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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

GILBERTO FERREIRA,
Individually and On Behalf of All
Others Similarly Situated,

Plaintiff,

v.

FUNKO, INC., et al.,

Defendants.

Case No.: 2:20-cv-02319-VAP-
MAAx

**ORDER AND FINAL JUDGMENT
APPROVING SETTLEMENT**

Judge: Hon. Virginia A. Phillips

CLASS ACTION

WHEREAS, a securities class action is pending in this court entitled *Gilberto Ferreira, et al. v. Funko, Inc., et al.*, 2:20-cv-02319-VAP-MAAx (the “Action”);

WHEREAS, (a) Lead Plaintiffs Huaiyu Zheng, Abdul Baker, and Zhibin Zhang (“Lead Plaintiffs”), on behalf of themselves and the Settlement Class (defined below), and (b) defendants Funko, Inc. (“Funko”) and Brian Mariotti, Jennifer Fall Jung, Andrew Perlmutter, Ken Brotman, Gino Dellomo, and

1 Adam Kriger (the “Individual Defendants,” and together with Funko, the
2 “Funko Defendants” or the “Settling Defendants”), and ACON Investments,
3 L.L.C., ACON Funko Manager, L.L.C., ACON Funko Investors, L.L.C.,
4 ACON Funko Investors Holdings 1, L.L.C., ACON Funko Investors Holdings
5 2, L.L.C., ACON Funko Investors Holdings 3, L.L.C., and ACON Equity
6 GenPar, L.L.C. (the “ACON Defendants,” and together with the Settling
7 Defendants, the “Defendants”) have determined to settle all claims asserted
8 in this Action against all parties with prejudice on the terms and conditions
9 set forth in the Stipulation and Agreement of Settlement dated June 3, 2022
10 (the “Stipulation”), subject to the approval of this Court (the “Settlement”);

11 WHEREAS, unless otherwise defined in this Judgment, the capitalized
12 terms herein shall have the same meanings as they have in the Stipulation;

13 WHEREAS, by Order dated July 19, 2022 (the “Preliminary Approval
14 Order”), this Court: (a) found, pursuant to Rule 23(e)(1)(B), that it (i) would
15 likely be able to approve the Settlement as fair, reasonable, and adequate
16 under Rule 23(e)(2) and (ii) would likely be able to certify the Settlement
17 Class for purposes of the Settlement; (b) ordered that notice of the proposed
18 Settlement be provided to potential Settlement Class Members; (c) provided
19 Settlement Class Members with the opportunity either to exclude themselves
20 from the Settlement Class or to object to the proposed Settlement; and (d)
21 scheduled a hearing regarding final approval of the Settlement;

22 WHEREAS, due and adequate notice has been given to the Settlement
23 Class;

24 WHEREAS, the Court conducted a hearing on November 7, 2022 (the
25 “Settlement Hearing”) to consider, among other things, (a) whether the terms
26 and conditions of the Settlement are fair, reasonable, and adequate to the
27 Settlement Class, and should therefore be approved; and (b) whether a

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1 judgment should be entered dismissing the Action with prejudice as against
2 the Defendants; and

3 WHEREAS, the Court having reviewed and considered the Stipulation,
4 all papers filed and proceedings held herein in connection with the
5 Settlement, all oral and written comments received regarding the Settlement,
6 and the record in the Action, and good cause appearing therefor;

7
8 IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

9 1. **Jurisdiction** – The Court has jurisdiction over the subject matter
10 of the Action, and all matters relating to the Settlement, as well as personal
11 jurisdiction over all of the parties and each of the Settlement Class Members.

12 2. **Incorporation of Settlement Documents** – This Judgment
13 incorporates and makes a part hereof the Stipulation and the exhibits thereto,
14 filed with the Court on June 3, 2022.

