko’s growth strategy, none of which included channel stuffing. To the contrary, the Registration Statement focused on such factors as “changing consumer preferences,” ability to “enter new licenses,” “favorable brand recognition,” “relationships with third-party manufacturers,” and “effectively manag[ing] debt.”

72. The Registration Statement also stated as possible “Risk Factors” generalized factors related to future retail demand and managing growth:

> [O]ur business ***could*** be adversely affected ***if*** any of our retail customers or distributors were to reduce purchases of our products. Our retail customers and distributors generally build inventories in anticipation of future sales, and will decrease the size of their future product orders ***if*** sales do not occur as rapidly as they anticipate. Our customers make no long-term commitments to us regarding purchase volumes and can therefore freely reduce their purchases of our products. Any reduction in purchases of our products by our retail customers and distributors, or the loss of any key retailer or distributor, ***could*** adversely affect our net sales, operating results and financial condition.
>
> * * *
>
> ***We have experienced rapid growth in recent periods. If we fail to manage our growth effectively, our financial performance may suffer***.
>
> We have experienced rapid growth over the last several years, which has placed a strain on our managerial, operational, product design and development, sales and marketing, administrative and financial infrastructure.

73. The statements above in ¶¶70-72 were false and misleading and omitted material facts, because the Company’s growth was then ***already*** being affected by Funko’s channel stuffing.

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Then-current and future growth had ***already*** been materially negated by Funko's undisclosed true growth strategy, which depended on channel stuffing. None of this was related to "changing consumer preferences" or any of the factors listed as potential risks to Funko's purported business strategy. Likewise, retailers were already materially decreasing demand and lowering prices as their inventories were overstocked from the Company's channel stuffing practices. None of that had anything to do with managing growth, i.e., "strain on managerial [or] operational . . . development."

74. The Registration Statement also stated as possible "Risk Factors" generalized factors related to future ability to manage inventories:

> ***Our success depends, in part, on our ability to successfully manage our inventories***.
>
> We must maintain sufficient inventory levels to operate our business successfully, but we must also avoid accumulating excess inventory, which increases working capital needs and lowers gross margin. We obtain substantially all of our inventory from third-party manufacturers located outside the United States and must typically order products well in advance of the time these products will be offered for sale to our customers. As a result, it may be difficult to respond to changes in consumer preferences and market conditions, which for pop culture products can change rapidly. If we do not accurately anticipate the popularity of certain products, then we may not have sufficient inventory to meet demand. Alternatively, if demand or future sales do not reach forecasted levels, we could have excess inventory that we may need to hold for a long period of time, write down, sell at prices lower than expected or discard. If we are not successful in managing our inventory, our business, financial condition and results of operations could be adversely affected.
>
> We may also be negatively affected by changes in retailers' inventory policies and practices. As a result of the desire of retailers to more closely manage inventory levels, there is a growing trend to make purchases on a "just-in-time" basis. This requires us to more closely anticipate demand, and could require us to carry additional inventory. Policies and practices of individual retailers may adversely affect us as well, including those relating to access to and time on shelf space, price demands, payment terms and favoring the products of our competitors. Our retail customers make no binding long-term commitments to us regarding purchase volumes and make all purchases by delivering purchase orders. Any retailer can therefore freely reduce its overall purchase of our products, and reduce the number and variety of our products that it carries and the shelf space allotted for our products. If demand or future sales do not reach forecasted levels, we could have excess inventory that we may need to hold for a long period of time, write down, sell at prices lower than expected or discard. If we are not successful in managing our inventory, our business, financial condition and results of operations could be adversely affected.

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75. The statements in the paragraph above were false and misleading and omitted material facts because the Company's inventory problems had ***already*** arrived, born of channel stuffing and Funko's poor internal controls over inventories, which was then causing the Company to improperly postpone write-downs of obsolete inventory into future periods. The Company had an entire auxiliary warehouse full of "dead stock" and did not even have a functioning system to adequately track obsolete inventory. Funko was moving inventory between warehouses and once moved, it would vanish on Funko's Microsoft Dynamics tracking system, making it extremely difficult, if not impossible, for the Company to track. Obsolete inventory remaining in the auxiliary warehouse and was not written-down to market value in accordance with GAAP. And this was not about keeping inventories to respond to "just in time" demands, given the Company's internal records alleged above (*see supra* ¶¶63-67) and channel stuffing practices (*see supra* ¶¶56-59).

