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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

Vicki Hebert, an individual, on behalf of herself and  
all others similarly situated and as a representative  
plaintiff,

Plaintiff,

vs.

Barnes & Noble, Inc.; and Does 1 through 10,

Defendants.

**CASE NO. 37-2019-00007178-CU-MC-CTL**  
**CLASS ACTION**  
*(Assigned to the Hon. Katherine Bacal - Dept. C-69)*

**JOINT STIPULATION OF CLASS**  
**ACTION SETTLEMENT AND RELEASE**

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1 Subject to Court approval, this JOINT STIPULATION OF CLASS ACTION SETTLEMENT  
2 AND RELEASE (the Settlement or Agreement) is entered into by Plaintiff Vicki Hebert (Plaintiff) and  
3 Defendant Barnes & Noble, Inc. (Defendant). Plaintiff and Defendant are collectively referred to in this  
4 Agreement as the Parties.

5 **I. DEFINITIONS**

6 In addition to terms defined elsewhere in the Settlement, as used in this Settlement, the following  
7 terms have the meanings indicated below:

8 **A. Action**

9 The civil action filed on February 6, 2019 in San Diego County Superior Court entitled *Hebert v.*  
10 *Barnes & Noble, Inc.*, Case No. 37-2019-00007178-CU-MC-CTL.

11 **B. Claims Administrator**

12 American Legal Claim Services LLC (“ALCS”), which will perform the customary duties of a  
13 settlement administrator including, but not limited to, the duties enumerated in this Agreement.

14 **C. Class**

15 All persons residing in the United States (including all territories and other political subdivisions  
16 of the United States) as to whom Barnes & Noble procured or caused to be procured a consumer report  
17 for employment purposes using the disclosure form challenged in this lawsuit, a version reflecting the  
18 substance of which is attached to this Agreement as Exhibit 1.

19 **D. Class Counsel**

20 Peter R. Dion-Kindem of Peter R. Dion-Kindem, P.C. and Lonnie C. Blanchard III of The  
21 Blanchard Law Group, APC.

22 **E. Class Member**

23 An individual who falls within the definition of the Class.

24 **F. Class Members’ Released Claims**

25 Class Members’ Released Claims shall mean all claims, debts, liabilities, demands, obligations,  
26 guarantees, costs, expenses, attorney’s fees, damages, actions or causes of action arising out of or relating  
27 to the facts alleged or asserted in the operative complaint in this action including, but not limited to, any  
28

1 claim for an alleged violation of the Fair Credit Reporting Act. This release shall apply to claims arising  
2 at any point during the Class Period.

3 **G. Class Notice**

4 The Notice which the Claims Administrator will email or mail to each Class Member explaining  
5 the terms of the settlement contemplated by this Agreement in a format that is mutually acceptable to the  
6 parties. The form of the Class Notice to be used is attached hereto as *Exhibit A*.

7 **H. Class Period**

8 February 6, 2014 to the date of the Final Approval Order and Judgment.

9 **I. Class Representative and Plaintiff**

10 Plaintiff Vicki Hebert.

11 **J. Class Representative Payment**

12 The Court-approved service payment to Plaintiff Vicki Hebert for her services as Class  
13 Representative and in exchange for her execution of the release described herein.

14 **K. Counsel for Defendant**

15 Shon Morgan and John Baumann of Quinn Emanuel Urquhart & Sullivan, LLP.

16 **L. Defendant**

17 Defendant Barnes & Noble, Inc.

18 **M. Final Approval Hearing**

19 The hearing contemplated by the Parties at which the Court will finally approve the settlement  
20 and make such other final rulings as contemplated by this Settlement.

21 **N. Final Approval Order and Judgment**

22 The Court's order granting final approval of the Settlement, which will constitute a judgment  
23 within the meaning of Code of Civil Procedure section 577.

