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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

_____ individually and on behalf of all
others similarly situated,

Plaintiff,

v.

FUNKO, INC., BRIAN MARIOTTI,
RUSSELL NICKEL, and JENNIFER FALL
JUNG,

Defendants.

Case No. _____

**CLASS ACTION COMPLAINT FOR
VIOLATIONS OF THE FEDERAL
SECURITIES LAWS**

JURY TRIAL DEMANDED

Plaintiff _____ (“Plaintiff”), by and through his attorneys, alleges upon personal knowledge as to his own acts, and upon information and belief as to all other matters, based upon the investigation conducted by and through his attorneys, which included, among other things, a review of documents filed by Defendants (as defined below) with the United States Securities and Exchange Commission (the “SEC”), news reports, press releases issued by Defendants, and other publicly available documents, as follows:

NATURE AND SUMMARY OF THE ACTION

1. This is a federal securities class action on behalf of all investors who purchased or otherwise acquired Funko, Inc. (“Funko” or the “Company”) common stock between August 8, 2019 and March 5, 2020, inclusive (the “Class Period”). This action is brought on behalf of the Class for violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the

1 “Exchange Act”), 15 U.S.C. §§ 78j(b) and 78t(a) and Rule 10b-5 promulgated thereunder by the
2 SEC, 17 C.F.R. § 240.10b-5.

3 2. Funko is a pop culture consumer products company that creates figures, plush,
4 accessories, apparel, and homewares regarding movies, TV shows, videogames, musicians, and
5 sports teams.

6 3. On February 5, 2020, after the markets closed, Funko issued a press release on
7 Form 8-K with the SEC announcing its preliminary financial results for the fourth quarter of
8 2019.¹ In this release, Funko stated that “[n]et sales are expected to be approximately \$214
9 million, a decrease of 8% compared to \$233 million in the fourth quarter of 2018.” Funko
10 further disclosed a \$16.8 million write-down to “dispose of slower moving inventory to increase
11 operational capacity.”

12 4. On this news, Funko’s share price fell \$6.20 per share in one day, or
13 approximately 40%, to close at \$9.29 per share on February 6, 2020.

14 5. Next, on March 5, 2020, after the markets closed, Funko issued a press release on
15 Form 8-K with the SEC announcing its financial results for the fourth quarter and full year of
16 2019. In this release, Funko confirmed that net sales for the fourth quarter of 2019 had
17 decreased 8% year-over-year to \$213.6 million due to, among other things, “softness at retail
18 during the holiday season which led to a decrease in orders.”² The Company further confirmed
19 the \$16.8 million write-down.

20 6. On this news, the Company’s stock price fell another \$0.32, or over 4%, to close
21 at \$6.92 per share on March 6, 2020.

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28 ¹ <https://www.sec.gov/Archives/edgar/data/1704711/000119312520025378/d881587dex991.htm>.

² <https://www.sec.gov/Archives/edgar/data/1704711/000170471120000020/ex-991.htm>

1 alleged herein to be misleading prior to, or shortly after, their issuance and had the ability and
2 opportunity to prevent their issuance or cause them to be corrected. Because of their positions
3 and access to material, non-public information available to them, the Individual Defendants
4 knew that the adverse facts specified herein had not been disclosed to, and were being concealed
5 from, the public, and that the positive representations that were being made were then materially
6 false and/or misleading. The Individual Defendants are therefore liable for the misstatements
7 and omissions plead herein.
8

9 **MATERIALLY FALSE MISSTATEMENTS AND OMISSIONS**

10 21. On August 8, 2019, Funko announced its second quarter 2019 financial results,
11 via press release filed on Form 8-K with the SEC.³ In this press release, Funko stated, in
12 relevant part:

13 **Second Quarter 2019 Highlights**

- 14 • Net sales increased 38% to \$191.2 million
- 15 • Gross profit[] increased 35% to \$71.2 million
- 16 • Gross margin[] decreased 90 basis points to 37.2%
- 17 • Income from operations increased 98% to \$17.1 million
- 18 • Net income increased to \$11.4 million from \$0.3 million
- 19 • Earnings per diluted share increased to \$0.16
- 20 • Adjusted Net Income[] was \$12.9 million compared to \$3.2 million in the
second quarter of 2018, and Adjusted Earnings per Diluted Share[] was \$0.25,
compared to \$0.06 in the second quarter of 2018
- 21 • Adjusted EBITDA[] increased 61% to \$31.4 million

22 * * *

23 **2019 Outlook**

24 The Company is raising its outlook for the full year 2019. The Company now
25 expects net sales to be in a range of \$840 million to \$850 million. Adjusted
26 EBITDA³ is expected to be in a range of \$140 million to \$145 million. Adjusted
27 Earnings per Diluted Share³ is expected to be in a range of \$1.15 per share to
28 \$1.22 per share and is based on estimated adjusted average diluted shares
outstanding of 53.5 million for the full year 2019.