15 3. **Class Certification for Settlement Purposes** – The Court
16 hereby certifies, for the purposes of the Settlement only, the Action as a class
17 action pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil
18 Procedure on behalf of the Settlement Class consisting of all persons and
19 entities who or which purchased or otherwise acquired shares of Funko
20 publicly traded common stock during the period from August 8, 2019 through
21 March 5, 2020, inclusive, (the “Class Period”), and who allege they were
22 damaged thereby (the “Settlement Class”). The Settlement Class includes
23 all persons or entities who purchased Funko common stock
24 contemporaneously with sales of Funko common stock made by Defendant
25 Mariotti during the Class Period. Excluded from the Settlement Class are:
26 (i) Defendants; (ii) members of the Immediate Family of each Individual
27 Defendant; (iii) any person who was an officer or director of Funko; (iv) any

1 firm or entity in which any Defendant has or had a controlling interest; (v) any
2 person who participated in the conduct alleged; (vi) Defendants' liability
3 insurance carriers; (vii) any affiliates, parents, or subsidiaries of Funko; (viii)
4 all Funko plans that are covered by ERISA; and (ix) the legal representatives,
5 agents, affiliates, heirs beneficiaries, successors-in-interest, or assigns of
6 any excluded person or entity in their respective capacity as such. Also
7 excluded from the Settlement Class are any persons and entities who or
8 which exclude themselves by submitting a request for exclusion that is
9 accepted by the Court.

10 4. **Settlement Class Findings** – For purposes of the Settlement
11 only, the Court finds that each element required for certification of the
12 Settlement Class pursuant to Rule 23 of the Federal Rules of Civil Procedure
13 has been met. In certifying Settlement Class for purposes of Settlement the
14 Court has analyzed the requirements of Federal Rule of Civil Procedure 23
15 and found that:

16 a. The Rule 23(a)(1) numerosity requirement is satisfied because
17 the members of the Settlement Class are so numerous that their joinder in
18 the Action would be impracticable;

19 b. The Rule 23(a)(2) commonality requirement is satisfied because
20 there are questions of law and fact common to the Settlement Class which
21 predominate over any individual questions;

22 c. The Rule 23(a)(3) typicality requirement is satisfied because the
23 claims of Lead Plaintiffs in the Action are typical of the claims of the
24 Settlement Class;

25 d. The Rule 23(a)(4) adequacy requirement is satisfied because
26 Lead Plaintiffs and Lead Counsel have and will fairly and adequately
27 represent and protect the interests of the Settlement Class; and

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1 e. The Rule 23(b)(3) predominance requirement is satisfied because
2 common issues predominate over individualized concerns and a class action
3 is superior to other available methods for the fair and efficient adjudication of
4 the claims of the Settlement Class in the Action.

5 5. **Adequacy of Representation** – Pursuant to Rule 23 of the
6 Federal Rules of Civil Procedure, and for the purposes of the Settlement
7 only, the Court hereby appoints Lead Plaintiffs as Class Representatives for
8 the Settlement Class and appoints Lead Counsel Bernstein Liebhard LLP
9 and Pomerantz LLP as Class Counsel for the Settlement Class. Lead
10 Plaintiffs and Lead Counsel have fairly and adequately represented the
11 Settlement Class both in terms of litigating the Action and for purposes of
12 entering into and implementing the Settlement and have satisfied the
13 requirements of Federal Rules of Civil Procedure 23(a)(4) and 23(g),
14 respectively.

15 6. **Notice** – The Court finds that the dissemination of the Postcard
16 Notice, Internet Notice and the publication of the Summary Notice satisfied
17 the Notice requirements pursuant to Rule 23(e) of the Federal Rules of Civil
18 Procedure and the Preliminary Order. The Court has analyzed the
19 requirements of Federal Rule of Civil Procedure 23(e) and found that:

- 20 a. Notice was directed in a reasonable manner to all Settlement
- 21 Class members who would be bound by the proposed Settlement;
- 22 b. The Notice was timely, accurate, and informative;
- 23 c. The Claims Administrator implemented the Notice in accordance
- 24 with the Preliminary Approval Order;
- 25 d. The Notice constituted the best notice practicable under the
- 26 circumstances;