24 **O. Final Effective Date**

25 The first date after the Court has by entry of Preliminary and Final Approval Orders:

- 26 1. Approved the certification of the Class for settlement purposes;  
27 2. Preliminarily approved the settlement set forth in this Settlement and the method of  
28 providing the Court-approved Class Notice to the certified class;

- 1 3. Entered a Final Approval Order approving this settlement and the Final Judgment;
- 2 4. The time to appeal from the Final Approval Order and Judgment has expired and no notice
- 3 of appeal or other collateral attack has been filed; and
- 4 5. If an appeal or other collateral attack is filed, the latest of the following, if applicable, has
- 5 occurred:
- 6 a. Any appeal or other collateral attack from the Final Approval Order and Judgment
- 7 has been finally dismissed;
- 8 b. The Final Approval Order and Judgment has been affirmed on appeal in a form
- 9 substantially identical to the form of the Final Approval Order entered by the Court;
- 10 c. The time to petition for review with respect to any appellate decision affirming the
- 11 Final Approval Order and Judgment has expired; or
- 12 d. If a petition for review of an appellate decision or other collateral attack is filed, the
- 13 petition has been denied or dismissed, or, if granted, has resulted in affirmance of
- 14 the Final Approval Order and Judgment in a form substantially identical to the form
- 15 of the Final Approval Order entered by the Court.

16 **P. Gross Individual Settlement Payment**

17 The gross amount of the Maximum Settlement Distribution Amount that each Participating Class  
18 Member will be paid under this Settlement. The sum of these Gross Individual Settlement Payments to  
19 individual Class Members shall constitute the Class Settlement Payment.

20 **Q. Maximum Gross Settlement Amount**

21 The maximum amount that Defendant shall cause to be paid pursuant to this Settlement, which  
22 is \$600,000. That sum includes the following:

- 23 1. the Class Representative Payment to Plaintiff in the amount of up to \$10,000, as approved
- 24 by the Court;
- 25 2. Class Counsels' attorney's fees in an amount up to \$200,000, which is approximately 33-
- 26 1/3% of the Maximum Gross Settlement Amount, incurred or to be incurred in the
- 27 Settlement of the Action, and any appeals, as approved by the Court;
- 28

- 1           3.       Class Counsels’ costs and expenses associated with the Action in an amount of up to
- 2                     \$15,000 incurred or to be incurred in the Settlement of the Action, and any appeals, as
- 3                     approved by the Court;
- 4           4.       the fees and expenses of the Claims Administrator, estimated at \$52,374.00 as approved
- 5                     by the Court; and
- 6           5.       the remainder of approximately \$322,626.

7           The net remainder shall be distributed to Participating Class Members in accordance with this

8 Agreement.

9           **R.       Participating Class Members**

10           Those members of the Class who have not requested to be excluded from the class. Class means

11 all Participating Class Members.

12           **S.       Preliminary Approval Order**

13           The order of the Court granting preliminary approval of this Settlement Agreement on the terms

14 provided herein or as the same may be modified by subsequent mutual agreement of the Parties with, as

15 appropriate, the Court’s approval.

16           **T.       Released Parties**

17           Released Parties means Defendant and Defendant’s past and present parent, subsidiary, and

18 affiliated corporations, entities, divisions, units, successors, general and limited partners, joint venturers

19 and affiliates, and each of their benefits plans, respective current and former directors, officers, managers,

20 employees, principals, members, agents, insurers, reinsurers, shareholders, trustees, agents, attorneys,

21 advisors, representatives, general partners, limited partners, joint venturers, and affiliated companies, and

22 each of their respective executors, predecessors, successors, assigns and legal representatives.

23           **II.       BACKGROUND AND REASONS FOR SETTLEMENT**

24           1.       On February 6, 2019, Plaintiff filed a Class Action Complaint in the Superior Court of the

25 County of San Diego, California. On April 2, 2019, Defendant removed the case to the United States

26 District Court, Southern District of California. On April 10, 2019, Plaintiff filed the Operative First

27 Amended Complaint. On July 21, 2020, the case was remanded back to the Superior Court of the County

28 of San Diego, California. On March 19, 2021, the Court granted Defendant’s motion for summary



1 judgment. Plaintiff filed her appeal on May 5, 2021. The Court of Appeal reversed the judgment and  
2 remanded the case back to San Diego County Superior Court on August 12, 2022.

