

THE HONORABLE KAREN DONOHUE

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-
This Document Relates To:	)	08153-0 SEA, 18-2-12229-5 SEA, and 18-2-
	)	14811-1 SEA)
ALL ACTIONS.	)	<u>CLASS ACTION</u>
	)	DECLARATION OF JAMES I. JACONETTE
	)	IN SUPPORT OF: (1) CLASS
	)	REPRESENTATIVES' MOTION FOR
	)	FINAL APPROVAL OF SETTLEMENT
	)	AND APPROVAL OF PLAN OF
	)	ALLOCATION; AND (2) CLASS
	)	REPRESENTATIVES' COUNSEL'S
	)	MOTION FOR AN AWARD OF
	)	ATTORNEYS' FEES AND EXPENSES AND
	)	AWARD TO CLASS
	)	REPRESENTATIVES/PLAINTIFFS

1 I, James I. Jaconette, declare as follows:

2 1. I am an attorney duly licensed to practice in the State of California, and have been
3 admitted *pro hac vice* in this action. I am a partner at the law firm Robbins Geller Rudman & Dowd
4 LLP (“Robbins Geller”), one of the Court-appointed Class Representatives’ Counsel for the Court-
5 appointed Class Representatives Robert Lowinger, The Ronald and Maxine Linde Foundation, Carl
6 Berkelhammer, and the proposed Class in the above-captioned securities class action (the
7 “Action”).¹ I have been actively involved in prosecuting and resolving the litigation, am familiar
8 with its proceedings, and have knowledge of the matters set forth herein based upon my participation
9 in this litigation and my supervision of, or communications with, other lawyers and staff assigned to
10 this matter. This declaration was prepared with the assistance of other lawyers at Robbins Geller,
11 reviewed by me before signing, and the information contained herein is believed to be accurate
12 based on what I know and what I have been told by others.

13 2. I respectfully submit this declaration in support of: (i) Class Representatives’ motion
14 for approval of the \$14,750,000 all-cash Settlement and the proposed Plan of Allocation; and
15 (ii) Class Representatives’ Counsel’s motion for an award of attorneys’ fees and expenses. Both
16 motions have the support of Class Representatives, as set forth in their concurrently filed
17 declarations. This declaration demonstrates why the proposed Settlement and Plan of Allocation are
18 fair, reasonable, adequate, in the best interests of the Class, and should be approved by the Court,
19 and why the application for an award of attorneys’ fees and expenses is reasonable and should
20 likewise be approved. This declaration also sets forth the background and principal proceedings of
21 the Action, the nature of the claims asserted, the legal services provided by Class Representatives’
22 Counsel, and the negotiations that led to the proposed Settlement with Defendants.

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26 ¹ Capitalized terms used herein that are not otherwise defined shall have the meanings as
provided in the Stipulation of Settlement dated February 7, 2025. ECF No. 424, Ex. 1.

1 **I. PRELIMINARY STATEMENT**

2 3. The Settlement Fund, providing for the payment of \$14,750,000 in cash, and any
3 interest accrued thereon, for the benefit of the Class, is the culmination of six-and-a-half years of
4 vigorously contested litigation. As detailed below, Class Representatives and Class Representatives’
5 Counsel zealously prosecuted their claims at every stage of the litigation. They successfully
6 defended against Defendants’ dismissal attempt by way of reversal in substantial part by the Court of
7 Appeals, obtained and produced extensive evidence in contentious discovery to obtain documents
8 and information, successfully moved for certification of the Class, and were preparing to take dozens
9 of depositions when this case settled. This Court preliminarily approved the Settlement in its Order
10 Preliminarily Approving Settlement and Providing for Notice, dated February 12, 2025 (ECF No.
11 425) (“Preliminary Approval Order”). The Settlement will resolve all claims asserted in the Action
12 against Defendants on behalf of a Class consisting of all Persons who purchased or otherwise
13 acquired common stock pursuant to or traceable to the Registration Statement and Prospectus issued
14 in connection with Funko, Inc.’s November 1, 2017 IPO. ECF No. 407, 424-1; ECF No. 77 at ¶¶1,
15 86.²

16 4. Securities class actions are complex and challenging cases where success is difficult
17 and, given the stakes involved, result in defendants retaining some of the largest, most sophisticated
18 law firms and vigorously disputing liability and damages. This case was no exception. The legal
19 risks to continued litigation were many and included Defendants’ asserted defenses concerning Class
20 Representatives’ ability to prove liability, loss causation, and damages. For example, Defendants
21 asserted that:

- 22 • Defendants’ statements were not false and misleading when made;
23 • the challenged statements were truly held opinions and/or statements of corporate
24 optimism/puffery;

25 ² Excluded from the Class are Defendants; the officers, directors, and affiliates of Defendants;
26 members of their Immediate Families; their legal representatives, heirs, successors, or assigns; and
any entity in which Defendants have or had a controlling interest. Also excluded from the Class is
any Person who timely and validly requests exclusion from the Class.

- the Offering Documents properly contained “risk factors” concerning alleged misrepresented and omitted material facts;
- alleged revelations of material omitted facts did not cause the Class’s losses;
- Class Representatives could not establish any violation of Item 303 or Item 503 of Regulation S-K;
- Class Representatives could not establish damages; and
- Defendants did not exercise sufficient control over Funko to establish a violation of Section 15 of the Securities Act.

5. In addition, as the litigation progressed, Defendants would mount a vigorous defense at summary judgment and at trial. In my experience, any judgment would be delayed by inevitable appeals and could be (at a minimum) delayed by necessity of enforcement. In spite of these potential obstacles, Class Representatives obtained a favorable settlement that will result in an immediate recovery for the Class. This immediate recovery eliminates the risk of continued litigation under circumstances where a favorable outcome was not guaranteed.

6. The case was vigorously litigated by both sides. On August 1, 2018, plaintiffs The Ronald and Maxine Linde Foundation, Robert Lowinger, Michael Surratt, Ernest Baskin, Carl Berkelhammer, and Michael Lovewell (together, “Plaintiffs”) filed the Consolidated Complaint for Violations of the Securities Act of 1933 (ECF No. 18A) (“Consolidated Complaint”). Defendants moved to dismiss the Consolidated Complaint, Plaintiffs opposed, and on August 2, 2019, the Court dismissed the Consolidated Complaint without prejudice. After an extensive investigation, including engaging a private investigative firm to review and analyze materials and conduct interviews with targeted third-party witnesses, Plaintiffs then filed the First Amended Consolidated Complaint for Violations of the Securities Act of 1933 (ECF No. 77) (“Complaint”). The Complaint added specific allegations that Funko’s financial disclosures were misleading because Funko failed to disclose it had abandoned a \$1.4 million e-commerce platform, had engaged in “channel stuffing” to artificially inflate its revenue in the months preceding the IPO, failed to disclose that it lacked the ability to track and record the value of obsolete inventory, and made false statements about the value of its

1 intellectual property. This resulted in detailed briefing on Defendants’ renewed motion to dismiss,
2 which relied on the same arguments as in their initial motion. The Court again dismissed the
3 Complaint, this time with prejudice.

4 7. Plaintiffs then filed a timely appeal to the Court of Appeals for the State of
5 Washington (“Court of Appeals”). Following full briefing and an oral argument, the Court of
6 Appeals issued an unpublished opinion affirming the district court’s opinion in part, reversing it in
7 substantial part, and remanding for further proceedings. *In re Funko, Inc. Sec. Litig.*, No. 81811-2-I
8 (Wash. Ct. App. Nov. 1, 2021). The Court of Appeals found that the Complaint’s allegations of
9 false and misleading statements of net revenue to be sufficient to survive a motion to dismiss under
10 the third prong of *Omnicare, Inc. v. Laborers Dist. Council Constr. Indus. Pension Fund*, 575 U.S.
11 175 (2015). The Court of Appeals also reversed dismissal of the Item 303 claim based on the
12 allegation that Funko failed to disclose its channel stuffing practices, while affirming the dismissal of
13 the claim to the extent it was based on unverifiable descriptions of the Company as “nimble” or its
14 management “dynamic.” Likewise, the Court of Appeals concluded the inventory control
15 allegations that Funko overstated the value of its inventory in its financial statements was sufficient
16 to state a Section 11 and 12(a) claim. As with the allegations about inventory management, the
17 Complaint was found to allege sufficient acts demonstrating that the Company knew its purported
18 opinion on the value of its intellectual property was not factually supportable because that valuation
19 was based in part on the amount of unsaleable stock in its inventory. Lastly, as to Plaintiffs’ claims
20 surrounding the adequacy of Funko’s risk disclosures, the Court of Appeals agreed that they did not
21 directly address the issue at hand: that Funko’s collection of unsaleable stock had already negatively
22 impacted the value of its inventory, the value of which was, thus, overstated in the consolidated
23 balance sheets. The Court of Appeals concluded reasonable minds could, therefore, disagree on the
24 sufficiency of the cautionary language and, thus, the bespeaks caution doctrine did not warrant
25 dismissal at that stage of the litigation.

1 8. Plaintiffs also submitted a detailed motion for class certification (ECF No. 179)
2 supported by the expert declaration of Bjorn I. Steinholt, CFA, Managing Director at Caliber
3 Advisors, Inc. (“Mr. Steinholt”). Thereafter, Defendants conducted discovery of Plaintiffs, including
4 the depositions of each of the three proposed Class Representatives and Mr. Steinholt. Defendants
5 strongly opposed the motion, arguing, *inter alia*: the individualized issues related to investors’
6 knowledge predominated over the common issue of falsity; the class definition lacked an end date
7 and was impermissibly overbroad; proposed Class Representatives were subject to unique defenses
8 because, after initially investing in the IPO, they continued to purchase Funko stock on the open
9 market after the Gandel Blogpost allegedly “revealed” the misstatements in the Complaint; and
10 proposed Class Representatives were inadequate as they ceded control to their lawyers and lacked
11 sufficient knowledge of the claims to represent the Class. ECF No. 198.

12 9. After Plaintiffs prevailed on appeal, they also utilized their thorough investigation to
13 issue extensive targeted discovery to Defendants and numerous third parties. Plaintiffs engaged in
14 several contentious and complex meet and confers with both Defendants and third parties regarding
15 the scope of discovery. Plaintiffs further searched for, collected, and produced to Defendants
16 numerous documents concerning its investments in Funko common stock. Through the discovery
17 process, Plaintiffs eventually obtained through conferral and successful motions to compel over one
18 million pages of documents, not including written evidence in the form of responses to scores of
19 requests for admission and interrogatories. Throughout the significant period of time following the
20 return of this case to the trial court until and through the period of mediation, the parties continued to
21 litigate over the sufficiency of discovery responses by both sides while Plaintiffs reviewed
22 documents in preparation of depositions.

23 10. The Settlement is the result of arm’s-length negotiations between the parties before an
24 experienced mediator, Michelle Yoshida (“Ms. Yoshida”) of Phillips ADR Enterprises, LLC. Ms.
25 Yoshida has substantial experience conducting mediations, including in securities class actions. In
26 advance of the mediation, the parties exchanged and provided to Ms. Yoshida detailed mediation

1 statements and evidentiary compendiums addressing liability and damages. The parties engaged in a
2 lengthy mediation via video conference and demonstrated their thorough understanding of the
3 strengths and weaknesses of the claims and defenses at issue in the litigation. The parties were
4 unable to resolve the litigation at the mediation. However, Class Representatives' Counsel and
5 Plaintiffs continued to engage in settlement negotiations with Defendants over several months
6 following the initial mediation, including multiple calls with Ms. Yoshida to progress the settlement
7 discussions. The Settlement was reached only after prolonged discovery and motion practice when
8 Ms. Yoshida, thereafter, issued a mediator's proposal to settle the action for \$14,750,000 in cash,
9 inclusive of all fees and costs, which the parties accepted.

10 11. The \$14,750,000 all-cash Settlement is a very favorable result considering the
11 immediate and substantial benefit to the Class and the risks posed by continued litigation.
12 Additionally, the Settlement has the support of all current Class Representatives and additional
13 plaintiff Baskin. *See* Declarations of Robert Lowinger ("Lowinger Decl."), The Ronald and Maxine
14 Linde Foundation ("Foundation Decl."), Carl M. Berkelhammer ("Berkelhammer Decl."), and
15 Ernest Baskin ("Baskin Decl."), attached hereto as Exhibits 1 through 4, respectively.