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1 e. The Notice was reasonably calculated, under the circumstances,
2 to apprise Settlement Class Members of (i) the pendency of the Action; (ii)
3 the effect of the proposed Settlement (including the Releases to be provided
4 thereunder); (iii) Lead Counsels' motion for attorneys' fees and Litigation
5 Expenses, including application for PSLRA awards to Lead Plaintiffs; (iv)
6 their right to object to any aspect of the Settlement, the Plan of Allocation,
7 and/or Lead Counsels' motion for attorneys' fees and Litigation Expenses;
8 (v) their right to exclude themselves from the Settlement Class; and (vi) their
9 right to appear at the Settlement Hearing;

10 f. The Notice constituted due, adequate, and sufficient notice to all
11 persons and entities entitled to receive notice of the proposed Settlement;
12 and

13 g. The Notice satisfied the requirements of Rule 23 of the Federal
14 Rules of Civil Procedure, the United States Constitution (including the Due
15 Process Clause), the Private Securities Litigation Reform Act of 1995, 15
16 U.S.C. § 78u-4, as amended, and all other applicable law and rules. No
17 Settlement Class Member is relieved from the terms of the Settlement,
18 including the Releases provided for therein, based upon the contention or
19 proof that such Settlement Class Member failed to receive actual or
20 adequate notice. A full opportunity has been offered to the Settlement Class
21 Members to object to the proposed Settlement and to participate in the
22 Settlement Hearing thereon. The Court further finds that the notice
23 provisions of the Class Action Fairness Act, 28 U.S.C. § 1715 *et seq.*, were
24 fully discharged and that the statutory waiting period has elapsed. Thus, the
25 Court hereby determines that all Settlement Class Members are bound by
26 this Judgment, except those persons and entities listed on Exhibit 1 to this
27 Judgment.

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1 7. **Final Settlement Approval and Dismissal of Claims** –

2 Pursuant to, and in accordance with Rule 23(e)(2) of the Federal Rules of
3 Civil Procedure, this Court hereby fully and finally approves the Settlement
4 set forth in the Stipulation in all respects (including, without limitation, the
5 amount of the Settlement, the Releases provided for therein, and the
6 dismissal with prejudice of the claims asserted against Defendants in the
7 Action), and finds that the Settlement is, in all respects, fair, reasonable, and
8 adequate to the Settlement Class. In granting final approval of the Settlement
9 the Court has analyzed the requirements of Federal Rule of Civil Procedure
10 23 and found that:

11 a. Lead Plaintiffs and Lead Counsel have adequately represented
12 the Settlement Class;

13 b. The Settlement was negotiated by the Parties at arm’s length;

14 c. The Settlement is not the product of fraud or overreaching by, or
15 collusion between, the Parties;

16 d. Sufficient discovery has been taken and investigation completed
17 to enable Lead Counsel and the Court to act intelligently;

18 e. The relief provided for the Settlement Class under the Settlement
19 is adequate taking into account the strength of Lead Plaintiffs’ claims, the risk,
20 expense, complexity, and likely duration of further litigation, the risk of
21 certifying the Action as a class action and maintaining class action status
22 throughout the trial, the amount offered in settlement, the extent of discovery
23 completed and the stage of the proceedings, the experience and views of
24 counsel, the reaction of Settlement Class members, and the proposed
25 attorneys’ fee award;

26 f. The Settlement treats members of the Settlement Class
27 equitably relative to each other. The parties are directed to implement,

1 perform, and consummate the Settlement in accordance with the terms and
2 provisions contained in the Stipulation.

3 8. The Action and all claims asserted against Defendants in the
4 Action by Lead Plaintiffs and the other Settlement Class Members are hereby
5 dismissed with prejudice. The parties shall bear their own costs and
6 expenses, except as otherwise expressly provided in the Stipulation.

7 9. **Binding Effect** – The terms of the Stipulation and of this
8 Judgment shall be forever binding on Defendants, Lead Plaintiffs, and all
9 other Settlement Class Members (regardless of whether or not any individual
10 Settlement Class Member submits a Claim Form or seeks or obtains a
11 distribution from the Net Settlement Fund), as well as their respective
12 successors and assigns. The persons and entities listed on Exhibit 1 hereto
13 are excluded from the Settlement Class pursuant to request and are not
14 bound by the terms of the Stipulation or this Judgment.