3  
4 2. In the First Amended Complaint, Plaintiff alleged that Defendant violated Section  
5 1681b(b) of the FCRA by procuring or causing to be procured consumer reports for employment  
6 purposes without first making the requisite disclosures. Defendant denies all the allegations in Plaintiff's  
7 Complaint and First Amended Complaint. Defendant asserts that Defendant did not violate any FCRA  
8 provisions and does not owe any amounts to the Class Members.

9  
10 3. On November 9, 2022, the Parties attended a mediation session presided over by John  
11 Bates, a mediator with significant experience in FCRA class actions. The Parties were represented by  
12 their respective counsel during the good-faith negotiations facilitated by Mr. Bates. After many hours of  
13 negotiation, Mr. Bates made a mediator's proposal, which the Parties accepted.

14  
15 4. Class Counsel have conducted a thorough investigation into the facts of this case and have  
16 diligently pursued an investigation of the Class Members' claims against Defendant, including reviewing  
17 and analyzing hundreds of pages of relevant documents, researching the applicable law and the potential  
18 defenses and preparing a damage analysis based on same, taking depositions of percipient witnesses,  
19 propounding written discovery to Defendant, reviewing Defendant's discovery responses, taking the  
20 depositions of Defendant's representatives, and prosecuting an appeal. Based on their own independent  
21 investigation and evaluation, Class Counsel believe that the Settlement is fair, reasonable, and adequate  
22 and is in the best interest of the Class considering all known facts and circumstances, including the risk  
23 of significant delay, the risk of not obtaining certification, the defenses asserted by Defendant, and  
24 potential appellate issues.

25  
26 5. The Parties desire to settle all claims against Defendant asserted in the Action. The Parties  
27 agree to cooperate and take all steps necessary and appropriate to obtain preliminary and final approval  
28 of this Settlement, to effectuate its terms, and to obtain the entry of Judgment consistent with this  
Agreement.

1 **III. NO ADMISSION BY DEFENDANT**

2 6. Nothing contained in this Settlement shall be construed or deemed an admission of liability,  
3 culpability, negligence, or wrongdoing by Defendant or Released Parties. While Defendant believes that  
4 this Action meets the prerequisites for certification of a settlement class, the fact that Defendant seeks  
5 approval of this Settlement in the form of a class action shall not be construed as an admission that the  
6 underlying action was properly brought as a class action for purposes other than settlement. The Parties  
7 have entered this Settlement with the intention to avoid further disputes and litigation with the attendant  
8 inconvenience and expenses. Settlement of the Action, the negotiation and execution of this Settlement,  
9 and all acts performed or documents executed pursuant to or in furtherance of this Settlement or the  
10 Settlement: (1) are not, shall not be deemed to be, and may not be used as an admission or evidence of  
11 any wrongdoing or liability on the part of Defendant; (2) are not, shall not be deemed to be, and may not  
12 be used as, an admission or evidence of any fault or omission by Defendant in any civil, criminal,  
13 administrative, or arbitral proceeding in any court, administrative agency or other tribunal; and (3) are  
14 not, shall not be deemed to be, and may not be used as, an admission or evidence of the appropriateness  
15 of these or similar claims for class certification or administration other than for purposes of administering  
16 this Settlement. This Settlement shall be inadmissible in evidence in any proceeding, except an action or  
17 proceeding to approve, interpret, or enforce the terms of the Settlement.

18 **IV. CERTIFICATION OF A CODE OF CIVIL PROCEDURE SECTION 382 CLASS**

19 7. For Settlement purposes only, the Parties stipulate to conditional certification of the Class.