16 12. The proposed Plan of Allocation, included in the Notice Packet (defined herein), was
17 developed with the assistance of Class Representatives' Counsel's damages expert and provides for
18 the fair and equitable distribution of the Net Settlement Fund to Class members. In accordance with
19 the Preliminary Approval Order, the Notice of Pendency of Class Action, Proposed Settlement, and
20 Motion for Attorneys' Fees and Expenses ("Notice") and the Proof of Claim and Release form
21 ("Claim Form," and together with the Notice, the "Notice Packet") was sent by First-Class Mail to
22 all Class members who could be identified with reasonable effort. *See* Declaration of Ann
23 Cavanaugh of A.B. Data, Ltd. ("A.B. Data") Regarding Notice Dissemination, Publication, and
24 Requests for Exclusion Received to Date ("Cavanaugh Decl.") at ¶¶5-12, submitted herewith. The
25 Notice Packet, Stipulation, and Preliminary Approval Order are also posted on the Settlement
26 website, www.FunkoSecuritiesSettlement.com, and the Summary Notice was published once in the

1 national edition of *The Wall Street Journal* and once more over a national newswire service. *Id.* at
2 ¶¶13, 15.

3 13. Class Representatives' Counsel have been advised by A.B. Data, whose retention as
4 Claims Administrator was authorized by the Preliminary Approval Order, that as of May 1, 2025, a
5 total of 16,215 copies of the Notice Packet have been mailed to potential Class members and their
6 nominees. *See* Cavanaugh Decl. at ¶12. The Court-ordered deadline for filing objections to the
7 Settlement or requesting to be excluded from the Class is May 16, 2025. To date, no objections to
8 any aspect of the Settlement have been filed by Class members.

9 14. The Notice advised all recipients of, among other things: (i) the definition of the
10 Class; (ii) their right to exclude themselves from the Class; (iii) their right to object to any aspect of
11 the Settlement, including the Plan of Allocation and Class Representatives' Counsel's request for
12 attorneys' fees and expenses; and (iv) the procedures and deadline for submitting a Claim Form in
13 order to be eligible for a payment from the proceeds of the Settlement.

14 15. The Notice also apprised Class members of Class Representatives' Counsel's request
15 for an award of attorneys' fees of one-third of the Settlement Amount plus litigation expenses not to
16 exceed \$500,000, plus accrued interest on such fees and expenses, including awards to Class
17 Representatives. As discussed below, Class Representatives' Counsel's requested fee amounts to a
18 fraction of Class Representatives' Counsel's "lodestar" (*i.e.*, Class Representatives' Counsel's
19 hourly rates multiplied by the hours spent on prosecuting and settling this Action), meaning the fee
20 requested is significantly less than the fees expended to achieve resolution, notwithstanding early
21 attempts at a mediated settlement. Class Representatives' Counsel have litigated this case on a
22 wholly contingent basis and submit that this fee request is fair, reasonable, and adequate, and
23 warrants this Court's approval. This request is well within the range of fees typically awarded in
24 similar types of cases and is justified in light of the benefits obtained, the substantial risks
25 undertaken, and the quality, nature, and extent of the services rendered.

1 16. Accordingly, Class Representatives respectfully submit that the Settlement and Plan
2 of Allocation should be approved as fair, reasonable, and adequate, and that Class Representatives’
3 Counsel should be awarded one-third of the Settlement Amount and payment of the requested
4 litigation expenses, including an award to Class Representatives and additional plaintiff Baskin for
5 their time representing the Class.

6 **II. THE NATURE AND HISTORY OF THE LITIGATION**

7 17. This is a securities class action against Funko, certain of its current and former
8 officers and directors, the private equity sponsors of the IPO, and the IPO’s underwriters brought
9 under Sections 11, 12(a)(2), and 15 of the Securities Act, on behalf of all persons (with certain
10 exceptions) who purchased shares of Funko Class A common stock in or traceable to the Company’s
11 November 1, 2017 IPO.

12 **A. Summary of Defendants’ Alleged Wrongful Conduct**

13 18. The Complaint alleges Funko made false and misleading statements and omitted
14 material facts issued in connection with its November 1, 2017 IPO. More specifically, then-
15 Plaintiffs alleged: (i) Funko’s failure to write off the cost of its abandoned e-commerce platform,
16 which caused certain of the Company’s reported financial metrics to be overstated by \$1.4 million
17 for the first three months ending September 30, 2017 in violation of Generally Accepted Accounting
18 Principles (“GAAP”); (ii) Funko’s reliance on channel stuffing to boost sales revenue and the risk
19 and adverse sales and earnings trends the Company experienced as a result of these undisclosed
20 practices; (iii) Funko’s failure to track obsolete inventory, including “dead stock,” in violation of
21 GAAP, thus overstating the value of its inventory in its financial statements; (iv) Funko’s failure to
22 adequately disclose the valuation of its intangible assets, including its intellectual property; and
23 (v) Funko’s failure to properly describe and account for problems related to inventory management
24 and financial prospects in its “risk factors.” Plaintiffs also contended that as alleged omitted material
25 facts began to be revealed to the market, Funko’s stock price precipitously fell, damaging Plaintiffs
26 and other Class members.

1 **B. Commencement of the Litigation**

2 19. Beginning in November 2017, multiple plaintiffs filed the first of several related
3 actions in this Court and other courts. *See, e.g.*, Complaint for Violations of Sections 11, 12 and 15
4 of the Securities Act of 1933, *Lowinger v. Funko, Inc.*, No. 17-2-29838-7 SEA (King Cnty. Super.
5 Ct. Nov. 16, 2017); Complaint for Violations of Sections 11, 12 and 15 of the Securities Act of
6 1933, *Baskin v. Funko, Inc.*, No. 18-2-02535-4 SEA (King Cnty. Super. Ct. Jan. 30, 2018);
7 Complaint for Violations of the Securities Act of 1933, *Berkelhammer v. Funko, Inc.*, No. 18-2-
8 02458-31 (Snohomish Cnty. Super. Ct. Mar. 13, 2018). Generally, the actions alleged that
9 Defendants had violated Sections 11, 12(a)(2), and 15 of the Securities Act by selling, or offering to
10 sell, Funko common stock pursuant to the allegedly negligently prepared Offering Documents. In
11 July 2018, those actions were consolidated before this Court wherein Robbins Geller and Stull, Stull
12 & Brody were appointed as Lead Counsel and Hagens Berman Sobol Shapiro LLP and Keller
13 Rohrback L.L.P. were appointed as Liaison Counsel. ECF No. 12.

14 20. On August 1, 2018, then-Plaintiffs The Ronald and Maxine Linde Foundation, Robert
15 Lowinger, Michael Surratt, Ernest Baskin, Carl Berkelhammer, and Michael Lovewell filed the
16 Consolidated Complaint.³ Thereafter, on October 1, 2018, Defendants moved to dismiss, Plaintiffs
17 opposed on October 31, 2018, and on August 2, 2019, the Court dismissed the Consolidated
18 Complaint without prejudice. The Court found that the Registration Statement did not contain any
19 materially false or misleading financial disclosures and that the Gandel Blogpost released the
20 morning of the IPO did not question the accuracy of Funko’s disclosures and was, therefore, not a
21 “corrective disclosure” revealing any falsity in the Registration Statement. The Court further

22

³ On April 15, 2019, Plaintiff Berkelhammer was granted voluntary dismissal without
23 prejudice from this Action following Berkelhammer’s appointment as the lead plaintiff in a
24 substantially similar action in federal court. *See also* Order Granting Carl Berkelhammer’s Renewed
25 Mot. Appointment as Lead Pl. & Approval of Selection of Lead Counsel & Liaison Counsel,
26 *Kanugonda v. Funko, Inc.*, No. 2:18-cv-00812-RSM (W.D. Wash. Jan. 4, 2019), ECF No. 40. To
increase the scope of class representatives by including the federal lead plaintiff, Berkelhammer
rejoined this Action as a Court-appointed Class Representative following the federal court’s entry of
the Order Granting Plaintiff’s Motion for Voluntary Dismissal. *Berkelhammer v. Funko, Inc.*, No.
2:18-cv-00812-DGE (W.D. Wash. Oct. 13, 2023), ECF No. 110.

1 concluded that the Consolidated Complaint had not established challenges to allegedly false and
2 misleading opinions were misleading under the standard set forth in *Omnicare*. The Court also
3 dismissed without prejudice the Section 15 claim against Fundamental Defendants and ACON
4 Defendants, concluding that they could not be secondarily liable if Funko was not liable for any
5 primary violations of the Securities Act.

6 **C. Plaintiffs' First Amended Consolidated Complaint**

7 21. Following their appointment, Class Representatives' Counsel continued their
8 aggressive, wide-ranging investigation into the facts and circumstances surrounding Defendants'
9 alleged false and misleading Offering Documents. In addition to engaging a third-party investigator,
10 Class Representatives' Counsel consulted with internal Robbins Geller analysts and an outside
11 expert on valuation, damages, and causation issues. Class Representatives' Counsel's efforts also
12 included reviewing and analyzing documents filed by the Company with the SEC, as well as other
13 publicly available information, including press releases, news articles, interviews, research reports
14 issued by financial analysts concerning Funko, and other public statements issued by or concerning
15 Defendants. On October 3, 2019, Plaintiffs filed the Complaint, which alleges violations of Sections
16 11 and 12(a)(2) of the Securities Act against Funko, the Individual Defendants, and the Underwriter
17 Defendants as well as violations of Section 15 of the Securities Act against Funko, the Individual
18 Defendants, Fundamental Defendants, and ACON Defendants.

19 22. The Complaint added specific allegations regarding Funko's accounting violations,
20 misleading statements about revenue, lack of inventory management, and control. For example, the
21 Complaint added detailed allegations that Funko's financial disclosures were misleading because
22 Funko failed to disclose it had abandoned a \$1.4 million e-commerce platform that Funko was
23 unable to successfully integrate with its internal systems and deploy in order to replace its more
24 antiquated and problematic online sales distribution channel, had engaged in "channel stuffing" to
25 artificially inflate its revenue in the months preceding the IPO, failed to disclose that it lacked the
26 ability to track and record the value of obsolete inventory, failing to write-down its value when first

1 required under GAAP, and made false and misleading statements about the value of its intellectual
2 property.

3 23. The Complaint also added additional post-IPO statements and commentary made by
4 Funko executives on the December 5, 2017 earnings call where securities analysts pressed
5 Defendants Russell Nickel (“Nickel”) and Brian Mariotti (“Mariotti”) on inventory levels and
6 management. It alleged that in response to a question from an analyst asking about how the
7 Company was “managing inventory,” Nickel admitted Funko was “focus[ing] on our overall
8 inventory management and we see – there are opportunities for improvements.” The Complaint also
9 added details, including that another analyst asked “how much larger are your channel inventories”
10 “compared to last year” and asked about “sales allowances as a percent of gross sales” on a year-
11 over-year basis, and that Mariotti largely evaded the question and the call ended immediately
12 thereafter. The Complaint further highlighted commentary by securities analysts in subsequent
13 reports issued the next day warning about potential “traffic weakness” at retailers (JP Morgan), a
14 concern given inventory levels, “[i]nventory . . . increase” relative to sales growth (Jefferies), and
15 stating “at some point demand will be satiated and the market will become saturated” (BMO Capital
16 Markets), leading to Funko’s stock to drop from an open of \$9.85 per share to a close of \$8.67 per
17 share, a drop of 12%.

18 **D. Defendants’ Motions to Dismiss**

19 24. Defendants moved to dismiss the Complaint on December 5-6, 2019, with detailed
20 memorandums of law and a supporting declaration from Funko with over 100 pages of exhibits.
21 ECF Nos. 80, 84, 86-88. Funko asserted that it made no materially false or misleading statements in
22 the Registration Statement and that some of the statements on which Plaintiffs relied were
23 inactionable opinions or puffery. ACON Defendants and Fundamental Defendants also asserted that
24 they could not be held liable under Section 15 of the Securities Act because they did not in fact
25 exercise any power or control over Funko.