76. The Registration Statement also included possible generalized "Risk Factors" concerning third party vendors and new technology, as follows:

> ***Our business depends in large part on our vendors and outsourcers, and our reputation and ability to effectively operate our business may be harmed by actions taken by these third parties outside of our control***.
>
> We rely significantly on vendor and outsourcing relationships with third parties for services and systems including manufacturing, transportation, logistics and information technology. Any shortcoming of one of our vendors or outsourcers, particularly one affecting the quality of these services or systems, may be attributed by customers to us, thus damaging our reputation and brand value, and potentially affecting our results of operations. In addition, problems with transitioning these services and systems to, or operating failures with, these vendors and outsourcers could cause delays in product sales, reduce the efficiency of our operations and require significant capital investments to remediate.
>
> *   *   *
>
> ***Failure to successfully operate our information systems and implement new technology effectively could disrupt our business or reduce our sales or profitability***.
>
> We rely extensively on various information technology systems and software applications to manage many aspects of our business, including product development, management of our supply chain, sale and delivery of our products, financial reporting and various other processes and transactions. We are critically

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dependent on the integrity, security and consistent operations of these systems and related back-up systems. These systems are subject to damage or interruption from power outages, computer and telecommunications failures, computer viruses, malware and other security breaches, catastrophic events such as hurricanes, fires, floods, earthquakes, tornadoes, acts of war or terrorism and usage errors by our employees. The efficient operation and successful growth of our business depends on these information systems, including our ability to operate them effectively and to select and implement adequate disaster recovery systems successfully. The failure of these information systems to perform as designed, our failure to operate them effectively, or a security breach or disruption in operation of our information systems could disrupt our business, require significant capital investments to remediate a problem or subject us to liability.

In addition, we have recently implemented, and expect to continue to invest in and implement, modifications and upgrades to our information technology systems and procedures to support our growth and the development of our e-commerce business. These modifications and upgrades could require substantial investment, and may not improve our profitability at a level that outweighs their costs, or at all. In addition, the process of implementing any new technology systems involves inherent costs and risks, including potential delays and system failures, the potential disruption of our internal control structure, the diversion of management's time and attention, and the need to re-train or hire new employees, any of which could disrupt our business operations and have a material adverse effect on our business, financial condition and results of operations.

77. The statements in the paragraph above were false and misleading and omitted material facts because Funko's business had ***already*** been harmed by the failure of a new ecommerce platform and a recent past implementation failure. In 2016, Funko originally allocated $1.4 million to be used in 2017 to build, design, deliver, and connect cloud and e-commerce platforms. The contractor engaged to install the e-commerce platform used Microsoft Axure for the cloud-based environment and used Magento for the e-commerce platform. However, these two software platforms were not compatible because the systems did not use the same architecture and could not be made to function together. Consequently, the e-commerce platform project that began in early 2017 did not – and could not – work, and had to be abandoned. Indeed, as Funko attempted to launch the platform in connection with the 2017 Comic-Con convention held in July 2017 in San Diego, California, the platform failed. This cost the Company at least $1.4 million, which required a significant write-down.

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Summary of Material Omissions Pleaded Above

78. The statements in ¶¶41-42, 46, 50-54, 63, 68-72, 74 and 76 were materially false and misleading when made because, in addition to what was stated above, they omitted the following material facts that existed as of the IPO:

(a) that Funko's historical financial statements for first six months of 2017 as well as preliminary results for the Company's quarter ended September 30, 2017 were materially false and misleading because the material facts concerning the accounting treatment of Funko's abandoned e-commerce sales platform were omitted. Funko should have, but failed to write off the cost of its abandoned e-commerce platform which caused the Company's pro forma net income, EBITDA and Adjusted EBITDA reported in the Company's Registration Statement to be overstated by $1.4 million for the three months ended September 30, 2017 in violation of GAAP;

(b) had Funko taken the required $1.4 million write off as of June 30, 2017, the end of the quarter in which the e-commerce platform was abandoned, rather than September 30, 2017, Funko's results for the first six months of 2017 would have reflected a seven-figure net loss rather than a net profit;

(c) that the Company's financial performance, purported "strong growth" and business model was the product of undisclosed and unsustainable channel stuffing during the twelve months leading to the IPO that left retailers overstocked with excess inventory;

(d) Funko lacked key controls over financial reporting. In particular, Funko did not have a functioning system to adequately track excess and obsolete inventory so that such dead stock was timely written down to market value as GAAP requires. Funko overstated the value of its inventory due to its failure to timely write down obsolete product;

(e) that Funko overstated the net value of its purported $258 million intangible assets and purported $106.5 million as of June 30, 2017. Funko relied on almost exclusively on third-party's intellectual property and warehouses full of obsolete product reflect the value of the Company's licenses, trade names and customer relationships were worth less than stated; and

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(f) that the Company's business and prospects had been materially impaired by the time of the IPO as a result of the conduct discussed in (a)-(e), above.