³ https://www.sec.gov/Archives/edgar/data/1704711/000156459019030800/fnko-ex991_6.htm.

1 22. Funko further stated in this press release that “[o]ur strong results in the first half
2 of 2019 have allowed us to increase our guidance for the full year. More importantly, the
3 growing range of opportunities for revenue growth, international expansion and entry into new
4 categories make us confident that our best days lie ahead, and that our fans, partners, employees
5 and shareholders can look forward to the future.”

6
7 23. Also on August 8, 2019, Funko filed its quarterly report on Form 10-Q with the
8 SEC for the period ended June 30, 2019, affirming these financial results. Concerning inventory
9 levels, Funko stated:

10 ***Our success depends, in part, on our ability to successfully manage our***
11 ***inventories.***

12 We must maintain sufficient inventory levels to operate our business successfully,
13 but we must also avoid accumulating excess inventory, which increases working
14 capital needs and lowers gross margin. We obtain substantially all of our
15 inventory from third-party manufacturers located outside the United States and
16 must typically order products well in advance of the time these products will be
17 offered for sale to our customers. As a result, it may be difficult to respond to
18 changes in consumer preferences and market conditions, which, for pop culture
19 products, can change rapidly. If we do not accurately anticipate the popularity of
20 certain products, then we may not have sufficient inventory to meet demand.
21 Alternatively, if demand or future sales do not reach forecasted levels, we could
22 have excess inventory that we may need to hold for a long period of time, write
23 down, sell at prices lower than expected or discard. If we are not successful in
24 managing our inventory, our business, financial condition and results of
25 operations could be adversely affected.

26 We may also be negatively affected by changes in retailers’ inventory policies and
27 practices. As a result of the desire of retailers to more closely manage inventory
28 levels, there is a growing trend to make purchases on a “just-in-time” basis. This
requires us to more closely anticipate demand and could require us to carry
additional inventory. Policies and practices of individual retailers may adversely
affect us as well, including those relating to access to and time on shelf space,
price demands, payment terms and favoring the products of our competitors. Our
retail customers make no binding long-term commitments to us regarding
purchase volumes and make all purchases by delivering purchase orders. Any
retailer can therefore freely reduce its overall purchase of our products, including
the number and variety of our products that it carries, and reduce the shelf space
allotted for our products. If demand or future sales do not reach forecasted levels,
we could have excess inventory that we may need to hold for a long period of
time, write down, sell at prices lower than expected or discard. If we are not

1 successful in managing our inventory, our business, financial condition and
2 results of operations could be adversely affected.

3 24. Pursuant to the Sarbanes-Oxley Act of 2002, Defendants Mariotti and Nickel
4 certified that this Form 10-Q “fairly presents, in all material respects, the financial condition and
5 results of operations of the Company.”

6 25. On October 31, 2019, Funko announced its third quarter 2019 financial results
7 and reiterated its fiscal 2019 outlook. In a press release filed on Form 8-K with the SEC,⁴ the
8 Company stated, in relevant part:

9 **Third Quarter 2019 Highlights**

- 10
- 11 • Net sales increased 26% to \$223.3 million
 - 12 • Gross profit[] increased 26% to \$85.5 million
 - 13 • Gross margin[] decreased 10 basis points to 38.3%
 - 14 • Income from operations increased 36% to \$22.6 million
 - 15 • Net income increased to \$15.5 million from \$7.6 million
 - 16 • Earnings per diluted share increased to \$0.25
 - 17 • Adjusted Net Income[] was \$19.9 million compared to \$13.6 million in the
18 third quarter of 2018, and Adjusted Earnings per Diluted Share[] was \$0.38,
19 compared to \$0.27 in the third quarter of 2018
 - 20 • Adjusted EBITDA[] increased 20% to \$40.6 million

21 * * *

22 **2019 Outlook**

23 The Company is reiterating its outlook for the full year 2019. The Company
24 expects net sales to be in a range of \$840 million to \$850 million. Adjusted
25 EBITDA[] is expected to be in a range of \$140 million to \$145 million. Adjusted
26 Earnings per Diluted Share[] is expected to be in a range of \$1.15 per share to
27 \$1.22 per share and is based on estimated adjusted average diluted shares
28 outstanding of 53.5 million for the full year 2019.