1 25. For example, Funko asserted its financial estimates for the third quarter of 2017 prior
2 to the IPO were not false or misleading, nor were statements regarding its growth strategy, revenue
3 recognition practices, or estimated value of inventory. ECF No. 86 at 9-15. Funko further asserted
4 that its valuation of goodwill and other intangible assets were inactionable opinion statements and
5 statements about future growth were merely examples of corporate optimism and puffery. *Id.* at 17-
6 18.

7 26. ACON Defendants asserted the Complaint failed to allege facts supporting a finding
8 that they exercised control over Funko since the Complaint alleged that Fundamental Defendants and
9 Mariotti held over 50% of the common stock while also failing to establish what voting rights, if
10 any, were associated with the shares ACON did own. ECF No. 88 at 5-10.

11 27. Fundamental Defendants asserted Plaintiffs' control person claim against them must
12 be dismissed because there was no primary violation, and because the purported indirect ownership
13 of minority shares, management of an indirect minority owner, and post-IPO appointment of one
14 board seat did not amount to pleading that they were "control persons" of Funko. ECF No. 80 at
15 5-8.

16 28. The Underwriter Defendants simply filed a notice of joinder to the arguments made
17 by Funko in its motion to dismiss. ECF No. 84.

18 **E. Defendants' Motions to Dismiss Are Granted With Prejudice**

19 29. Following full briefing and oral argument on each of Defendants' motions to dismiss,
20 on August 5, 2020, the Court granted each of Defendants' motions to dismiss the Complaint with
21 prejudice. ECF Nos. 99-102.

22 **F. Plaintiffs Appeal Dismissal of Complaint**

23 30. After dismissal of the Complaint with prejudice, Plaintiffs then filed a timely appeal
24 to the Court of Appeals for the State of Washington. Plaintiffs asserted, *inter alia*, the trial court
25 failed to consider two substantial allegations of falsehoods contained in Funko's Registration
26 Statement that were stated in the Complaint: (i) the strong financial performance and growth that the
Company was representing were not really the result of dynamic real growth, rather they were

1 attributable to undisclosed and unsustainable channel-stuffing that left retailers with excess inventory
2 and created a materially misleading impression regarding Funko’s true rate of growth and prospects
3 (Complaint ¶¶49-62, 78); and (ii) Funko’s accounting was misleading because it did not have a
4 functioning system to adequately track excess and obsolete inventory, and this “dead stock” was,
5 thus, not timely written down in value as required by GAAP (Complaint ¶¶56, 63-67, 75-78). Brief
6 of Plaintiffs-Appellants at 23-43, *In re Funko, Inc. Sec. Litig.*, No. 81811-2-I (Wash. Ct. App. Feb.
7 12, 2021) (“Appellants Brief”). Plaintiffs also contended: Funko’s statements regarding the value of
8 its intellectual property were materially misleading because they failed to state existing credible facts
9 (existence and status of its “dead stock”) that called their opinions on the value of its intellectual
10 property into question; the trial court’s ruling that Defendants’ statements are simply “corporate
11 optimism” or “puffery” did not comport with the disclosure standards under the federal securities
12 laws; Defendants’ statements of risk factors were materially false and misleading because the
13 Company described them as factors that could occur, not ones that had already occurred (Complaint
14 ¶¶66-67); and as the Complaint stated claims under Section 11 and 12, Plaintiffs’ claim under
15 Section 15 should be reinstated as well. Appellants Brief at 43-47. Plaintiffs, therefore, requested
16 the Court of Appeals reverse the dismissal of the case by the trial court and remand it for further
17 proceedings. *Id.* at 47. The Defendants-Appellees stood on their motion to dismiss arguments,
18 asserting the trial court correctly found that Plaintiffs failed to plead a valid claim under Section 11
19 or 12 and, thus, also failed to plead a primary violation to uphold a Section 15 claim, warranting
20 affirmation of dismissal.

21 31. Following full briefing and an oral argument, the Court of Appeals issued an
22 unpublished opinion affirming the district court’s opinion in part, reversing it in substantial part, and
23 remanding for further proceedings. The Court of Appeals found that the Complaint’s allegations of
24 false and misleading statements of net revenue to be sufficient to survive a motion to dismiss while
25 also reversing dismissal of the Item 303 claim based on the allegation that Funko failed to disclose
26 its channel stuffing practices. The Court of Appeals further concluded the inventory control

1 allegations that Funko overstated the value of its inventory in its financial statements due to
2 inclusion of obsolete inventory was sufficient to state a Section 11 and 12(a) claim. The Complaint
3 was also found to sufficiently demonstrate that Funko knew its purported opinion on the value of its
4 intellectual property was not factually supportable because that valuation was based in part on the
5 amount of obsolete or “dead stock” in its inventory. The Court of Appeals agreed with Plaintiffs that
6 Funko’s risk disclosure statements included in the Offering Documents did not directly address that
7 Funko’s large quantity of obsolete inventory had already negatively impacted the value of its
8 inventory, the value of which was, thus, overstated in the consolidated balance sheets. Accordingly,
9 the bespeaks caution doctrine did not warrant dismissal the Court of Appeals held, and the case was
10 remanded, reinstating Plaintiffs’ Section 11, 12, and 15 claims.

11 **G. Extensive Discovery Consistent with Complex Litigation**

12 32. In June 2019, prior to a ruling on Defendants’ motions to dismiss the Complaint,
13 Plaintiffs served each set of Defendants with initial requests for the production of documents
14 (“RFP”). Thereafter a dispute arose between the parties concerning whether discovery could move
15 forward pending resolution of the motions to dismiss. That dispute was not resolved until after the
16 case was remanded by the Court of Appeals reinstating the bulk of Plaintiffs’ claims. At that time,
17 Plaintiffs prepared additional discovery and served Funko Defendants with their second set of RFPs
18 in August 2022. Around this time the parties also exchanged initial disclosures of the Identification
19 of Possible Primary Lay Witnesses.

20 33. After remand, the parties agreed to engage in formal mediation and agreed to a
21 limited scope of discovery aimed specifically at facilitating mediation.⁴ The parties understood that
22 in the event mediation was unsuccessful, the parties would, thereafter, reengage in the discovery
23

24 ⁴ Prior to mediation, on February 28, 2023, Plaintiff Michel Surratt was granted voluntary
25 dismissal from this Action. *See* Order Dismissing Plaintiff Michael Surratt, ECF No. 167.
26 Likewise, on May 10, 2024, Plaintiff Michael Lovewell filed a motion for voluntary dismissal,
which was granted by the Court on May 14, 2024, without prejudice and without terms or
conditions. *See* Order Granting Plaintiff Michael Lovewell’s Motion for Voluntary Dismissal, ECF
No. 340.

1 process, and would conduct a complete search for and production of documents. As part of that
2 limited scope of discovery, Defendants agreed to search the files of just ten custodians, applying a
3 limited set of search terms, for a narrowly tailored time period.

4 34. As anticipated, after mediation was unsuccessful in May 2023, Plaintiffs reengaged in
5 the discovery process via written correspondence. Discovery was intensive as it can be in complex
6 litigation and highly contentious. Over the course of discovery, Plaintiffs served the Funko
7 Defendants with four sets of RFPs and four sets of interrogatories aimed at supporting the allegations
8 of the Complaint and responding to Defendants' special and affirmative defenses, including with
9 respect to, among other things: (i) Funko's failure to write off the cost of its abandoned e-commerce
10 platform, which caused certain of the Company's reported financial metrics to be overstated by \$1.4
11 million for the first three months ending September 30, 2017 in violation of GAAP; (ii) Funko's
12 reliance on channel stuffing to boost sales revenue and the risk and adverse sales and earnings trends
13 the Company experienced as a result of these undisclosed practices; (iii) Funko's failure to track
14 obsolete inventory, including "dead stock," in violation of GAAP, thus overstating the value of its
15 inventory in its financial statements; (iv) Funko's failure to adequately disclose the valuation of its
16 intangible assets, including its intellectual property; and (v) Funko's failure to properly describe and
17 account for problems related to inventory management and financial prospects in its "risk factors."
18 Likewise, Plaintiffs served three sets of RFPs and three sets of interrogatories on the Fundamental
19 Defendants, two sets of RFPs and three sets of interrogatories on the ACON Defendants,⁵ and two
20 sets of RFPs on the Underwriter Defendants.⁶

22 ⁵ The discovery requests served on the ACON Defendants and Fundamental Defendants
23 pertained primarily to: (i) acquiring an equity interest in Funko; (ii) any vote, acceptance, or motion
24 made concerning any matter related to Funko; (iii) decision-making processes behind matters related
25 to Funko or FAH, LLC; (iv) investment, involvement in, and the formation, governance, or
26 capitalization of Funko or FAH, LLC; (v) management, consulting, or monitoring agreements
involving Funko or FAH, LLC; (vi) minutes, presentations, memos, decisions, or meetings
concerning Funko or FAH, LLC or any offering of Funko securities; (vii) financing transactions for
Funko or FAH, LLC; (viii) Prospectus, Registration Statement, and Offering, including drafts or
U.S. Securities and Exchange Commission ("SEC") comment letters; (ix) presentations or
summaries concerning Funko's e-commerce platform, Funko's inventory management system, sales

1 35. Plaintiffs also issued subpoenas for documents to ten third parties including
2 investment and public relation firms, Funko’s public auditor, and securities analyst firms that
3 covered Funko stock during the relevant time period.⁷

4 36. Defendants also served discovery on Plaintiffs, including a set of RFPs and two sets
5 of interrogatories from the Funko Defendants and one set each of RFPs and interrogatories from the
6 Fundamental Defendants. Plaintiffs responded to each set of requests, producing trading records and
7 submitting extensive verified responses to interrogatories totaling over 300 pages per Plaintiff.

8 37. Discovery between the parties, as well as between Plaintiffs and third parties, resulted
9 in numerous telephonic meet and confer sessions and written correspondence documenting issues of
10 confidentiality and the scope and breadth of Plaintiffs’ document requests and subpoenas. The
11 complexity of the issues presented ultimately necessitated court intervention with multiple motions
12 to compel and other related motion practice fully briefed by the parties as outlined below:

- 13 • Plaintiffs filed a motion to compel directed at ACON Defendants and Fundamental
14 Defendants (ECF No. 234), which the Court granted in part – ordering the ACON
15 Defendants and Fundamental Defendants to produce certain categories of requested
16 documents while leaving the door open to further motions if needed (ECF No. 245);
- 17 • After months-long negotiations broke down between the parties, Plaintiffs filed a
18 motion for entry of ESI Protocols (ECF No. 248) focusing on: (i) disclosing any
19 relevant sources of ESI that have not been preserved; (ii) producing linked
20 documents, not only the “produced” documents; (iii) running search terms for linked
21 documents only after a family relationship has been created; and (iv) any disputes
22 arising under the ESI order be governed by the Washington State Superior Court
23 Civil Rules, the King County Local Civil Rules, or other applicable rules;

22 channels and markdowns, or Funko’s intellectual property valuations; (x) organizational charts; and
23 (xi) insurance policies covering the claims asserted in this Action.

24 ⁶ Discovery on the Underwriter Defendants pertained to the preparation, planning, marketing,
25 drafting, and launching of Funko’s IPO, including communications on these topics with Company
26 insiders, financial analysts, and the media.

⁷ The subpoenaed third parties include Ernst & Young LLP, Revel, Inc., ICR Capital LLC,
Kevin G. Keenley, Bloomberg L.P., Stephen Gandel, D.A. Davidson & Co., Institutional
Shareholder Services, Inc., BofA Securities, Inc., and Piper Sandler Companies.