20 8. The Parties stipulate that Plaintiff Vicki Hebert shall be appointed as Class Representative  
21 for the Class.

22 9. The Parties stipulate that Peter R. Dion-Kindem of Peter R. Dion-Kindem, P.C. and Lonnie  
23 C. Blanchard III of The Blanchard Law Group, APC shall be appointed Class Counsel for the Class.

24 10. The stipulation to certify the Class is completely contingent upon final approval of this  
25 Agreement by the Court and is made for settlement purposes only. If the Settlement is not approved by  
26 the Court, overturned on appeal, or does not become final for any other reason, the Parties agree that the  
27  
28

1 certification of the Class is void *ab initio* and that, if necessary, they shall stipulate to decertification of  
2 the Class without prejudice to the propriety of class certification being adjudicated on the merits.

3 **V. TERMS OF THE SETTLEMENT**

4 **A. Maximum Gross Settlement Amount**

5 11. The Maximum Gross Settlement Amount under this Settlement is \$600,000. Under no  
6 circumstances will Defendant be required to pay more than \$600,000 under this Settlement Agreement.

7 12. The Settlement is non-reversionary and will not require Class Members to submit claim  
8 forms. Class Members not requesting to be excluded will still be bound by the Settlement.

9 13. The Maximum Gross Settlement Amount shall be provided to the Claims Administrator  
10 for distribution sufficiently in advance for the Claims Administrator to meet its obligations under the  
11 Settlement Agreement. If the Settlement Agreement is canceled, rescinded, terminated, voided, or  
12 nullified, however that may occur, or the settlement of the Action is barred by operation of law, is  
13 invalidated, is not approved or otherwise is ordered not to be carried out by the Court or any court of  
14 competent jurisdiction, Defendant will cease to have any obligation to pay or provide any portion of the  
15 Maximum Gross Settlement Amount to anyone under the terms of this Settlement.

16 **B. Attorney's Fees and Costs**

17 14. The Action seeks the recovery of attorney's fees and costs pursuant to the FCRA. The  
18 Parties agree that all such claims for attorney's fees and costs by Class Counsel against Defendant and  
19 the Released Parties have been settled in this Settlement subject only to approval by the Court, whether  
20 incurred to date or in the future due to the defense of the settlement, administration of the settlement, or  
21 appeal from the Settlement, *inter alia*.

22 15. Defendant agrees that Class Counsel will apply to the Court for an award of attorney's fees  
23 and costs, which will be scheduled for determination at the Final Approval Hearing. Class Counsel will  
24 apply for, and Defendant will not oppose, an award of attorney's fees in an amount up to, but not to  
25 exceed \$200,000, which is approximately 33-1/3% of the Maximum Gross Settlement Amount, and  
26 litigation costs and expenses in the maximum amount of \$15,000, all of which shall be paid exclusively  
27 from the Maximum Gross Settlement Amount and will compensate Class Counsel for all the work  
28 already performed in the Action and all work remaining to be performed in documenting the Settlement,

1 securing Court approval of the Settlement, administering the Settlement, ensuring that the Settlement is  
2 fairly administered and implemented, and litigating any appeals or other collateral attacks (including any  
3 appeal of a ruling on attorney's fees and/or costs), as well as the litigation costs incurred by Class  
4 Counsel.

5 16. If the Court approves less than the requested fees and costs, the difference between the  
6 amount sought and the amount approved shall be distributed to Participating Class Members in  
7 accordance with the distribution formula set forth in this Agreement.

