

FILED
Court of Appeals
Division I
State of Washington
1/13/2022 4:14 PM

FILED
SUPREME COURT
STATE OF WASHINGTON
1/14/2022
BY ERIN L. LENNON
CLERK

100572-5

COURT OF APPEALS
DIVISION I
STATE OF WASHINGTON

No. 81811-2-I

IN RE: FUNKO INC. SECURITIES LITIGATION

ROBERT LOWINGER, et al.

Appellants,

v.

FUNKO, INC., et al.

Respondents

UNDERWRITER DEFENDANTS' JOINDER IN PETITION FOR REVIEW

Robin E. Wechkin
SIDLEY AUSTIN LLP
8426 316th Pl. SE
Issaquah, WA 98027
Phone: (415) 439-1799
Email: rwechkin@sidley.com

Attorneys for Underwriter Defendants
Goldman, Sachs & Co. (n/k/a Goldman Sachs & Co. LLC), 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. (n/k/a Truist Securities, Inc.)

This joinder is filed under RAP 10.1(g) by the eight Underwriter Defendants: Goldman, Sachs & Co. (n/k/a Goldman Sachs & Co. LLC), 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. (n/k/a Truist Securities, Inc.).

The Underwriter Defendants hereby join in the January 13, 2022 petition for review of the Court of Appeals' November 1, 2021 decision filed by the nine Funko Defendants, *i.e.*, Funko, Inc., Brian Mariotti, Russell Nickel, Ken Brotman, Gino Dellomo, Charles Denson, Diane Irvine, Adam Kriger, and Richard McNally.

The arguments set forth in Funko Defendants' petition for review apply equally to the claims asserted in this action against the Underwriter Defendants. Plaintiffs' claims against these two groups of defendants arise from identical challenged statements in Funko's IPO prospectus and registration statement, and are asserted under the same federal securities statutes. The Court of Appeals did not analyze the claims against the Underwriter Defendants separately from the claims against the Funko Defendants. Both the Court of Appeals' analysis and the errors in that analysis identified in the Funko Defendants' petition for review pertain equally to the claims against the Underwriter Defendants.

For the reasons set forth in the Funko Defendants' petition, discretionary review of the Court of Appeals' decision is warranted here.

And for purposes of fairness and efficiency, that review should extend to the claims asserted the Underwriter Defendants.

Respectfully submitted this 13th day of January, 2022.

SIDLEY AUSTIN LLP

/s/ Robin E. Wechkin

Robin E. Wechkin, WSBA No. 24746

8426 316th Pl. SE

Issaquah, WA 98027

Phone: (415) 439-1799

Email: rwechkin@sidley.com

Attorneys for the Underwriter Defendants

CERTIFICATION

I certify that I caused to be served via the Court’s secure filing portal, and electronic mail as a courtesy, a true and correct copy of this document to the following:

<p>Juli E. Farris, WSBA #17593 Elizabeth A. Leland, WSBA #23433 KELLER ROHRBACK L.L.P. 1201 Third Avenue, Ste. 3200 Seattle, WA 98101 Phone: (206) 623-1900 jfarris@kellerrohrback.com bleland@kellerrohrback.com</p> <p>Karl P. Barth, WSBA #22780 Steve W. Berman, WSBA #12536 Dawn D. Cornelius, WSBA #50170 HAGENS BERMAN SOBOL SHAPIRO 1918 Eighth Avenue, Suite 3300 Seattle, Washington 98101 Phone: 206-623-7292 karlb@hbsslaw.com steve@hbsslaw.com dawn@hbsslaw.com</p> <p><i>Liaison Counsel for Plaintiffs</i></p>	<p>Samuel H. Rudman ROBBINS GELLER RUDMAN & DOWD LLP 58 South Service Road, Suite 200 Melville, NY 11747 Phone: 631-367-7100 srudman@rgrdlaw.com</p> <p>James I. Jaconette ROBBINS GELLER RUDMAN & DOWD LLP 655 West Broadway, Suite 1900 San Diego, CA 92101-8498 Phone: (619) 231-1058 jamesj@rgrdlaw.com bcochran@rgrdlaw.com</p> <p>Aaron L. Brody Patrick K. Slyne STULL, STULL & BRODY 6 East 45th Street New York, NY 10017 Phone: (212) 687-7230 abrody@ssbny.com mklein@ssbny.com</p> <p><i>Co-Lead Counsel for Plaintiffs</i></p>
--	---

<p>David Freeburg DLA PIPER LLP david.freeburg@dlapiper.com</p> <p>Benjamin Naftalis Kevin McDonough Thomas J. Giblin LATHAM & WATKINS LLP benjamin.naftalis@lw.com kevin.mcdonough@lw.com thomas.giblin@lw.com</p> <p><i>Counsel for the Funko Respondents</i></p>	<p>Stephen C. Willey Duffy J Graham SAVITT BRUCE & WILLEY LLP swilley@sbwllp.com dgraham@sbwllp.com</p> <p>Philip S. McCune Lawrence C. Locker SUMMIT LAW GROUP, PLLC philm@summitlaw.com laerry1@summitlaw.com</p> <p>Carla Wirtschafter James L. Sanders REED SMITH LLP cwirtschafter@reedsmith.com jsanders@reedsmith.com</p> <p>Michael Ross Sean Roberts AEGIS LAW GROUP LLP mross@aegislawgroup.com sroberts@aegislawgroup.com</p> <p><i>Counsel for Respondents</i></p>
---	--

/s/ Robin E. Wechkin
Robin E. Wechkin

SIDLEY AUSTIN LLP

January 13, 2022 - 4:14 PM

Transmittal Information

Filed with Court: Court of Appeals Division I
Appellate Court Case Number: 81811-2
Appellate Court Case Title: Robert Lowinger, et al, Appellants v. Funko, Inc., et al, Respondents

The following documents have been uploaded:

- 818112_Petition_for_Review_20220113160810D1668952_7277.pdf
This File Contains:
Petition for Review
The Original File Name was 2022.01.13 Funko S Ct petition for review UWs_ joinder.pdf

A copy of the uploaded files will be sent to:

- Mdolan@sidley.com
- benjamin.naftalis@lw.com
- cherish.drain@lw.com
- cwirtschaft@reedsmith.com
- david.freeburg@us.dlapiper.com
- dawn@hbsslw.com
- dgraham@sbwllp.com
- dmorrissey@lawschool.gonzaga.edu
- elaliberte@kellerrohrback.com
- eservice@sbwllp.com
- jfarris@kellerrohrback.com
- jsanders@reedsmith.com
- kbarth7504@aol.com
- kevin.mcdonough@lw.com
- larryl@summitlaw.com
- marciar@summitlaw.com
- melissa.sherry@lw.com
- mross@aegislawgroup.com
- paige.plassmeyer@us.dlapiper.com
- philm@summitlaw.com
- sroberts@aegislawgroup.com
- steve@hbsslw.com
- swilley@sbwllp.com
- thomas.giblin@lw.com

Comments:

Underwriter Defendants' Joinder in Petition for Review

Sender Name: JoAnn Buss - Email: jbuss@sidley.com

Filing on Behalf of: Robin E. Wechkin - Email: rwechkin@sidley.com (Alternate Email: enorwood@sidley.com)

Address:

701 Fifth Avenue
Suite 4200
Seattle, WA, 98104
Phone: (415) 772-1200

Note: The Filing Id is 20220113160810D1668952