- Due to ongoing delay and protracted negotiations and motions practice regarding the production of discovery, the parties were not on course to meet the substantial completion of discovery or document discovery deadlines initially imposed by the Court. Accordingly, Plaintiffs then filed their first motion to amend the case schedule (ECF No. 262), requesting a nine-month extension, which was granted in part by the Court, extending the discovery deadlines by approximately three months (ECF No. 299);
- After protracted months-long conferral regarding the number of custodians Defendants would agree to search the records of, Plaintiffs filed a motion to compel Defendants to collect and search certain custodian files (ECF No. 267), which the Court granted in part, adding the remaining Individual Defendants in addition to a number of others requested as custodians and ordering Defendants to search and collect their relevant records (ECF No. 339);
- After the Court ordered Fundamental Defendants to produce certain records requested in discovery, Fundamental Defendants significantly refused to comply, in our view. Plaintiffs returned to Court with a subsequent motion to compel related to the relevant time period. ECF No. 349. The Court found Plaintiffs' arguments unavailing, denying the motion. ECF No. 357;
- Given the contentious discovery process and the time that transpired in that process, the parties stipulated to a short extension of the schedule to account for expert report briefing and the upcoming holidays. ECF No. 361. However, this short extension proved inadequate as Defendants continued to produce tens of thousands of additional documents, including over 72,000 produced after the substantial completion deadline. Given the volume, pace, and timing of Defendants' productions, and the importance of the materials produced to the case, Plaintiffs requested a four-month extension of the remaining case deadlines, to allow for review of Defendants' document productions in advance of identifying deponents and taking depositions, and to resolve ongoing discovery disputes (ECF No. 364), which the Court granted on October 17, 2024 (ECF No. 383), extending the fact deposition and fact discovery cutoff to March 11, 2025.

38. Ultimately, Defendants produced approximately 240,000 documents, totaling over 1.2 million pages. Plaintiffs also received over 3,000 documents from third parties, totaling over 33,000 pages. The substance of the production included complex accounting-related topics for which Plaintiffs dedicated their extensive resources – a forensic accountant and team of attorneys to review and analyze the documents. Class Representatives' Counsel ultimately analyzed more than 1.2

1 million pages of documents produced by Defendants and third parties, including identifying key
2 “hot” documents that would likely represent exhibits for depositions and at trial.⁸

3 **H. Class Certification**

4 39. On July 7, 2023 Plaintiffs filed their motion for class certification. The motion was
5 supported by a thorough memorandum of law that explained how the proposed Class satisfied the
6 requirements for class certification under Rules 23(a) and (b). ECF No 179. In connection with its
7 motion, Plaintiffs retained and worked closely with financial expert Bjorn I. Steinholt, CFA,
8 Managing Director at Caliber Advisors, Inc. Mr. Steinholt prepared and submitted a declaration in
9 support of Plaintiffs’ motion, in which he opined that damages could be computed for all Class
10 members using the statutory formula, which would apply mechanically for each Class member,
11 consistent with Plaintiffs’ allegations. ECF No. 180-4. Plaintiffs’ motion was further supported by
12 declarations from each proposed Class Representative detailing how they were committed to
13 vigorously prosecuting this litigation and that if appointed Class Representative, they would continue
14 to provide fair and adequate representation of the Class. ECF Nos. 180-5, 180-6, 180-7.

15 40. Defendants deposed all proposed Class Representatives and their expert,
16 Mr. Steinholt, while vigorously opposing class certification. Defendants argued, *inter alia*: (i) the
17 individualized issues related to investors’ knowledge predominated over the common issue of
18 falsity; (ii) the class definition lacked an end date and was impermissibly overbroad; (iii) proposed
19 Class Representatives were subject to unique defenses because, after initially investing in the IPO,
20 they continued to purchase Funko stock on the open market after the Gandel Blogpost allegedly
21 “revealed” the misstatements in the Complaint; and (iv) proposed Class Representatives were
22 inadequate as they ceded control to their lawyers and lacked sufficient knowledge of the claims to
23 represent the Class. ECF No. 198.

24
25 ⁸ Plaintiffs also received and analyzed multiple privilege logs from Defendants, including two
26 logs from each of the Funko Defendants and Fundamental Defendants containing thousands of
entries, the substance of which led to several exchanges of correspondence and meet and confer
conferences throughout discovery.

1 41. Ultimately, the Court granted Plaintiffs' motion certifying the Class, appointing
2 Robert Lowinger, The Ronald and Maxine Linde Foundation, and Carl Berkelhammer as Class
3 Representatives, Robbins Geller and Stull, Stull & Brody as Class Counsel, and Keller Rohrback
4 L.L.P. as Liaison Counsel for the Class. ECF No. 230.

5 **III. THE SETTLEMENT**

6 42. The Settlement is the product of intense and hard-fought negotiations, which were
7 conducted at arm's length between experienced counsel and supervised by mediator Michelle
8 Yoshida.

9 43. Michelle Yoshida of Phillips ADR Enterprises, LLC, is a well-respected,
10 experienced, and neutral third-party mediator. In connection with the mediation, the parties
11 exchanged detailed mediation submissions and extensive documentary exhibits in addition to
12 preparing answers to a series of confidential questions, posed by the Mediator in advance of the
13 mediation, which were designed to meaningfully examine the strengths and weaknesses of the
14 claims and defenses. The parties then participated in an all-day, virtual mediation before Ms.
15 Yoshida on May 16, 2023. During these negotiations, Class Representatives' Counsel made it clear
16 that they would continue to litigate rather than settle the case for less than fair value.

17 44. The mediation continued for over 10 hours and despite good-faith efforts to reach a
18 resolution, the mediation, while productive, was unsuccessful. Thereafter, the parties continued to
19 litigate the Action, proceeding, *inter alia*, through class certification, class representative
20 depositions, and extensive document discovery, while simultaneously continuing their negotiations
21 through the Mediator.

22 45. On October 18, 2024, just one day after the Court granted Class Representatives'
23 motion to amend the case schedule by four months and on the heel of deposition notices being sent
24 out to Defendants and third parties in order to continue preparation for trial, Ms. Yoshida issued a
25 mediator's proposal to settle the Action for \$14,750,000 in cash, inclusive of all fees and costs,
26 which the parties, thereafter, accepted.

1 46. On October 23, 2024, Class Representatives' Counsel informed the Court that the
2 parties had reached an agreement-in-principle to settle the Action, subject to final documentation of
3 the Settlement's terms.

4 **IV. PRELIMINARY APPROVAL OF THE SETTLEMENT AND NOTICE TO**
5 **CLASS MEMBERS IN COMPLIANCE WITH THE COURT'S**
6 **PRELIMINARY APPROVAL ORDER**

7 47. On February 10, 2025, Class Representatives filed their unopposed motion for
8 Preliminary Approval of Class Action Settlement. ECF Nos. 406-408. In connection therewith,
9 Class Representatives requested that the Court approve the proposed forms of notice, which, among
10 other things, described the terms of the Settlement, advised Class members of their rights in
11 connection with the Settlement, set forth the Plan of Allocation, informed Class members of the
12 amount of attorneys' fees and expenses that Class Representatives' Counsel would request, and
13 explained the procedure for filing a Proof of Claim and Release form to be eligible to receive a
14 payment from the Net Settlement Fund.

15 48. The Court's Preliminary Approval Order was entered on February 12, 2025. ECF
16 No. 425. Among other things, it appointed A.B. Data as the Claims Administrator and directed A.B.
17 Data to cause the mailing of the Notice Packet by first-class mail to all Class members identifiable
18 with reasonable efforts, no later than March 4, 2025. ECF No. 425, ¶5(b). Pursuant to the
19 Preliminary Approval Order, and under Robbins Geller's supervision, A.B. Data commenced
20 mailing the Notice Packet to potential Class members and nominees on March 4, 2025. *See*
21 Cavanaugh Decl. at ¶¶5-11.

22 49. The Preliminary Approval Order also directed A.B. Data to cause the Summary
23 Notice to be published once in *The Wall Street Journal*, and once over a national newswire service
24 no later than March 11, 2025. ECF No. 425, ¶5(c). Pursuant to the Preliminary Approval Order,
25 A.B. Data caused the Summary Notice to be published in *The Wall Street Journal* and transmitted
26 over *PR Newswire* on March 11, 2025. *See* Cavanaugh Decl. at ¶13.

1 50. A.B. Data also maintains and posts information regarding the Settlement on a
2 dedicated website established for the Action, www.FunkoSecuritiesSettlement.com, to provide Class
3 members with information concerning the Settlement, as well as downloadable copies of the Notice
4 Packet, the Stipulation, and the Preliminary Approval Order. *See* Cavanaugh Decl. at ¶15.

5 **V. FACTORS IN SUPPORT OF THE SETTLEMENT**

6 **A. The Settlement Was Fairly, Honestly, and Aggressively Negotiated by**
7 **Court-Appointed Class Representatives' Counsel, Who Endorse the**
8 **Settlement**

9 51. The Settlement was reached only after arm's-length, adversarial, good-faith
10 negotiations at a full-day Zoom mediation session, followed by continued litigation proceeding
11 through class certification, class representative depositions, and extensive document discovery, while
12 simultaneously continuing negotiations through the Mediator, who provided substantial assistance to
13 the parties.

14 52. The parties prepared comprehensive mediation statements and thoroughly presented
15 arguments supporting their claims and defenses. Class Representatives' Counsel are actively
16 engaged in complex federal civil litigation, particularly the litigation of securities class actions, and
17 believe that their reputations and experience gave them a strong position in engaging in settlement
18 negotiations with Defendants. In addition, Defendants' counsel are experienced lawyers from
19 Latham & Watkins LLP, DLA Piper LLP (US), Sidley Austin LLP, Aegis Law Group LLP, Summit
20 Law Group, PLLC, Fennemore Craig, P.C., and Reed Smith LLP, well-respected defense firms, with
21 reputations for vigorous advocacy in the defense of complex securities class actions.

22 53. The volume and substance of Class Representatives' Counsel's knowledge of the
23 merits and potential weaknesses of Class Representatives' claims are unquestionably adequate to
24 support the Settlement. In short, by the time they entered into the Settlement, Class Representatives
25 and Class Representatives' Counsel had developed a comprehensive understanding of the facts
26 underlying the claims in the Action. Class Representatives' Counsel conducted an extensive factual
investigation, including reviewing Defendants' public statements, SEC filings, regulatory filings and

1 reports, securities analysts' reports about Funko, media reports about Funko, and engaging outside
2 investigators, to conduct interviews with numerous investigative sources with information
3 concerning Funko. Class Representatives' Counsel thoroughly researched the applicable law with
4 respect to the claims asserted in the Action and the potential defenses thereto, drafted a robust
5 Complaint, and successfully opposed Defendants' motions to dismiss through appeal. Class
6 Representatives' Counsel also retained an economic consultant with extensive experience opining on
7 the issue of damages.

8 54. As set forth above, the parties also engaged in comprehensive document and written
9 discovery. By the time parties agreed to settle the Action, they had met and conferred many times
10 on numerous discovery-related topics. Defendants and third parties had produced more than 240,000
11 documents, totaling over 1.2 million pages, and Class Representatives had obtained over 3,000
12 documents from third parties, totaling more than 33,000 pages.

13 55. Class Representatives' Counsel prepared mediation submissions that included
14 detailed legal analysis of the claims and defenses in the Action and extensive documentary exhibits
15 in addition to preparing answers to a series of confidential questions, posed by the Mediator in
16 advance of the mediation, which were designed to meaningfully examine the strengths and
17 weaknesses of the claims and defenses. Class Representatives' Counsel also reviewed and analyzed
18 Defendants' mediation statement and exhibits, and the parties vigorously addressed each other's
19 arguments during the mediation.

20 56. All these efforts enabled Class Representatives and Class Representatives' Counsel to
21 endorse the Settlement as fair, adequate, and reasonable. Indeed, as a result of Class
22 Representatives' Counsel's extensive legal and factual research and analysis, together with their
23 economic expert and in-house consultants, Class Representatives and Class Representatives'
24 Counsel had a thorough understanding of the strengths and weaknesses of the claims and defenses at
25 the time the agreement to settle the Action was reached.

1 **B. The Settlement Eliminates the Risks and Any Potential Delay of**
2 **Recovery for Class Representatives and the Class**

3 57. Securities class actions are notoriously complex, and Class Representatives and Class
4 Representatives' Counsel faced hurdles to establish a compensable claim. Accordingly, absent the
5 Settlement, there was a real possibility that the Class would be unable to obtain a meaningful
6 recovery.