15 10. **Releases** – The Releases set forth in paragraphs 5 and 6 of the
16 Stipulation, together with the definitions contained in paragraph 1 of the
17 Stipulation relating thereto, are expressly incorporated herein in all respects.
18 The Releases are effective as of the Effective Date. Accordingly, this Court
19 orders that:

20 a. Without further action by anyone, and subject to paragraph 11
21 below, upon the Effective date of the Settlement, Lead Plaintiffs and each of
22 the other Settlement Class Members, on behalf of themselves, and their
23 respective heirs, executors, administrators, predecessors, successors, and
24 assigns, in their capacities as such, shall be deemed to have and by
25 operation of law and of this Judgment shall have, fully, finally, and forever
26 compromised, settled, released, resolved, relinquished, waived, and
27 discharged each and every Released Plaintiffs' Claim against Defendants

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1 and all of the Defendants' Releasees, and shall forever be barred and
2 enjoined from bringing, asserting, or prosecuting any or all of the Released
3 Plaintiffs' Claims against any of the Defendants' Releasees.

4 b. Without further action by anyone, and subject to paragraph 11
5 below, upon the Effective Date of the Settlement, the Settling Defendants,
6 on behalf of themselves, and their respective heirs, executors,
7 administrators, predecessors, successors, and assigns, in their capacities as
8 such, shall be deemed to have, and by operation of law and of this Judgment
9 shall have, fully, finally, and forever compromised, settled, released,
10 resolved, relinquished, waived, and discharged each and every Released
11 Defendants' Claim against Lead Plaintiffs and all of the Plaintiffs' Releasees,
12 and shall forever be barred and enjoined from bringing, asserting or
13 prosecuting any or all of the Released Defendants' Claims against any of the
14 Plaintiffs' Releasees. This Release shall not apply to any person or entity
15 listed on Exhibit 1 hereto.

16 11. Notwithstanding paragraphs 10(a) – (b) above, nothing in this
17 Judgment shall bar any action by any of the parties or any Releasee to
18 enforce or effectuate the terms of the Stipulation or this Judgment.

19 12. **Rule 11 Findings** – The Court finds and concludes that the
20 parties and their respective counsel have complied in all respects with the
21 requirements of Rule 11 of the Federal Rules of Civil Procedure in
22 connection with the institution, prosecution, defense, and settlement of the
23 Action.

24 13. **No Admissions** – Neither this Judgment, the Stipulation
25 (whether or not consummated), including the exhibits thereto and the Plan
26 of Allocation contained therein (or any other plan of allocation that may be
27 approved by the Court), the negotiations leading to the execution of the

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1 Stipulation, nor any proceedings taken pursuant to or in connection with the
2 Stipulation and/or approval of the Settlement (including any arguments
3 proffered in connection therewith):

4 a. Shall be offered against any of the Defendants' Releasees as
5 evidence of, or construed as, or deemed to be evidence of any presumption,
6 concession, or admission by any of the Defendants' Releasees with respect
7 to the truth of any fact alleged by Lead Plaintiffs or the validity of any claim
8 that was or could have been asserted or the deficiency of any defense that
9 has been or could have been asserted in this Action or in any other litigation,
10 or of any liability, negligence, fault, or other wrongdoing of any kind of any of
11 the Defendants' Releasees or in any way referred to for any other reason as
12 against any of the Defendants' Releasees, in any arbitration proceeding or
13 other civil, criminal, or administrative action or proceeding, other than such
14 proceedings as may be necessary to effectuate the provisions of the
15 Stipulation;