29 26. Also on October 31, 2019, Funko filed its quarterly report on Form 10-Q with the
30 SEC for the period ended September 30, 2019,⁵ affirming these financial results. Concerning
31 inventory levels, Funko stated, in relevant part:

32 ⁴ https://www.sec.gov/Archives/edgar/data/1704711/000156459019039150/fnko-ex991_6.htm.

33 ⁵ https://www.sec.gov/Archives/edgar/data/1704711/000156459019039165/fnko-10q_20190930.htm.

1 ***Our success depends, in part, on our ability to successfully manage our***
2 ***inventories.***

3 We must maintain sufficient inventory levels to operate our business successfully,
4 but we must also avoid accumulating excess inventory, which increases working
5 capital needs and lowers gross margin. We obtain substantially all of our
6 inventory from third-party manufacturers located outside the United States and
7 must typically order products well in advance of the time these products will be
8 offered for sale to our customers. As a result, it may be difficult to respond to
9 changes in consumer preferences and market conditions, which, for pop culture
10 products, can change rapidly. If we do not accurately anticipate the popularity of
11 certain products, then we may not have sufficient inventory to meet demand.
12 Alternatively, if demand or future sales do not reach forecasted levels, we could
13 have excess inventory that we may need to hold for a long period of time, write
14 down, sell at prices lower than expected or discard. If we are not successful in
15 managing our inventory, our business, financial condition and results of
16 operations could be adversely affected.

17 We may also be negatively affected by changes in retailers' inventory policies and
18 practices. As a result of the desire of retailers to more closely manage inventory
19 levels, there is a growing trend to make purchases on a "just-intime" basis. This
20 requires us to more closely anticipate demand and could require us to carry
21 additional inventory. Policies and practices of individual retailers may adversely
22 affect us as well, including those relating to access to and time on shelf space,
23 price demands, payment terms and favoring the products of our competitors. Our
24 retail customers make no binding long-term commitments to us regarding
25 purchase volumes and make all purchases by delivering purchase orders. Any
26 retailer can therefore freely reduce its overall purchase of our products, including
27 the number and variety of our products that it carries, and reduce the shelf space
28 allotted for our products. If demand or future sales do not reach forecasted levels,
 we could have excess inventory that we may need to hold for a long period of
 time, write down, sell at prices lower than expected or discard. If we are not
 successful in managing our inventory, our business, financial condition and
 results of operations could be adversely affected.

21 27. Pursuant to the Sarbanes-Oxley Act of 2002, Defendants Mariotti and Jung
22 certified that this Form 10-Q "fairly presents, in all material respects, the financial condition and
23 results of operations of the Company."

24 28. The statements in ¶¶ 21-27 were materially false and misleading and omitted to
25 disclose material information. Specifically, Defendants failed to disclose to investors that: (1)
26 Funko was experiencing lower than expected sales; (2) consequently, Funko was reasonably
27 likely to incur a write-down for slower moving inventory; and (3) as a result of the foregoing,
28

1 Defendants' statements and disclosures were materially misleading, failed to disclose material
2 information, and/or lacked a reasonable basis.

3 THE TRUTH EMERGES

4 29. On February 5, 2020, after the markets closed, Funko issued a press release on
5 Form 8-K with the SEC announcing its preliminary financial results for the fourth quarter of
6 2019. In this release, Funko stated that “[n]et sales are expected to be approximately \$214
7 million, a decrease of 8% compared to \$233 million in the fourth quarter of 2018.” Funko
8 further disclosed a \$16.8 million write-down to “dispose of slower moving inventory to increase
9 operational capacity.” In this press release, Funko stated, in relevant part:

11 Net sales are expected to be approximately \$214 million, a decrease of 8%
12 compared to \$233 million in the fourth quarter of 2018. Net sales were below
13 expectations in mature markets, including the U.S., due to the challenging retail
14 environment, which resulted in lower than expected purchases among Funko's top
15 customers throughout the holiday season as well as softness in sales related to
certain tentpole movie releases. These factors more than offset strong growth both
in Europe and the Loungefly brand during the quarter.