7 58. In deciding to enter into the Settlement, Class Representatives and Class
8 Representatives' Counsel considered, among other things, the substantial immediate cash benefit to
9 Class members under the terms of the Stipulation and the risks of proceeding through summary
10 judgment and/or trial.

11 59. In particular, absent the Settlement, there was a risk of the Court accepting
12 Defendants' likely argument that Class Representatives could not prove their damages were the
13 result of any corrective disclosure released after their stock purchases, and that the significant write-
14 downs of dead stock inventory years after the IPO have no relevance to the Offering Documents at
15 issue here. While Class Representatives believe they could overcome this argument, they recognize
16 the possibility that the Court could have accepted these arguments at either summary judgment or
17 trial, which would have significantly reduced recoverable damages for the Class.

18 60. There was also risk that Class Representatives could not prove that Defendants
19 violated their disclosure obligations. Although Class Representatives were successful in defeating
20 this argument on appeal, Defendants would likely continue to argue that they fully disclosed all
21 material facts and risks associated with their financial position and inventory management, thereby
22 negating Class Representatives' claims that they omitted material information about the true state of
23 the Company prior to the IPO. Even if Class Representatives were successful in opposing summary
24 judgment, Defendants would likely continue to strenuously oppose Class Representatives' claims at
25 trial.

26 61. While Class Representatives' Counsel believe that all the claims asserted against
 Defendants have merit, as discussed above, there were serious risks as to whether Class

Representatives would ultimately prevail on the merits. And, even if completely successful, there were equally serious risks as to the amount of time it would take to collect on any judgment. Class Representatives further determined that, in the absence of the Settlement, there was a real risk that the Class could have received an amount significantly less than the Settlement Amount or nothing at all. Class Representatives and Class Representatives' Counsel considered and analyzed these significant risks to continued litigation in determining whether to settle the case. In light of such risks, both Class Representatives and Class Representatives' Counsel believe the \$14.75 million Settlement to be in the best interests of the Class.

C. The Settlement Amount in the Context of Total Damages

62. Based on accepted damages models applied by Class Representatives' damages expert, the recovery in this case expressed as a percentage of damages ranges from 49% to 32%, with a 39% recovery based on the average of the damages range. The percentage of estimated damages represented by the Settlement is over five times that of the 7.9% median percentage recovery for securities class actions involving Section 11 and/or Section 12(a)(2) claims from 2015-2024.⁹

63. In Class Representatives' Counsel's view, the Settlement is an exceptional result because it is a substantial, immediate recovery for the Class. If the litigation had continued, loss causation and damages issues would have been costly and hotly contested. The process of ultimately proving damages requires retaining an expert to perform an economic analysis, exchanging expert reports and rebuttal reports, taking expert depositions, briefing *Daubert* motions and/or holding *Daubert* hearings, briefing summary judgment, and prevailing at trial. Continuing to litigate would not guarantee a larger recovery for the Class. It would only guarantee further delay in any recovery and the continued risk of a smaller or no recovery. For these reasons, securing such a substantial

⁹ See Cornerstone Research, *Securities Class Action Settlements: 2024 Review and Analysis* (2025), at 8, <https://www.cornerstone.com/wp-content/uploads/2025/03/Securities-Class-Action-Settlements-2024-Review-and-Analysis.pdf> (analyzing settlements from 2015-2024).

percentage of estimated damages at this stage of the proceedings (significantly more than is typically obtained in these types of cases) is a meaningful achievement for the Class.

64. Based on their experience in securities class action litigation and in this case, and after weighing the substantial benefits of the Settlement against the numerous obstacles to recovery after continued litigation, Class Representatives' Counsel have determined that the Settlement is fair, reasonable, and in the best interest of the Class.

VI. THE PROPOSED PLAN OF ALLOCATION

65. The Net Settlement Fund will be distributed to Class members who, in accordance with the terms of the Stipulation, are entitled to a distribution and who submit a valid and timely Claim Form. The Plan of Allocation attempts to equitably distribute the Net Settlement Fund on a *pro rata* basis and provides that a Class member will be eligible to participate in the distribution of the Net Settlement Fund only if the Class member has an overall net loss on his, her, or its transactions in Funko common stock purchased pursuant to or traceable to the IPO.

66. In determining the amount an Authorized Claimant may recover under the Plan of Allocation, Class Representatives' Counsel consulted with their damages expert, Mr. Steinholt and his staff, as well as Class Representatives' Counsel's in-house damages consultants. Based on this analysis of causation and damages, Class Representatives' Counsel oversaw the development of the Plan of Allocation premised on the out-of-pocket measure of damages, *i.e.*, the difference between the price Class members paid for their Funko common stock and the price that their Funko common stock would have been had the allegedly misrepresented and omitted information been disclosed.

67. To date, there have been no objections to the Plan of Allocation. Class Representatives' Counsel respectfully submit the Plan of Allocation is a fair and reasonable method to equitably distribute the Net Settlement Fund among Authorized Claimants, and should be approved.

1 **VII. CLASS REPRESENTATIVES' COUNSEL'S REQUEST FOR AN AWARD**
2 **OF ATTORNEYS' FEES IS REASONABLE AND SHOULD BE**
3 **APPROVED**

4 68. Class Representatives' Counsel respectfully request that the Court award attorneys'
5 fees of one-third of the \$14,750,000 Settlement Amount, plus payment of \$397,559.12 in litigation
6 charges and expenses, plus interest earned on both amounts at the same rate earned by the Settlement
7 Fund. Class Representatives' Counsel have prosecuted the Action on a wholly contingent basis and
8 believe such a fee is reasonable and appropriate in light of the efficiency with which they litigated
9 this matter, the resources Class Representatives' Counsel expended in prosecuting the case, the
10 inherent risk of nonpayment from representing the Class on a contingent-fee basis, and the aggregate
11 monetary benefit conferred on the Class in a challenging case. Class Representatives' Counsel
12 further request \$25,000 for each Class Representative reflecting partial reimbursement for their
13 substantial expenditure of time during the many years in which this case progressed. Additional
14 plaintiff Baskin seeks an award of \$5,000 for his time spent on behalf of the Class. The legal
15 authorities supporting the requested fees and expenses are set forth in the accompanying
16 memorandum. Each Class Representative and Mr. Baskin is submitting herewith declarations
supporting these awards.

17 **A. Time, Labor, and Fee Percentage Requested**

18 69. Class Representatives' Counsel have devoted a significant amount of time and
19 resources into research, investigation, and prosecution of this Action. Class Representatives'
20 Counsel have substantial experience representing investors in securities fraud cases. The
21 identification and background of Class Representatives' Counsel is attached as Exhibit D to the
22 accompanying Declaration of James I. Jaconette Filed on Behalf of Robbins Geller Rudman &
23 Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses, Exhibit C to the
24 Declaration of Juli E. Farris Filed on Behalf of Keller Rohrbach L.L.P. in Support of Application for
25 Award of Attorneys' Fees and Expenses, Exhibit C to the Declaration of Aaron L. Brody Filed on
26 Behalf of Stull, Stull & Brody in Support of Application for Award of Attorneys' Fees and

1 Expenses, and Exhibit C to the Declaration of Thomas L. Laughlin, IV Filed on Behalf of
2 Scott+Scott Attorneys at Law LLP in Support of Application for Award of Attorneys' Fees and
3 Expenses.

4 70. Class Representatives' Counsel's representation of the Class required considerable
5 efforts, as detailed above. *See supra* §§I-II. The substantial recovery for the Class is directly
6 attributable to the diligence, determination, hard work, and reputations of Class Representatives'
7 Counsel. Class Representatives' claims could have been dismissed in August 2019, August 2020, or
8 November 2021, but instead, all of their claims survived intact as a result of Class Representatives'
9 Counsel's vigorous and unwavering efforts. Class Representatives' Counsel continued to vigorously
10 represent the Class's interests through discovery and settlement negotiations.

11 71. Class Representatives' Counsel zealously prosecuted this case on a contingency basis.
12 As a result, despite working on this matter for over six and a half years before Settlement, Class
13 Representatives' Counsel have not received any payment for their services in prosecuting the Action,
14 nor have they been paid their litigation expenses reasonably incurred. When Class Representatives'
15 Counsel undertook to represent Class Representatives and the Class, it was with the expectation that
16 they would have to devote a significant amount of time and effort in their prosecution of the case,
17 and advance large sums on investigation, research, consultants, and mediation. It was also with the
18 knowledge that Class Representatives' Counsel would spend many hours of hard work against
19 capable defense lawyers with no assurance of ever obtaining any compensation for their efforts. In
20 undertaking this responsibility, Class Representatives' Counsel made sure that sufficient attorney
21 resources were dedicated to advancing Class Representatives' claims, and that sufficient funds were
22 available to advance the expenses required to zealously pursue such complex litigation. Class
23 Representatives' Counsel assumed a substantial risk that the case would yield no recovery and leave
24 them uncompensated.

25 72. The fee request is based on a percentage of the recovery after discussion with and
26 approval by Class Representatives. *See* Lowinger Decl., ¶¶15-16; Foundation Decl., ¶¶15-16;

1 Berkelhammer Decl., ¶¶13-14; Baskin Decl., ¶9. The fee request is similar to other requests
2 approved by courts in this state, as set forth in Class Representatives' Counsel's accompanying
3 memorandum. *See* Class Representatives' Counsel's Memorandum of Points and Authorities in
4 Support of Motion for an Award of Attorneys' Fees and Expenses and Reimbursement for Class
5 Representatives' Time, submitted herewith.

6 73. Class Representatives' Counsel's fee request is further reasonable when cross-
7 checked against Class Representatives' Counsel's lodestar. Class Representatives' Counsel
8 expended more than 21,000 hours in the investigation, prosecution, and resolution of the Action.
9 The hourly rates for attorneys and professional support staff included in these schedules are the same
10 as the regular current rates counsel have submitted to and have had approved by other courts.

11 74. Further, courts have repeatedly held that it is in the public interest to have
12 experienced and able counsel enforce the securities laws. Vigorous private enforcement of the
13 federal securities laws can only occur if private plaintiffs can obtain some equivalence to the
14 representation available to large corporate defendants. Awarding fees that will adequately
15 compensate private plaintiffs' counsel, taking into account the enormous risks inherent in
16 prosecuting securities class actions on a contingent-fee basis, will ensure that this important public
17 policy is carried out.

18 75. In light of the uncertain nature and extent of the Action, the complexity of the factual
19 and legal issues presented, and the substantial risks Class Representatives' Counsel overcame, Class
20 Representatives' Counsel respectfully submit that their request for attorneys' fees of one-third of the
21 Settlement Amount warrants the Court's approval.

22 **B. The Risk, Magnitude, and Complexity of the Litigation**

23 76. As detailed above, the Action asserts violations of Sections 11, 12(a)(2), and 15 of the
24 Securities Act, involving challenging issues of law and fact that presented considerable risks.
25 Indeed, there are numerous decisions ruling in favor of Defendants at each stage of the litigation.
26

1 77. Defendants' motions to dismiss were similarly complex and raised challenging
2 arguments requiring experience and considerable effort to prepare a thorough opposition, which
3 necessitated appeal. Document discovery involved numerous meet and confers with counsel for
4 Defendants and third parties, who sought to constrain the scope of discovery sought by Class
5 Representatives. Likewise, Class Representatives' motion for class certification required nuanced
6 research and analysis and the retention of a qualified and experienced expert who submitted a
7 declaration on damages. Class Representatives' Counsel also undertook significant effort to review
8 documents produced by Defendants and to utilize them to support their evaluation of the case's
9 strengths and weaknesses, including through the mediation and negotiation process.

10 78. As a result of these challenges, when Class Representatives' Counsel undertook this
11 representation, there was no assurance that the Action would survive a motion to dismiss, appeal, or
12 prevail on other disputed issues. Therefore, there was no assurance that Class Representatives'
13 Counsel would recover any payment for their services. In addition, the time spent by Class
14 Representatives' Counsel on this case was at the expense of the time that they could have devoted to
15 other matters. Moreover, if the case had not settled, Class Representatives' Counsel were fully
16 prepared to litigate this case through fact discovery, expert discovery, summary judgment, trial, and
17 appeal.