ADDITIONAL FACTS DEMONSTRATING MATERIALITY

79. Materiality does ***not*** require proof of a substantial likelihood that truthful disclosure of the fact would have been a determinative factor in making an investment decision. Instead, it requires only a showing that the misrepresented or omitted fact would have assumed actual significance in a reasonable investor's investment decision. "'A material fact is a fact to which a reasonable person would attach importance in determining his or her decision whether to purchase the security, or a fact that would affect the desire of reasonable investors to buy the company's securities. There is an ongoing duty to disclose material facts that relate to the specific security originally purchased. For an undisclosed fact to be material, there must be a substantial likelihood that the disclosures of the omitted fact would have been viewed by the reasonable investor as having significantly altered the total mix of information made available.'" *Newcomer v. Cohen*, No. 48233-9-II, 2017 Wash. App. LEXIS 1190, at *23 (Wash. Ct. App. May 16, 2017).

80. "Information is material if omitting it or misstating it could influence decisions that users make on the basis of the financial information of a specific reporting entity." Statement of Financial Accounting Concepts No. 8, Financial Accounting Standards Board (September 2010). These misstatements were also material to investors because misstatements or omissions representing 5% or more of reported financial items are deemed to be material, although amounts less than 5% can also be material depending upon the facts and circumstances. "The use of a percentage as a numerical threshold, such as 5%, may provide the basis for a preliminary assumption that – without considering all relevant circumstances – a deviation of less than the specified percentage with respect to a particular item on the registrant's financial statements is unlikely to be material." SEC Staff Accounting Bulletin No. 99; ASC 250-10-S99-1. "Evaluation of materiality requires a registrant and its auditor to consider ***all*** the relevant circumstances, and

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the staff believes that there are numerous circumstances in which misstatements below 5% could well be material." *Id*.

81. After subscriptions for the IPO were complete and the Registration Statement was declared effective, *Bloomberg* published an article that charged the Company with "funhouse accounting" and questioned the veracity of the representations that Funko had made in the Registration Statement. Multiple reports also questioned the true value of Funko's intellectual property assets given that the Company relied primarily on licensing the intellectual property of third-party content providers. For example, *Bloomberg's* Gandel, wrote: "Funko also contends it has intellectual property worth $250 million. That's odd for a company whose main products are based on others' intellectual property." Another analyst revealed that Funko had "***no real brands or intellectual property***." Investors reacted negatively to questions about Funko's accounting practices in general and intellectual property valuation. The stock price and volume revealed a selloff, with the stock price plummeting 41%. Renaissance Capital reported it was the biggest IPO drop since 2000. Comics Gaming Magazine called the IPO a "Flop[]," stating "[e]xperts predict that part of the reason behind the incredibly poor debut stems from Funko's accounting practices."

82. Just weeks after the IPO, it was revealed that Funko's sales channels were overloaded with inventory as of the time of the IPO and markdowns were damaging Funko's business. In a conference call with Funko's management after the close of the market on December 5, 2017, securities analysts pressed the Executive Defendants on inventory levels and management. In response to a question from an analyst asking about how the Company was "managing inventory," Defendant Nickel admitted Funko was "focus[ing] on our overall inventory management and we see – there are opportunities for improvements." Another analyst asked "how much larger are your channel inventories" "compared to last year" and asked about "sales allowances as a percent of gross sales" on a year-over-year basis. Defendant Mariotti largely evaded the question and the call ended immediately thereafter.

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83. The next day, securities analysts issued reports warning about potential "traffic weakness" at retailers (JP Morgan), a concern given inventory levels, "[i]nventory . . . increase" relative to sales growth (Jefferies), and stating "at some point demand will be satiated and the market will become saturated" (BMO Capital Markets). Investors reacted negatively, and Funko's stock price dropped from an open of $9.85 per share to a close of $8.67 per share, a drop of 12%.

84. In a December 19, 2017 report, BMO Capital Markets analysts called these facts a "warning sign," immediately downgraded the Company, asserted valuation multiples existing at the time of the IPO should be lowered, and cut valuation multiples by over 10%.

85. Days later, on December 21, 2017, Funko Class A common stock closed at $6.00 per share. This price represented a ***50% decline*** from the price at which Funko stock had been sold to the investing public in the IPO less than two months earlier.