16 For the fourth quarter of fiscal 2019, Funko estimates:

- 17 • Net sales in the U.S. will decrease approximately 9%, while net sales
18 internationally will decrease approximately 8%, reflecting declines in mature
19 international markets, including Australia and Canada, partially offset by
continued double digit growth in Europe.
- 20 • On a product category basis, net sales of figures will decrease approximately 10%
21 and net sales of other products will decrease approximately 3% versus the year
22 ago period, respectively. Net sales of Loungefly items, included in other products,
are expected to show continued double digit growth in the fourth quarter offset by
declines in other branded products.
- 23 • The Company will incur a one-time \$16.8 million charge related to the write-
24 down of inventory as a result of the Company's decision to dispose of slower
25 moving inventory to increase operational capacity. This charge is incremental to
26 normal course reserves and will have an unfavorable impact to gross profit[],
gross margin[], net loss and net loss per diluted share in the fourth quarter.
- 27 • Gross profit[] will be in the range of \$62.3 million to \$62.8 million, while gross
28 margin will be 29.2% to 29.4%. Gross margin excluding the one-time inventory
write-down[] will be 37.0% to 37.3%.

- 1
- 2
- The Company will have a net loss in the range of \$6.7 million to \$6.0 million and net loss per diluted share of \$0.12 to \$0.11.
- 3
- Adjusted EBITDA[] will be in the range of \$24.7 million to \$25.7 million.
- 4
- Adjusted Net Income[] will be in the range of \$8.1 million to \$8.9 million and Adjusted Earnings per Diluted Share[] will be in the range of \$0.16 to \$0.18.
- 5

6 “While we are disappointed in our fourth quarter results, we are confident that our
7 strong track record of innovation through new product categories and properties,
8 as well as continued international expansion, will continue to propel the Company
9 in 2020 and beyond. The underlying strength of our Pop! and Loungefly brands,
10 combined with Funko’s unique ability to leverage evergreen properties will
11 enable the Company to achieve high-single-digit to low-double-digit sales growth
12 in 2020,” stated Brian Mariotti, Chief Executive Officer.

13 30. The Company further announced that it expected that sales trends would not
14 improve until second half of fiscal 2020, stating in the same press release:

15 The Company expects its 2020 net sales growth rate to be in the high-single-digits
16 to low-double-digits. Additionally, the Company anticipates that top line trends
17 will improve gradually throughout 2020 and will be largely weighted toward the
18 second half of the year, with net sales in the first half expected to be down low-
19 single-digits to flat compared to the first half of 2019. Funko plans to provide
20 expanded guidance for 2020 in connection with the release of fourth quarter and
21 full year 2019 financial results on March 5, 2020.

22 31. On this news, Funko’s share price fell \$6.20 per share in one day, or
23 approximately 40%, to close at \$9.29 per share on February 6, 2020.

24 32. Next, on March 5, 2020, after the markets closed, Funko issued a press release on
25 Form 8-K with the SEC announcing its financial results for the fourth quarter and full year of
26 2019. In this release, Funko confirmed that net sales for the fourth quarter of 2019 had
27 decreased 8% year-over-year to \$213.6 million due to, inter alia, “softness at retail during the
28 holiday season which led to a decrease in orders.” The Company further confirmed the \$16.8
million write-down.

- 1 d. Whether Defendants knew or recklessly disregarded that their statements were
- 2 false and misleading;
- 3 e. Whether the price of the Company's stock was artificially inflated; and
- 4 f. The extent of damage sustained by Class members and the appropriate measure of
- 5 damages.

6
7 39. Plaintiff's claims are typical of those of the Class because Plaintiff and the Class
8 sustained damages from Defendants' wrongful conduct alleged herein.

9 40. Plaintiff will adequately protect the interests of the Class and has retained counsel
10 who are experienced in class action securities litigation. Plaintiff has no interests that conflict
11 with those of the Class.

12 41. A class action is superior to other available methods for the fair and efficient
13 adjudication of this controversy.

14
15 **FRAUD ON THE MARKET**

16 42. Plaintiff will rely upon the presumption of reliance established by the fraud-on-
17 the-market doctrine that, among other things:

- 18 a. Defendants made public misrepresentations or failed to disclose material facts
- 19 during the Class Period;
- 20 b. The omissions and misrepresentations were material;
- 21 c. The Company's common stock traded in efficient markets;
- 22 d. The misrepresentations alleged herein would tend to induce a reasonable investor
- 23 to misjudge the value of the Company's common stock; and
- 24 e. Plaintiff and other members of the class purchased the Company's common stock
- 25 between the time Defendants misrepresented or failed to disclose material facts
- 26

27 43. At all relevant times, the markets for the Company's stock were efficient for the
28 following reasons, among others: (i) the Company filed periodic public reports with the SEC;