18 **C. Quality of the Representation**

19 79. Class Representatives' Counsel are among the most experienced and skilled securities
20 practitioners in the country, as illustrated by their firm biographies attached to each firm's time and
21 expense declaration. The recovery obtained for the Class is the direct result of the significant efforts
22 of highly skilled attorneys with substantial experience in prosecuting complex securities class
23 actions. For example, the undersigned is one of three Robbins Geller partners who prosecuted the
24 *Enron* litigation day-to-day from inception to conclusion, resulting in a recovery of over \$7 billion
25 for aggrieved Enron investors.
26

1 80. The quality of opposing counsel is also important in evaluating the quality of Class
2 Representatives' Counsel's work. Defendants were represented by experienced lawyers from seven
3 well-respected defense firms, Latham & Watkins LLP, DLA Piper LLP (US), Sidley Austin LLP,
4 Aegis Law Group LLP, Summit Law Group, PLLC, Fennemore Craig, P.C., and Reed Smith LLP.
5 Defense counsel have reputations for vigorous advocacy in defending complex securities cases such
6 as this one. The ability of Class Representatives' Counsel to obtain a favorable settlement for the
7 Class in the face of such opposition further supports the quality of Class Representatives' Counsel's
8 representation.

9 **VIII. THE REQUESTED EXPENSES ARE APPROPRIATE**

10 81. Class Representatives' Counsel seek an award of \$397,559.12 in expenses in
11 connection with the prosecution of the Action. These expenses are reflected in the books and
12 records maintained by each firm, and are summarized by category in each firm declaration.

13 82. Class Representatives' Counsel submit that their expenses are reasonable and were
14 necessary for the successful prosecution of the Action. Class Representatives' Counsel's expenses
15 reflect routine and typical expenditures incurred in the course of litigation, such as the costs of
16 investigation, legal research, document duplication, consultant fees, mediation fees, and expedited
17 mail delivery. Class Representatives' Counsel were aware that they might not recover any of these
18 expenses unless and until the Action was successfully resolved. Accordingly, Class Representatives'
19 Counsel took steps to minimize expenses whenever practicable without jeopardizing the vigorous
20 and efficient prosecution of Class Representatives' claims.

21 **IX. AWARDS TO PLAINTIFFS FOR THEIR SUBSTANTIAL**
22 **COMMITMENT OF TIME TO THE LITIGATION IS APPROPRIATE**

23 83. Class Representatives' Counsel also respectfully request that the Court grant Class
24 Representatives an award of \$25,000 each and an award of \$5,000 to plaintiff Baskin for their time
25 and effort in representing the Class during this protracted litigation. As detailed in the
26 accompanying memorandum, and as more fully described in their declarations, Class
Representatives and Baskin have been fully committed to pursuing the claims detailed in the

1 Complaint on behalf of the Class. These efforts required the dedication of hundreds of hours of time
2 and of resources that would have otherwise been devoted to their regular operations. Although the
3 Class Representatives come from different professions (including a former Fortune 500 CEO who is
4 a multi-disciplinary scientist, and a medical doctor) and committed varying amounts of hours, each
5 Class Representative worked hard throughout the litigation, and the requested amounts are
6 significantly less than reasonable estimates of the value of their time expended. The Class
7 Representatives also pursued this case zealously against all Defendants, notwithstanding personal
8 risk to business relationships certain Class Representatives had with investment banks that were
9 Defendants in this case. Their efforts expended during the course of this case devoted to
10 representing the Class are precisely the types of activities courts have found adequate to support an
11 award. As such, the requested awards warrant the Court's approval.

12 **X. CONCLUSION**

13 84. Given the significant cash recovery for the Class and the uncertainty that Class
14 Representatives would have ultimately prevailed, Class Representatives' Counsel respectfully
15 submit that the Settlement and Plan of Allocation should be approved as fair, reasonable, and
16 adequate. In addition, as a result of the significant recovery, Class Representatives' Counsel
17 respectfully submit that the Court should award attorneys' fees in the amount of one-third of the
18 Settlement Amount, plus \$397,559.12 in expenses, plus the interest earned thereon at the same rate
19 and for the same period as that earned on the Settlement Fund until paid, plus awards of \$25,000 to
20 each Class Representative and \$5,000 to plaintiff Baskin in connection with their time and effort in
21 the representation of the Class.

22 I declare under penalty of perjury under the laws of the State of Washington that the
23 foregoing is true and correct. Executed on this 1st day of May, 2025, at San Diego, California.

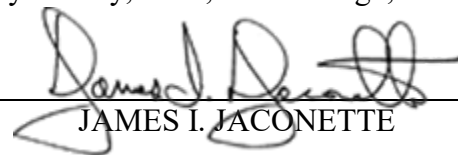
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25 
26 JAMES I. JACONETTE

EXHIBIT 1

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

IN RE FUNKO, INC. SECURITIES
LITIGATION,

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,
and 18-2-14811-1 SEA)

CLASS ACTION

**DECLARATION OF DR. ROBERT
LOWINGER IN SUPPORT OF
MOTIONS FOR: (1) FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND (2) AWARD OF
ATTORNEYS' FEES, PAYMENT OF
LITIGATION EXPENSES, AND
REIMBURSEMENT FOR CLASS
REPRESENTATIVES' TIME AND
EXPENSES**

1 I, Robert Lowinger, declare and state as follows:

2 1. I am one of three Court-appointed Class Representatives in this case. I
3 respectfully submit this declaration in support of the proposed Settlement, the requested award
4 of attorneys' fees and payment of litigation expenses, and my request for reimbursement for
5 the time and expenses I spent representing and serving the best interests of the Class.

6 2. I have personal knowledge of the matters set forth in this declaration and if
7 called as a witness, could competently testify thereto.

8 3. As set forth in my July 7, 2023, declaration in support of the motion for class
9 certification, I purchased shares of Funko, Inc. ("Funko") Class A common stock ("Funko
10 common stock") in Funko's November 1, 2017, initial public offering ("IPO"), pursuant to the
11 Registration Statement and Prospectus ("Offering Documents") issued in connection with
12 Funko's IPO and was damaged thereby.

13 4. Thereafter, I vigorously pursued relief on behalf of myself and the Class against
14 Funko, certain of Funko's current and former officers and directors, the two private equity
15 firms that controlled Funko, and the underwriters that took Funko public ("Defendants"). As
16 discussed below, my efforts encompassed approximately seven years of hard-fought litigation.

17 **Extensive Work Performed on Behalf of the Settlement Class**

18 5. I sought to serve as a named-Plaintiff and later Class Representative in order to
19 represent and protect the interests of all investors who, like myself, were damaged as a result
20 of their purchases or acquisitions of Funko common stock pursuant to or traceable to Funko's
21 IPO Offering Documents.

22 6. From the start of the Action, I have been fully engaged in the Action and
23 committed to assisting Class Representatives' Counsel – particularly my attorneys at Stull,
24 Stull & Brody, and Keller Rohrback LLP– in prosecuting this case on behalf of the Class.

25 7. I was the first Plaintiff to file a complaint in this litigation, Compl. for
26 Violations of the Securities Act of 1933, *Lowinger v. Funko, Inc.*, No 17-2-29838-7 (King

1 Cnty. Super. Ct. Nov. 16, 2017), after working with my counsel and providing factual
2 information to help develop our claims. After my case was consolidated with six other related
3 cases, I continued to work with court appointed Lead Counsel at Stull, Stull and Brody and
4 Robbins Geller Rudman & Dowd, as well as Keller Rohrback, appointed as Liaison Counsel.
5 I continued to work with Lead and Liaison Counsel to monitor the case, review pleadings, and
6 provide input when appropriate, as the lawsuit progressed through motions to dismiss, the
7 development of two amended consolidated complaints, and an appeal that ultimately reversed
8 in part a lower court order dismissing the case.

9 8. Finally, after five years of motions practice and appeal, the lawsuit finally
10 proceeded to discovery and class certification. I worked with counsel to engage in a thorough
11 and painstaking process to collect and produce both electronic and hard copy documents and
12 responded to three sets of interrogatories and two sets of document requests. I sat for a lengthy
13 deposition and met with counsel on multiple occasions, in person and by telephone, to prepare
14 for it. I continued to confer with my counsel as the case progressed. I carefully reviewed
15 pleadings, particularly Plaintiffs' motion for Class Certification, and discovery responses as
16 they were drafted, and kept apprised of discovery progress and the frequent motions to compel
17 discovery from the defendants. I worked with counsel to review

18 9. In November 2023 the Court granted Plaintiffs motion for Class Certification
19 and appointed me, together with Carl Berkelhammer and The Ronald and Maxine Linde
20 Foundation, as Class Representatives for the certified class of those who purchased or
21 acquired common stock pursuant to or traceable to Funko's November 2017 IPO. I continued
22 to work with Class Counsel as well as the other Class Representatives and their counsel to
23 monitor the case as it progressed and participate in discussions regarding strategy, including
24 settlement, as requested. The Class Representatives and I participated in periodic video
25 conferences with counsel to discuss the case and key events. I made myself available by phone
26

1 or videoconference during sessions held with the mediator, and at other key points during the
2 litigation.

3 10. Prior to and throughout the pendency of the above-captioned action, I actively
4 pursued my and the Class's securities claims against Defendants by, among other things:

- 5 (a) communicating with my counsel about the merits of a lawsuit against
6 Defendants and then the subsequent investigation into Defendants and Funko's
7 IPO;
- 8 (b) protecting my and the Class's interests by pursuing leadership over the action;
- 9 (c) supervising, reviewing, and approving the original and amended complaints I
10 filed;
- 11 (d) reviewing and discussing with my counsel pleadings, briefs, orders, and other
12 documents;
- 13 (e) engaging in extensive discovery, including responding to Defendants' several
14 requests for production of documents and interrogatories, as well as searching
15 for and producing responsive documents;
- 16 (f) supervising, reviewing, and approving the filing of a motion for class
17 certification, my declaration in support, and the subsequent in reply in support;
- 18 (g) preparing for and then sitting for a class representative deposition;
- 19 (h) receiving and reviewing regular status reports from my counsel, as well as
20 participating in discussions with my counsel concerning significant
21 developments in both the state and federal actions;
- 22 (i) attending videoconference sessions with the other two Class Representatives
23 and their respective counsel regarding the status of this action, upcoming filing
24 deadlines, discovery processes, and settlement efforts;

1 (j) conferring with my counsel concerning the strengths and weaknesses of the
2 action, the initial mediation and, later, the settlement negotiations that
3 ultimately resulted in this proposed Settlement; and

4 (k) approving the filing of the earlier preliminary approval documents and these
5 final approval documents.

6 11. All the above-listed efforts over the last seven years were necessary for the
7 successful prosecution and resolution of the action.

8 12. Through the date of this declaration, a reasonable estimate of the time I spent
9 prosecuting my and the Class's securities claims against Defendants exceeds 125 hours.

10 **The Settlement Warrants Approval**

11 13. Given the merits of the action, and in light of the risks of continued litigation,
12 including the risk that following summary judgment or trial, the Settlement Class could
13 receive nothing, I believe the \$14,750,000 Settlement Amount represents an excellent result
14 for the Settlement Class. The Settlement Amount also secures an immediate sum payable to
15 the Settlement Class and follows considerable work over the course of approximately seven
16 years, including litigation in both state and federal court, briefing on multiple motions to
17 dismiss, an appeal, class certification, extensive document discovery, and a mediation and
18 subsequent settlement negotiations.

19 14. Therefore, I believe the Settlement represents a fair, reasonable, and adequate
20 recovery on behalf of the Settlement Class and that final approval of the proposed Settlement
21 is in the best interest of each Class Member.

22 **Class Representatives' Counsel's Fee and Expense** 23 **Application Should be Approved**

24 15. I also approve and support Class Representatives' Counsel's request for an
25 award of attorneys' fees of one-third of the Settlement Fund and payment of Class Counsel's
26 requested litigation expenses, with interest on both amounts.

16. Given the high-quality representation, diligence, and hard work Class Representatives' Counsel performed in prosecuting this Action, as well as the resulting excellent recovery of \$14,750,000 for the Settlement Class in the face of the risk of no recovery at all, I believe that the requested award of attorneys' fees is both fair and reasonable. I also believe that the litigation expenses requested are reasonable and were necessary for the successful prosecution and resolution of this action.

