

The Honorable Ricardo S. Martinez

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

MICHAEL SURRATT, Individually and On
Behalf of All Others Similarly Situated,

Plaintiff,

v.

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

Defendants.

NO. 2:18-cv-00283-RSM

**STIPULATION AND ORDER
EXTENDING TIME TO ANSWER,
MOVE, OR OTHERWISE RESPOND
PENDING REMAND PROCEEDINGS**

Plaintiff Michael Surratt (“Plaintiff”) and Defendants, by and through their
undersigned counsel of record, hereby stipulate and agree as follows:

1. On January 16, 2018, Plaintiff filed the complaint in this putative class action
(the “Complaint”) in the Superior Court of Washington in and for King County against Funko,
Inc., Brian Mariotti, Russell Nickel, Ken Brotman, Gino Dellomo, Charles Denson, Diane

1 Irvine, Adam Kriger, and Richard McNally (collectively, the “Funko Defendants”); Goldman,
2 Sachs & Co., now known as Goldman Sachs & Co. LLC; J.P. Morgan Securities LLC; Merrill
3 Lynch, Pierce, Fenner & Smith Incorporated; Piper Jaffray & Co.; Jefferies LLC; Stifel,
4 Nicolaus & Company, Incorporated; BMO Capital Markets Corp.; and SunTrust Robinson
5 Humphrey, Inc. (collectively, the “Underwriter Defendants,” and together with the Funko
6 Defendants, the “Defendants”).

7 2. The Complaint alleges violations of Sections 11 and 15 of the federal Securities
8 Act of 1933, 15 U.S.C. § 77a, *et seq.*

9 3. On February 23, 2018, the Funko Defendants removed this action to this Court,
10 along with two additional cases arising out of the same allegations and asserting substantially
11 the same causes of action as this case. *See Baskin v. Funko, Inc., et al.*, 2:18-cv-00281-RSM;
12 *The Ronald and Maxine Linde Foundation v. Funko, Inc., et al.*, 2:18-cv-00282-RSM.

13 4. Although the Funko Defendants identified all three removed actions as “related
14 to” *Lowinger v. Funko, Inc., et al.*, 2:18-cv-00201-RSM, which the Funko Defendants removed
15 to this Court on February 7, 2018, the cases were assigned to different judges.

16 5. On February 28, 2018, this action was reassigned to Judge Ricardo S. Martinez,
17 as related to *Lowinger v. Funko, Inc., et al.*, 2:18-cv-00201-RSM.

18 6. The Funko Defendants intend to seek consolidation of the four *Funko* cases.

19 7. Pursuant to the Federal Rules of Civil Procedure, the Funko Defendants must
20 answer, move, or otherwise respond to the Complaint in this action on or before March 2, 2018.

21 8. Plaintiff intends to file a motion to remand this action to the Superior Court of
22 Washington in and for King County.

23 9. The plaintiff in *Lowinger* filed a motion to remand proceedings to the Superior
24 Court of Washington in and for King County on February 27, 2018.

25 10. The Funko Defendants filed a motion to stay proceedings in *Lowinger* on
26 February 27, 2018 and intend to file motions to stay proceedings in the remaining three *Funko*
27 cases pending a decision by the United States Supreme Court in *Cyan, Inc. v. Beaver County*

1 *Employees Retirement Fund*, No. 15-1439 (argued Nov. 28, 2017), on the certified question of
2 “[w]hether state courts lack subject-matter jurisdiction over ‘covered class actions,’ 15 U.S.C. §
3 77v(a), that allege only claims under the Securities Act of 1933.”

4 11. There have been no prior extensions of time for Defendants to answer, move or
5 otherwise respond to the Complaint in this Court.

6 12. The undersigned counsel hereby accepts service of the Summons and Complaint
7 on behalf of the Funko Defendants and is authorized to accept, and hereby does accept service
8 of the Summons and Complaint on behalf of the Underwriter Defendants, without prejudice
9 and without waiver of any defenses, objections, or arguments in this matter or any other matter,
10 including without limitation any arguments regarding personal jurisdiction or venue, except as
11 to sufficiency of service of process of the Summons and Complaint.

12 13. Subject to this Court’s approval, the Defendants’ time within which to answer,
13 move, or otherwise respond to the Complaint is extended pending the Court’s resolution of any
14 motion to remand that Plaintiff may file, except as otherwise ordered by the Court.

15 14. Except as otherwise ordered by the Court, after a decision is issued on any
16 motion to remand that Plaintiff may file, the undersigned parties will confer regarding a
17 schedule for answering, moving, or otherwise responding to the Complaint, taking into account
18 the Private Securities Litigation Reform Act’s procedural requirements regarding the
19 appointment of lead plaintiff and lead counsel in private class actions arising under the federal
20 securities laws (as applicable).

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

1 SO STIPULATED AND AGREED this 2nd day of March 2018.

2 **BRESKIN JOHNSON & TOWNSEND PLLC**

3 By /s/ Roger M. Townsend [email authorization]

4 Roger M. Townsend, WSBA #25525
5 1000 Second Avenue, Suite 3670
6 Seattle, WA 98104
7 Tel: (206) 652-8660
8 Email: rtownsend@bjtlegal.com

9 Of Counsel

10 **LEVI & KORSINSKY, LLP**

11 Shannon L. Hopkins (*PHV* to be filed)
12 733 Summer Street, Suite 304
13 Stamford, CT 06901
14 Tel: (203) 992-4523
15 Email: shopkins@zlk.com

16 *Attorneys for Plaintiff*

17 **SIDLEY AUSTIN LLP**

18 By /s/ Robin E. Wechkin [email authorization]

19 Robin E. Wechkin, WSBA #24746
20 701 5th Avenue, Suite 4200
21 Seattle, WA 98104
22 Tel: (415) 439-1799
23 Email: rwechkin@sidley.com

24 *Attorneys for Defendants Goldman, Sachs & Co. LLC;*
25 *J.P. Morgan Securities LLC; Merrill Lynch, Pierce,*
26 *Fenner & Smith Incorporated; Piper Jaffray & Co.;*
27 *Jefferies LLC; Stifel, Nicolaus & Company,*
Incorporated; BMO Capital Markets Corp.; and
SunTrust Robinson Humphrey, Inc.

SAVITT BRUCE & WILLEY LLP

By /s/ Stephen C. Willey

Stephen C. Willey, WSBA #24499
1425 Fourth Avenue, Suite 800
Seattle, WA 98101
Tel: (206) 749-0500
Email: swilley@sbwllp.com

Of Counsel

LATHAM & WATKINS LLP

Benjamin Naftalis (*pro hac vice*)
Kevin McDonough (*pro hac vice*)
885 Third Avenue
New York, NY 10022-4834
Tel: (212) 906-1246
Email: benjamin.naftalis@lw.com
Email: kevin.mcdonough@lw.com

Attorneys for Defendants Funko, Inc.;
Brian Mariotti; Russell Nickel; Ken
Brotman; Gino Dellomo; Charles Denson;
Diane Irvine; Adam Kriger; and
Richard McNally

I. ORDER

In accordance with the foregoing stipulation, it is so **ORDERED**.

DATED: March 5, 2018.



RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27