16 b. Shall be offered against any of the Plaintiffs' Releasees, as
17 evidence of, or construed as, or deemed to be evidence of any presumption,
18 concession or admission by any of the Plaintiffs' Releasees that any of their
19 claims are without merit, that any of the Defendants' Releasees had
20 meritorious defenses, or that damages recoverable under the Complaint
21 would not have exceeded the Settlement Amount or with respect to any
22 liability, negligence, fault, or wrongdoing of any kind, or in any way referred
23 to for any other reason as against any of the Plaintiffs' Releasees, in any
24 arbitration proceeding or other civil, criminal, or administrative action or
25 proceeding, other than such proceedings as may be necessary to effectuate
26 the provisions of the Stipulation; or

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1 c. Shall be construed against any of the Releasees as an
2 admission, concession, or presumption that the consideration to be given
3 under the Settlement represents the amount which could be or would have
4 been recovered after trial; provided, however, that the Parties and the
5 Releasees and their respective counsel may refer to and rely on this
6 Judgment and the Stipulation to effectuate the protections from liability
7 granted hereunder and thereunder or otherwise to enforce the terms of the
8 Settlement, including but not limited to by filing the Stipulation and/or this
9 Judgment in any other action that may be brought against them in order to
10 support a defense or counterclaim based on principles of *res judicata*,
11 collateral estoppel, release, good faith settlement, judgment bar or reduction,
12 or any other theory of claim preclusion or issue preclusion or similar defense
13 or counterclaim.

14 14. **Retention of Jurisdiction** – Without affecting the finality of this
15 Judgment in any way, this Court retains continuing and exclusive jurisdiction
16 over: (a) the parties for purposes of the administration, interpretation,
17 implementation, and enforcement of the Settlement; (b) the disposition of the
18 Settlement Fund; (c) any motion for an award of attorneys’ fees and/or
19 Litigation Expenses by Lead Counsel in the Action that will be paid from the
20 Settlement Fund; (d) any motion to approve the Plan of Allocation; (e) any
21 motion to approve the Class Distribution Order; and (f) the Settlement Class
22 Members for all matters relating to the Action.

23 15. **Modification of the Agreement of Settlement** – Without further
24 approval from the Court, Lead Plaintiffs and the Settlement Defendants are
25 hereby authorized to agree to and adopt such amendments or modifications
26 of the Stipulation or any exhibits attached thereto to effectuate the Settlement
27 that: (a) are not materially inconsistent with this Judgment; and (b) do not

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1 materially limit the rights of Settlement Class Members in connection with the
2 Settlement. Without further order of the Court, Lead Plaintiffs and the Settling
3 Defendants may agree to reasonable extensions of time to carry out any
4 provisions of the Settlement.

5 16. **Plan of Allocation** – The Court hereby finds that the proposed
6 Plan of Allocation is a fair and reasonable method to allocate the Net
7 Settlement Fund among Settlement Class Members, and Lead Counsel and
8 the Claims Administrator are directed to administer the Plan of Allocation in
9 accordance with its terms and the terms of the Stipulation.

10 17. **Settlement Administration Fees and Expenses** – The Claims
11 Administrator, Strategic Claims Services, shall be reimbursed for fees and
12 expenses in the amount of \$53,610.21 associated with implementing the
13 Notice program and administrating the settlement to date. Such amounts are
14 to be paid out of the Settlement Fund immediately upon entry of this Order.

15 18. **Termination of Settlement** – If the Settlement is terminated as
16 provided in the Stipulation or the Effective Date of the Settlement otherwise
17 fails to occur, this Judgment shall be vacated, rendered null and void, and
18 be of no further force and effect, except as otherwise provided by the
19 Stipulation, and this Judgment shall be without prejudice to the rights of Lead
20 Plaintiffs, the other Settlement Class Members, and Defendants, and the
21 parties shall revert to their respective positions in the Action immediately
22 prior to the execution of the Stipulation.

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1 19. **Entry of Final Judgment** – There is no just reason to delay the
2 entry of this Judgment as a final judgment in this Action. Accordingly, the
3 Clerk of the Court is expressly directed to immediately enter this final
4 judgment in this Action.

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SO ORDERED this 13th day of December, 2022.

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Virginia A. Phillips

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The Honorable Virginia A. Phillips
Senior United States District Judge

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EXHIBIT 1

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Persons Excluded From the Settlement Class

Jonathan D. Sato