**I Respectfully Request Reimbursement for the Time and Expenses
I Spent Prosecuting My and the Class's Securities Claims against Defendants**

17. I have not received, nor have I been promised or offered, any financial incentive or compensation for serving as a Plaintiff or Class Representative in this – or any – action against Defendants. I understand, however, that courts may authorize reimbursement to a representative serving on behalf of the Class directly relating to their representation.

18. While I do not earn an hourly wage, an approximate valuation of my time, based on my income during the period this case has been pending, is more than \$200 per hour. As noted above, a reasonable estimate of the time I spent pursuing relief for myself and the Class exceeds 125 hours. On this basis, I respectfully request reimbursement of \$25,000 for the efforts I expended prosecuting my and the Class's securities claims against Defendants.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed on this 30th day of April 2025, at Flushing, New York.

Robert Lowinger

EXHIBIT 2

THE HONORABLE KAREN DONOHUE

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, and 18-2-
This Document Relates To:	)	14811-1 SEA)
)	
ALL ACTIONS.	)	<u>CLASS ACTION</u>
)	

DECLARATION OF THE RONALD AND
MAXINE LINDE FOUNDATION IN
SUPPORT OF MOTIONS FOR: (1) FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT; AND (2) AWARD OF
ATTORNEYS' FEES, PAYMENT OF
LITIGATION EXPENSES, AND
REIMBURSEMENT FOR CLASS
REPRESENTATIVES' TIME AND
EXPENSES

1 I, Ronald K. Linde, as the representative for The Ronald and Maxine Linde Foundation
2 (“Foundation”), declare and state as follows:

3 1. The Foundation is one of three Court-appointed Class Representatives in this case.

4 2. I, on behalf of the Foundation, respectfully submit this declaration in support of the
5 proposed Settlement, the requested award of attorneys’ fees and payment of litigation expenses,
6 and my request for reimbursement for the time and expenses I spent on behalf of the Foundation
7 representing and serving the best interests of the Class.

8 3. As the representative of the Foundation, I participate in and oversee decisions
9 regarding the prosecution of this Action. I am authorized to sign this declaration on behalf of the
10 Foundation.

11 4. I have personal knowledge of the matters set forth in this declaration and if called
12 as a witness, could competently testify thereto.

13 5. As set forth in my July 7, 2023 declaration in support of the motion for class
14 certification, the Foundation purchased shares of Funko, Inc. (“Funko”) Class A common stock
15 (“Funko common stock”) in Funko’s November 1, 2017 initial public offering (“IPO”), pursuant
16 to the Registration Statement and Prospectus (“Offering Documents”) issued in connection with
17 Funko’s IPO, and was damaged thereby.

18 6. Thereafter, through my efforts, the Foundation vigorously pursued relief on behalf
19 of itself and the Class against Funko, certain of Funko’s current and former officers and directors,
20 the two private equity firms that controlled Funko, and the underwriters that took Funko public
21 (collectively, “Defendants”). As discussed below, the Foundation’s work and the work of Robbins
22 Geller Rudman & Dowd LLP (“Robbins Geller”) continued for approximately seven years of hard-
23 fought litigation.

24 DECLARATION OF THE RONALD AND
25 MAXINE LINDE FOUNDATION IN SUPPORT OF
26 MOTIONS FOR: (1) FINAL APPROVAL OF
CLASS ACTION SETTLEMENT; AND (2)
AWARD OF ATTORNEYS’ FEES, PAYMENT OF
LITIGATION EXPENSES, AND
REIMBURSEMENT FOR CLASS
REPRESENTATIVES’ TIME AND EXPENSES – 1
of 6

KELLER ROHRBACK L.L.P.
1201 Third Avenue, Suite 3400
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Telephone: 206/623-1900
Facsimile: 206/623-3384

Extensive Work Performed on Behalf of the Class

7. The Foundation sought to serve as a named-Plaintiff and later Class Representative in order to represent and protect the interests of all investors who, like the Foundation, were damaged as a result of their purchases or acquisitions of Funko common stock pursuant to or traceable to Funko's IPO Offering Documents.

8. From the start of this Action, the Foundation has been fully engaged in the Action and committed to assisting Class Representatives' Counsel – particularly my attorneys at Robbins Geller – in prosecuting this case on behalf of the Class.

9. The Foundation's work began with significant interactions with a predecessor law firm to consider initiating the Action and to make related Court filings and continued with intensive interactions with Robbins Geller concerning the progress of the investigation in the case and the selection of Defendants the Foundation understood were enumerated under the federal securities laws. It was not without risk to the Foundation that one of those Defendants was the investment bank through whom the Foundation purchased Funko shares and with which the Foundation has accounts. Notwithstanding, all Defendants were prosecuted in this case with great vigor. The Foundation also assisted with the investigation insofar as the Foundation's records were made available to counsel, and insofar as I kept abreast of developments and consistently inquired about those developments.

10. Throughout the pendency of this Action, I actively pursued the Foundation's and the Class's securities claims against all Defendants by, among other things:

(a) communicating with my counsel and reviewing numerous drafts and court filings over a seven year period, beginning with calls regarding the merits of a lawsuit against Defendants and then regarding the subsequent investigation into Defendants and Funko's IPO,

DECLARATION OF THE RONALD AND
MAXINE LINDE FOUNDATION IN SUPPORT OF
MOTIONS FOR: (1) FINAL APPROVAL OF
CLASS ACTION SETTLEMENT; AND (2)
AWARD OF ATTORNEYS' FEES, PAYMENT OF
LITIGATION EXPENSES, AND
REIMBURSEMENT FOR CLASS
REPRESENTATIVES' TIME AND EXPENSES – 2
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1 followed by post-lawsuit filing communications that not only included dozens of Zoom meetings
2 and conference calls, but also involved my personal extensive preparation for those meetings and
3 calls, including reviewing more than 1,000 pages of documents and dedicated study of relevant
4 laws and regulations in advance of those meetings;

5 (b) protecting the Foundation and the Class's interests by pursuing leadership
6 over the Action;

7 (c) supervising, reviewing in detail, and approving the original and amended
8 complaints;

9 (d) reviewing in detail and discussing with my counsel pleadings, briefs, orders,
10 and other documents filed, including those prepared and filed in the Court of Appeals;

11 (e) engaging in extensive discovery, including responding to Defendants'
12 several requests for production of documents and interrogatories that required hundreds of pages
13 of detailed responses that I reviewed and otherwise participated in finalizing, as well as searching
14 for and producing responsive documents;

15 (f) supervising, reviewing, participating in finalizing, and approving the filing
16 of a motion for class certification, the Foundation's declaration in support, and the subsequent
17 reply in support;

18 (g) preparing for and then sitting for a class representative deposition, which
19 included, but was not limited to, extensive review of Court filings over the prior years of the
20 litigation;

21 (h) receiving and reviewing regular status reports from counsel, as well as
22 participating in discussions with counsel concerning significant developments in the Action;

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DECLARATION OF THE RONALD AND
MAXINE LINDE FOUNDATION IN SUPPORT OF
MOTIONS FOR: (1) FINAL APPROVAL OF
CLASS ACTION SETTLEMENT; AND (2)
AWARD OF ATTORNEYS' FEES, PAYMENT OF
LITIGATION EXPENSES, AND
REIMBURSEMENT FOR CLASS
REPRESENTATIVES' TIME AND EXPENSES – 3
of 6

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1 (i) attending videoconference sessions with the other two Class
2 Representatives and their respective counsel regarding the status of this Action, upcoming filing
3 deadlines, discovery processes, and settlement efforts;

4 (j) conferring with counsel concerning the strengths and weaknesses of the
5 Action, the initial mediation and, later, the settlement negotiations that ultimately resulted in this
6 proposed Settlement; and

7 (k) approving the filing of the earlier preliminary approval documents and these
8 final approval documents.

9 11. All of the above-listed efforts (and more) over the last seven years were necessary
10 for the successful prosecution and resolution of the Action.

11 12. Through the date of this declaration, and after a thorough review of my calendar
12 and other records, a conservative estimate of the time I spent prosecuting the Foundation's and the
13 Class's securities claims against Defendants exceeds 200 hours.

14 **The Settlement Warrants Approval**

15 13. Given the merits of the Action, and in light of the risks of continued litigation,
16 including the risk that following summary judgment or trial, the Class could receive nothing, I, on
17 behalf of the Foundation, believe the \$14,750,000 Settlement Amount represents an excellent
18 result for the Class. The Settlement Amount also secures an immediate sum payable to the Class
19 and follows considerable work over the course of approximately seven years, including litigation
20 in both state and federal court, briefing on multiple motions to dismiss, an appeal, class
21 certification, extensive document discovery, a mediation, and subsequent settlement negotiations.

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24 DECLARATION OF THE RONALD AND
25 MAXINE LINDE FOUNDATION IN SUPPORT OF
26 MOTIONS FOR: (1) FINAL APPROVAL OF
CLASS ACTION SETTLEMENT; AND (2)
AWARD OF ATTORNEYS' FEES, PAYMENT OF
LITIGATION EXPENSES, AND
REIMBURSEMENT FOR CLASS
REPRESENTATIVES' TIME AND EXPENSES – 4
of 6

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1 14. Therefore, the Foundation believes the Settlement represents a fair, reasonable, and
2 adequate recovery on behalf of the Class and that final approval of the proposed Settlement is in
3 the best interest of each Class Member.

4 **Class Representatives' Counsel's Fee and Expense**
5 **Application Should Be Approved**

6 15. The Foundation also approves and supports Class Representatives' Counsel's
7 request for an award of attorneys' fees of one-third of the Settlement Amount and payment of
8 Class Representatives' Counsel's requested litigation expenses, with interest on both amounts.

9 16. Given the high-quality representation, diligence, and hard work Class
10 Representatives' Counsel performed in prosecuting this Action, as well as the resulting excellent
11 recovery of \$14,750,000 for the Class in the face of the risk of no recovery at all, the Foundation
12 believes that the requested award of attorneys' fees is both fair and reasonable. The Foundation
13 also believes that the litigation expenses requested are reasonable and were necessary for the
14 successful prosecution and resolution of this Action.

15 **The Foundation Respectfully Requests Reimbursement for the Time and Expenses Spent**
16 **Prosecuting the Foundation's and the Class's Securities Claims Against Defendants**

17 17. The Foundation has not received, nor been promised or offered, any financial
18 incentive or compensation for serving as a Plaintiff or Class Representative in this – or any – action
19 against Defendants. The Foundation understands, however, that courts may authorize
20 reimbursement to a representative serving on behalf of the Class directly relating to their
21 representation.

22 18. While I do not earn an hourly wage, I have assisted and engaged at various stages
23 of different and unrelated litigation as an expert in the past. My expertise comes from being a
24 founder and former CEO of an international Fortune 500 company, having led the acquisition of

25 DECLARATION OF THE RONALD AND
26 MAXINE LINDE FOUNDATION IN SUPPORT OF
MOTIONS FOR: (1) FINAL APPROVAL OF
CLASS ACTION SETTLEMENT; AND (2)
AWARD OF ATTORNEYS' FEES, PAYMENT OF
LITIGATION EXPENSES, AND
REIMBURSEMENT FOR CLASS
REPRESENTATIVES' TIME AND EXPENSES – 5
of 6

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1 numerous companies, as well as being a multidisciplinary scientist and author or co-author of more
2 than 50 publications in condensed matter physics, applied mechanics, inorganic chemistry,
3 geophysics, and other fields. Among other responsibilities, I am Vice Chair of the Board Emeritus
4 and Life Member of the California Institute of Technology, a Fellow of the American Academy of
5 Arts and Sciences, and have served as a member of numerous committees and subcommittees
6 related to the fields in which I have relevant expertise, including serving as Chair or Vice Chair of
7 Investment Committees, Business and Finance Committees, and Audit and Compliance
8 Committees. An approximate valuation of my time in this Action, based on my previous
9 compensation for assisting in other litigation, is over \$500 per hour. As noted above, a conservative
10 estimate of the time I spent pursuing relief for myself and the Class during that time period exceeds
11 200 hours. On this basis, I respectfully request reimbursement of \$25,000, which is only a
12 relatively small portion of the estimated value of the time I expended prosecuting the Foundation's
13 and the Class's securities claims against Defendants.