CLASS ACTION ALLEGATIONS

86. Plaintiffs bring this action as a class action pursuant to Wash. CR 23 on behalf of a class consisting of all persons or entities who acquired Funko Class A common stock pursuant and/or traceable to the materially false and misleading Registration Statement (Registration No. 333-220856) issued in connection with the Company's IPO conducted on or about November 1, 2017 (the "Class"). Excluded from the Class are defendants and their families, the officers, directors and affiliates of the defendants, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which defendants have or had a controlling interest.

87. The members of the Class are so numerous that joinder of all members is impracticable. Funko Class A common stock is actively traded on the Nasdaq and millions of shares were sold in the IPO. While the exact number of Class members is unknown to plaintiffs at this time and can only be ascertained through appropriate discovery, plaintiffs believe that there are hundreds of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Funko or its transfer agent and may be notified of

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the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

88. Plaintiffs' claims are typical of the claims of the members of the Class, as all members of the Class are similarly affected by defendants' wrongful conduct in violation of federal law that is complained of herein.

89. Plaintiffs will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

90. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(a) whether defendants violated the 1933 Act;

(b) whether statements made by defendants to the investing public in the Registration Statement misrepresented or omitted material facts about the business and operations of Funko;

(c) whether the Registration Statement failed to disclose known trends or uncertainties that have had or that the registrant reasonably expects will have a material favorable or unfavorable impact on the sales or revenues or income from continuing operations; and

(d) to what extent the members of the Class have sustained damages and the proper measure of damages.

91. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

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FIRST CAUSE OF ACTION

For Violations of Section 11 of the 1933 Act Against All Defendants Except the ACON Defendants and Fundamental Defendants

92. Plaintiffs repeat and reallege ¶¶1-91 by reference.

93. This Cause of Action is brought pursuant to §11 of the 1933 Act [15 U.S.C. §77k], on behalf of the Class, against all defendants except ACON and Fundamental.

94. This Cause of Action does not sound in fraud. Plaintiffs do not allege that the Individual Defendants or the Underwriter Defendants had scienter or fraudulent intent, which are not elements of a §11 claim.

95. The Registration Statement for the IPO was materially inaccurate and misleading, contained untrue statements of material fact, omitted to state other material facts necessary to make the statements made not materially misleading, and omitted to state material facts required to be stated therein or failed to disclose, as required by Item 303 of SEC Regulation S-K [17 C.F.R. §229.303(a)(3)(ii)], a description of "any known trends or uncertainties that have had or that the registrant reasonably expects will have a material favorable or unfavorable impact on the sales or revenues or income from continuing operations" as required by law.

96. Funko is the registrant for the IPO. The defendants named herein were responsible for the contents and dissemination of the Registration Statement.

97. As issuer of the shares, Funko is strictly liable to plaintiffs and the Class for the misstatements and omissions.

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

99. By reason of the conduct alleged herein, each defendant named in this cause of action violated §11 of the 1933 Act.

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100. Plaintiffs and the other members of the Class who purchased in, or traceable to, the IPO have sustained damages under §11(e) of the 1933 Act.

101. At the time of their purchases of Funko Class A common stock, plaintiffs and the other members of the Class were without knowledge of the facts concerning the wrongful conduct alleged herein. Less than one year has elapsed from the time that plaintiffs discovered or reasonably could have discovered the facts upon which this complaint is based to the time that plaintiffs filed this complaint and their initial complaints. Less than three years has elapsed between the time that the securities upon which this Cause of Action is brought were offered to the public and the time plaintiffs filed this complaint.

SECOND CAUSE OF ACTION

For Violation of Section 12(a)(2) of the 1933 Act By Plaintiffs The Ronald and Maxine Linde Foundation, Robert Lowinger, Ernest Baskin and Carl Berkelhammer Against All Defendants Except the ACON Defendants and the Fundamental Defendants

102. Plaintiffs The Ronald and Maxine Linde Foundation, Robert Lowinger, Ernest Baskin and Carl Berkelhammer (the "Section 12 plaintiffs") repeat and reallege ¶¶1-91 by reference.

103. This Cause of Action is brought pursuant to §12(a)(2) of the 1933 Act, 15 U.S.C. §771(a)(2), on behalf of the Class, against all defendants except ACON and Fundamental.

104. This Cause of Action does not sound in fraud. Plaintiffs do not allege that the Individual Defendants or the Underwriter Defendants had scienter or fraudulent intent, which are not elements of a §12(a)(2) claim.