1 and (ii) the Company regularly communicated with public investors via established market
2 communication mechanisms, including through regular disseminations of press releases on the
3 major news wire services and through other wide-ranging public disclosures such as
4 communications with the financial press, securities analysts, and other similar reporting services.
5 Plaintiff and the Class relied on the price of the Company's common stock, which reflected all
6 information in the market, including the misstatements by Defendants.
7

8 **NO SAFE HARBOR**

9 44. The statutory safe harbor provided for forward-looking statements under certain
10 conditions does not apply to any of the allegedly false statements pleaded in this Complaint. The
11 specific statements pleaded herein were not identified as forward-looking statements when made.
12

13 45. To the extent there were any forward-looking statements, there were no
14 meaningful cautionary statements identifying important factors that could cause actual results to
15 differ materially from those in the purportedly forward-looking statements.
16

16 **SCIENTER ALLEGATIONS**

17 46. As alleged herein, Defendants acted with scienter since Defendants knew that the
18 public documents and statements issued or disseminated in the name of the Company were
19 materially false and/or misleading; knew that such statements or documents would be issued or
20 disseminated to the investing public; and knowingly and substantially participated or acquiesced
21 in the issuance or dissemination of such statements or documents as primary violations of the
22 federal securities laws. As set forth elsewhere herein in detail, the Individual Defendants, by
23 virtue of their receipt of information reflecting the true facts regarding Funko, their control over,
24 and/or receipt and/or modification of Funko's allegedly materially misleading misstatements
25 and/or their associations with the Company which made them privy to confidential proprietary
26 information concerning Funko, participated in the fraudulent scheme alleged herein.
27
28

1 **LOSS CAUSATION**

2 47. On February 5, 2020, Funko announced its preliminary financial results for the
3 fourth quarter of 2019, expecting net sales of approximately \$214 million and announcing a
4 write-down of \$16.8 million. On this news, Funko’s share price fell \$6.20 per share in one day,
5 or approximately 40%, to close at \$9.29 per share on February 6, 2020.

6 48. On March 5, 2020, Funko announced its financial results for the fourth quarter
7 and full year of 2019, confirming that net sales for the fourth quarter of 2019 had decreased 8%
8 year-over-year to \$213.6 million and confirming the \$16.8 million write-down. On this news,
9 the Company’s stock price fell another \$0.32, or over 4%, to close at \$6.92 per share on March
10 6, 2020.

11 49. During the Class Period, the Company’s stock traded as high as \$27.89 per share.
12 The March 6, 2020 closing price of \$6.92 per share therefore *represents approximately a 75%*
13 *decrease from the Class Period high.*

14 50. The February 5, 2020 and March 5, 2020 disclosures contradicted statements
15 made by Defendants during the Class Period and were a causal element of the concurrent
16 declines in the Company’s share price.

17 **CAUSES OF ACTION**

18 **COUNT ONE**

19 **Violations of § 10(b) of the Exchange Act and Rule 10b-5 Promulgated Thereunder**

20 51. Plaintiff repeats and re-alleges each and every allegation contained above as if
21 fully set forth herein.

22 52. During the Class Period, Defendants disseminated or approved the false
23 statements specified above, which they knew or deliberately disregarded were misleading in that
24 they contained misrepresentations and failed to disclose the material facts necessary to make the
25 statements made, in light of the circumstances under which they were made, not misleading.
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- 1 a) determining that this action is a proper class action pursuant to Rule 23(a) and
2 23(b)(3) of the Federal Rules of Civil Procedure on behalf of the Class as defined
3 herein, and a certification of Plaintiff as class representative pursuant to Rule 23
4 of the Federal Rules of Civil Procedure and appointment of Plaintiff's counsel as
5 Lead Counsel;
6
7 b) awarding compensatory and punitive damages in favor of Plaintiff and the other
8 class members against all Defendants, jointly and severally, for all damages
9 sustained as a result of Defendants' wrongdoing, in an amount to be proven at
10 trial, including pre-judgment and post- judgment interest thereon.
11
12 c) awarding Plaintiff and other members of the Class their costs and expenses in this
13 litigation, including reasonable attorneys' fees and experts' fees and other costs
14 and disbursements; and
15
16 d) awarding Plaintiff and the other Class members such other relief as this Court
17 may deem just and proper.

17 **DEMAND FOR JURY TRIAL**

18 Plaintiff hereby demands a trial by jury in this action of all issues so triable.
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