14 I declare under penalty of perjury under the laws of the State of Washington that the
15 foregoing is true and correct.

16 Executed on this 1st day of May 2025, at Paradise Valley, Arizona.

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21 Ronald K. Linde as the representative for Plaintiff,
22 The Ronald and Maxine Linde Foundation
23

24 DECLARATION OF THE RONALD AND
25 MAXINE LINDE FOUNDATION IN SUPPORT OF
26 MOTIONS FOR: (1) FINAL APPROVAL OF
CLASS ACTION SETTLEMENT; AND (2)
AWARD OF ATTORNEYS' FEES, PAYMENT OF
LITIGATION EXPENSES, AND
REIMBURSEMENT FOR CLASS
REPRESENTATIVES' TIME AND EXPENSES – 6

of 6

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EXHIBIT 3

THE HONORABLE KAREN DONOHUE

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,
This Document Relates To:	)	18-2-08153-0 SEA, 18-2-12229-5 SEA, and
	)	18-2-14811-1 SEA)
ALL ACTIONS.	)	<u>CLASS ACTION</u>
	)	DECLARATION OF CARL M.
	)	BERKELHAMMER IN SUPPORT OF
	)	MOTIONS FOR: (1) FINAL APPROVAL
	)	OF CLASS ACTION SETTLEMENT AND
	)	(2) AWARD OF ATTORNEYS' FEES,
	)	PAYMENT OF LITIGATION EXPENSES,
	)	AND REIMBURSEMENT FOR CLASS
	)	REPRESENTATIVES' TIME

1 I, Carl M. Berkelhammer, declare and state as follows:

2 1. I am one of three Court-appointed Class Representatives in this case. I respectfully
3 submit this declaration in support of the proposed Settlement, the requested award of attorneys'
4 fees and payment of litigation expenses, and my request for reimbursement for the time I spent
5 representing and serving the best interests of the Class.

6 2. I have personal knowledge of the matters set forth in this declaration and if called
7 as a witness, could competently testify thereto.

8 3. As set forth in my July 7, 2023 declaration in support of the motion for class
9 certification, I purchased shares of Funko, Inc. ("Funko") Class A common stock ("Funko
10 common stock") in Funko's November 1, 2017 initial public offering ("IPO"), pursuant to the
11 Registration Statement and Prospectus ("Offering Documents") issued in connection with
12 Funko's IPO, and was damaged thereby.

13 4. To date, I have vigorously pursued relief on behalf of myself and the Class against
14 Funko, certain of Funko's current and former officers and directors, the two private equity firms
15 that controlled Funko, and the underwriters that took Funko public ("Defendants"). As discussed
16 below, my efforts spanned multiple courts – including this Court and the federal district court –
17 and encompassed approximately seven years of hard-fought litigation.

18 **Extensive Work Performed on Behalf of the Class**

19 5. I sought to serve as a named-Plaintiff and later Class Representative in order to
20 represent and protect the interests of all investors who, like myself, were damaged as a result of
21 their purchases or acquisitions of Funko common stock pursuant to or traceable to Funko's IPO
22 Offering Documents.

23 6. From the start of the Action, I have been fully engaged in the Action and
24 committed to assisting Class Representatives' Counsel – including my attorneys at Scott+Scott
25 Attorneys at Law LLP – in prosecuting this case on behalf of the Class.

1 7. After initially filing a complaint in Snohomish County, *see* Compl. for Violations
2 of the Securities Act of 1933, *Berkelhammer v. Funko, Inc.*, No. 18-2-02458-31 (Snohomish Cnty.
3 Super. Ct. Mar. 13, 2018), I worked with my counsel to consolidate my action with this King
4 County action. *See* Order Granting Plaintiff's Motion for Voluntary Dismissal, No. 18-2-02458-
5 31 (Snohomish Cnty. Super. Ct. May 8, 2018); Order Granting Stipulation Consolidating Cases,
6 Appointing Lead & Liaison Counsel, and Providing Schedule for Resp. to Consolidated Compl.,
7 *In re Funko, Inc. Sec. Litig.*, No. 17-2-29838-7 SEA (King Cnty. Super. Ct. July 2, 2018).
8 Thereafter, I worked with my counsel to obtain leadership over a substantially similar action in
9 federal court – *see* Order Granting Carl Berkelhammer's Renewed Motion for Appointment as
10 Lead Plaintiff and Approval of Selection of Lead and Liaison Counsel, *Berkelhammer v. Funko,*
11 *Inc.*, Case No. 2:18-cv-00812, ECF No. 40 (W.D. Wash. Jan. 4, 2019) – and then I supervised,
12 reviewed, and approved the filing of an amended complaint in that court. *See* No. 2:18-cv-00812,
13 ECF No. 45 (W.D. Wash. Apr. 30, 2019). Later, in 2023, in order to strengthen representation of
14 the Class at the class certification stage and to prosecute the case against Defendants in a single
15 forum, I worked with my counsel to rejoin this action as a Court-approved Class Representative.
16 *See* Plaintiffs' Motion for Class Certification, 17-2-29838-7 SEA (King Cnty. Super. Ct. July 7,
17 2023).

18 8. Prior to and then throughout the pendency of each of the above-captioned actions,
19 I actively pursued my and the Class's securities claims against Defendants by, among other things:

- 20 (a) communicating with my counsel about the merits of a lawsuit against Defendants
21 and then the subsequent investigation into Defendants and Funko's IPO;
22 (b) protecting my and the Class's interests by pursuing leadership over the action in
23 both state and federal court;
24 (c) supervising, reviewing, and approving the original and amended complaints I filed
25 in state and federal court;
26

- 1 (d) reviewing and discussing with my counsel pleadings, briefs, orders, and other
2 documents filed in the state and federal actions;
- 3 (e) engaging in extensive discovery, including responding to Defendants' several
4 requests for production of documents and interrogatories by reviewing and
5 approving hundreds of pages of discovery responses on my behalf, as well as
6 searching for and producing responsive documents;
- 7 (f) supervising, reviewing, and approving the filing of a motion for class certification,
8 my declaration in support, and the subsequent reply in support;
- 9 (g) preparing for and then sitting for a class representative deposition;
- 10 (h) receiving and reviewing regular status reports from my counsel, as well as
11 participating in discussions with my counsel concerning significant developments
12 in both the state and federal actions;
- 13 (i) attending videoconference sessions with the other two Class Representatives and
14 their respective counsel regarding the status of this action, upcoming filing
15 deadlines, discovery processes, and settlement efforts;
- 16 (j) conferring with my counsel concerning the strengths and weaknesses of the action,
17 the mediation and, later, the settlement negotiations that ultimately resulted in this
18 proposed Settlement; and
- 19 (k) approving the filing of the earlier preliminary approval documents and the final
20 approval documents.

21 9. All of the above-listed efforts over the last seven years were necessary for the
22 successful prosecution and resolution of the action.

23 10. Through the date of this declaration, a conservative estimate of the time I spent
24 prosecuting my and the Class's securities claims against Defendants exceeds 150 hours.
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12. Therefore, I believe the Settlement represents a fair, reasonable, and adequate recovery on behalf of the Settlement Class and that final approval of the proposed Settlement is in the best interest of each Class Member.

13. I also approve and support Class Representatives' Counsel's request for an award of attorneys' fees of one-third of the Settlement Fund and payment of Class Representatives' Counsel's requested litigation expenses, with interest on both amounts.

DECLARATION OF CARL M. BERKELHAMMER IN SUPPORT OF
MOTIONS FOR: (1) FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AND (2) AWARD OF ATTORNEYS' FEES,
PAYMENT OF LITIGATION EXPENSES, AND
REIMBURSEMENT FOR CLASS REPRESENTATIVES' TIME - 5

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16. While I do not earn an hourly wage, an approximate valuation of my time, based on my average annual salary over the seven-year period from the inception of the first action I participated in through today, is approximately \$225 per hour. As noted above, a conservative estimate of the time I spent pursuing relief for myself and the Class during that time period exceeds 150 hours. On this basis, I respectfully request reimbursement of \$25,000 for the efforts I expended prosecuting my and the Class's securities claims against Defendants.

Executed on this 2nd day of May, 2025, at Fort Lauderdale, Florida.

Carl M. Berkelhammer

EXHIBIT 4

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

IN RE FUNKO, INC. SECURITIES
LITIGATION,

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,
and 18-2-14811-1 SEA)

CLASS ACTION

**DECLARATION OF ERNEST
BASKIN IN SUPPORT OF REQUEST
FOR REIMBURSEMENT FOR TIME
AND EXPENSES**

I, Ernest Baskin, declare and state as follows:

1. I am one of the named Plaintiffs in this consolidated class action. I respectfully submit this declaration in support of the proposed Settlement, the requested award of attorneys' fees and payment of litigation expenses, and my request for reimbursement for the time and expenses I spent as a plaintiff in the putative and thereafter, certified, class action.

2. I have personal knowledge of the matters set forth in this declaration and if called as a witness, could competently testify thereto.

3. I purchased shares of Funko, Inc. ("Funko") Class A common stock ("Funko common stock") in Funko's November 1, 2017, initial public offering ("IPO"), pursuant to the

1 Registration Statement and Prospectus (“Offering Documents”) issued in connection with
2 Funko’s IPO and was damaged thereby.

3 4. Thereafter, I filed suit in King County Superior Court on behalf of myself and the
4 Class against Funko, certain of Funko’s current and former officers and directors, the two private
5 equity firms that controlled Funko, and the underwriters that took Funko public (“Defendants”).
6 *Baskin v. Funko, et al.*, No. 18-2-02535-4. By stipulation and Order, my lawsuit was consolidated
7 with six other related cases to become *In re Funko, Inc. Securities Litig.* No. 17-2-29838-7. *See*
8 Order Granting Stipulation Consolidating Cases, Appointing Lead and Liaison Counsel and
9 Providing Schedule for Response to Consolidated Complaint, July 2, 2018.

10 **Work Performed on Behalf of the Settlement Class**

11 5. I remained as a named-Plaintiff in the consolidated action for the next several
12 years as Funko and other defendants filed motions to dismiss, and as the initial order dismissing
13 the action was ultimately appealed and reversed in part in November 2021.

14 6. After the case was remanded to King County Superior Court, I supported the
15 motion for Class Certification and appointment of Plaintiffs Robert Lowinger, Carl
16 Berkelhammer and The Ronald and Maxine Linde Foundation as Class Representatives. I
17 continued to participate in discovery by responding to interrogatories and production requests
18 served on me by Defendants Funko and Fundamental. At all times, I acted not only on my own
19 behalf, but to represent and protect the interests of all investors who, like me, were damaged as
20 a result of their purchases or acquisitions of Funko common stock pursuant to or traceable to
21 Funko’s IPO Offering Documents.

22 7. Through the date of this declaration, a conservative estimate of the time I spent
23 prosecuting my and the Class’s securities claims against Defendants and responding to
24 Defendants’ discovery requests exceeds 25 hours.

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Class Representatives' Counsel's Fee and Expense Application Should be Approved

**I Respectfully Request Reimbursement for the Time and Expenses
I Spent Prosecuting My and the Class's Securities Claims against Defendants**

11. Although I did not serve as a Class Representative in this matter, I did participate in the litigation as a Named Plaintiff for many years and cooperated in responding to discovery requests served on me by Defendants.

12. An approximate valuation of my time, based on my average annual salary over the seven-year period from the inception of the first action I participated in through today, is \$200.00 per hour. As noted above, a conservative estimate of the time I spent pursuing relief for myself and the Class during that time period exceeds 25 hours. On this basis, I respectfully

1 request reimbursement of \$5,000 for the efforts I expended prosecuting my and the Class's
2 securities claims against Defendants.

3
4 I declare under penalty of perjury under the laws of the State of Washington that the
5 foregoing is true and correct.

6 Executed this 30th day of April 2025 at Philadelphia, Pennsylvania.

7
8 Ernest Baskin
9 Ernest Baskin