105. By means of the defective Prospectus and communications over the internet sent to and received by the Section 12 plaintiffs, these defendants promoted and sold Funko Class A common stock to the Section 12 plaintiffs and other members of the Class for their own benefit and the benefit of their associates. The Underwriter Defendants additionally solicited their brokerage clients and other members of the investing public to submit indications of interest and

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subscriptions to purchase shares in the IPO. The plaintiffs that bring this claim were solicited by at least one member of the underwriting syndicate and each purchased from an Underwriter Defendant.

106. The Prospectus contained untrue statements of material fact and concealed and failed to disclose material facts, as detailed above. Defendants owed the Section 12 plaintiffs and the other members of the Class who purchased Funko Class A common stock pursuant to the Prospectus the duty to make a reasonable and diligent investigation of the statements contained in the Prospectus to ensure that such statements were true and that there was no omission to state a material fact required to be stated in order to make the statements contained therein not misleading. Defendants, in the exercise of reasonable care, should have known of the misstatements and omissions contained in the Prospectus as set forth above.

107. The Section 12 plaintiffs did not know, nor in the exercise of reasonable diligence could the Section 12 plaintiffs have known, of the untruths and omissions contained in the Prospectus at the time the Section 12 plaintiffs acquired Funko Class A common stock.

108. By reason of the conduct alleged herein, defendants named herein violated §12(a)(2) of the 1933 Act. As a direct and proximate result of such violations, the Section 12 plaintiffs and the other members of the Class who purchased Funko Class A common stock pursuant to the Prospectus sustained substantial damages in connection with their purchases of stock. Accordingly, the Section 12 plaintiffs and the other members of the Class who purchased the Class A common stock issued pursuant to the Prospectus seek damages to the extent permitted by law or seek to rescind and recover the consideration paid for their shares, and hereby tender their common stock to the defendants sued herein.

THIRD CAUSE OF ACTION

For Violation of Section 15 of the 1933 Act
Against the Individual Defendants, ACON Defendants, Fundamental Defendants and Funko

109. Plaintiffs repeat and reallege ¶¶1-108 by reference.

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110. This Cause of Action is brought pursuant to §15 of the 1933 Act against Funko, the Individual Defendants, the ACON Defendants, and the Fundamental Defendants.

111. The Individual Defendants each were control persons of Funko by virtue of their positions as directors and/or senior officers of Funko's predecessor entities immediately prior to the IPO. The ACON Defendants and the Fundamental Defendants each had the ability to influence the policies and management of Funko by their voting and dispositive control over Funko's and the predecessor entities to Funko at all relevant times by securities ownership, pre-IPO agreements, including the FAH, LLC Agreement, and by having their designated directors serving on the boards of Funko's and Funko's predecessor entities. The Individual Defendants each had a series of direct and/or indirect business and/or personal relationships with other directors and/or officers and/or major shareholders of Funko and Funko's predecessor entities. The ACON Defendants and the Fundamental Defendants were not only control persons of Funko and Funko's predecessor entities by virtue of their ownership of Funko-related securities, Board membership, relationships with management, and involvement in establishing Funko's management, they also had extensive contractual rights regarding Funko's governance, capitalization, and ability to finance, including, but not limited to, rights to cause the IPO. Funko controlled the Individual Defendants and all of its employees.

112. The ACON Defendants and the Fundamental Defendants had a financial interest in taking the Company's stock public in order to increase the holding value and marketability of their investment. Defendant Funko, the ACON Defendants, the Fundamental Defendants, and the Individual Defendants were each critical to effecting the IPO, based on their signing or authorization of the signing of the Registration Statement, by voting (including voting their shares) to execute the IPO, and by having otherwise directed through their authority the processes leading to execution of the IPO, including obtaining the Underwriter Defendants, registration, qualification, authorization, pricing, offering to the public, and issuance and sale of the shares in the IPO.

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PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for relief and judgment, as follows:

A. Determining that this action is a proper class action and certifying plaintiffs as class representatives under Civil Rule 23 and certifying their counsel as Class Counsel;

B. Awarding compensatory damages in favor of plaintiffs and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

C. Awarding rescission or a rescissory measure of damages to the extent permitted under the claims asserted herein;

D. Awarding plaintiffs and the other members of the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

E. Awarding such equitable/injunctive or other relief as the Court may deem just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury.

DATED: October 3, 2019

HAGENS BERMAN SOBOL SHAPIRO LLP

/s/ Karl P. Barth

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Lead Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each party through the Court's electronic filing service on October 3, 2019, which will send notification of such filing to the e-mail addresses registered.

/s/ Karl P. Barth
Karl P. Barth

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