8 17. All claims for attorney's fees and costs or expenses that Plaintiff, the Class Members, and  
9 Class Counsel may possess against Defendant and the Released Parties have been compromised and  
10 resolved in this Settlement. Any proceedings related to Class Counsel's application for attorney's fees  
11 and costs shall not terminate or cancel this Settlement. If Class Counsel appeals an adverse ruling of the  
12 Court regarding its fee and cost application, the ruling of the appellate court (regardless of its substance)  
13 shall not constitute a material alteration of a term of this Settlement, and no amounts (including but not  
14 limited to the Maximum Gross Settlement Amount) shall be due to be paid by Defendant until after  
15 conclusion of said appeal or collateral attack. Class Counsel waives and releases any claim for fees and  
16 costs against Defendant and the Released Parties more than that which are allowed on appellate review  
17 or collateral attack (if any) of the Court's fees and costs decision or otherwise, and an award of less than  
18 the maximum amount in attorney's fees or costs or both on appellate review shall not be a breach of or  
19 valid reason for Plaintiff or their counsel to rescind or withdraw from the settlement.

20 18. No later than 15 calendar days after the Court's approval of Class Counsel's application  
21 for attorney's fees and costs, Class Counsel shall deliver to the Claims Administrator written instructions  
22 that describe the manner and mode of payment of such attorney's fees and costs (and, in the absence of  
23 such instructions, such attorney's fees and costs shall be sent by U.S. mail as set forth below) and fully-  
24 executed Form W-9s and other documentation required by the Claims Administrator (if any) with respect  
25 to all persons or entities to whom some or all of the attorney's fees and costs shall be paid.

26 19. Assuming the conditions precedent have been met, no later than fifteen calendar days after  
27 the Final Effective Date, Defendant shall wire transfer the Maximum Gross Settlement Amount to the  
28

1 Claims Administrator. Assuming the conditions precedent have been met, no later than seven calendar  
2 days after the receipt of the Maximum Gross Settlement Amount from Defendant, the Claims  
3 Administrator shall issue a payment to Class Counsel for the attorney’s fees and costs approved by the  
4 Court and in accordance with the instructions provided by Class Counsel.

5         20. The Claims Administrator will issue to Class Counsel and others IRS Form 1099s for the  
6 amounts paid for attorney’s fees and costs under this Settlement.

7         **C. Payment to Claims Administrator**

8         21. The fees and expenses of the Claims Administrator are estimated to be \$52,374.00. If the  
9 costs of administration exceed \$52,374.00 and the Court approves a greater payment, the shortfall will  
10 be taken from the Maximum Settlement Distribution Amount and thereby reduce the amount payable to  
11 the Participating Class Members. To the extent the cost of administration is less than \$52,374.00, the  
12 excess shall become part of the Maximum Settlement Distribution Amount and shall increase the amount  
13 payable to the Participating Class Members.

14         22. On or before the date of the Final Approval Hearing, the Claims Administrator shall deliver  
15 to Counsel for Defendant a fully executed Form W-9. Assuming the conditions precedent have been met,  
16 at the time it receives the Maximum Gross Settlement, the Claims Administrator may issue a payment to  
17 itself for the fees approved by the Court. Defendant will issue to the Claims Administrator an IRS Form  
18 1099 for the sum paid to it under this Settlement.

19         **D. Class Representative Payment to Class Representative**

20         23. Defendant agrees that Plaintiff will apply to the Court for a Class Representative Payment,  
21 which will be scheduled for determination at the Final Approval Hearing, in amount up to \$10,000, which  
22 shall be paid exclusively from the Maximum Gross Settlement Amount and will compensate Plaintiff for  
23 the service as a Class Representative and the execution of a general release as set forth in this Agreement.  
24 Defendant will not oppose Plaintiff’s application for a Class Representative Payment up to the stated  
25 amount. The amount, if any, by which the Class Representative Payment awarded by the Court is less  
26 than the maximum amount which can be sought pursuant to this Agreement shall be part of the Maximum  
27  
28

1 Settlement Distribution Amount. The Court may allocate less to Plaintiff without impacting the validity  
2 and enforceability of the Agreement.

3 24. Any Class Representative Payment awarded by the Court shall be in addition to the  
4 payment, if any, Plaintiff may otherwise receive as a Participating Class Member and shall not be subject  
5 to payroll tax withholding and deductions.

6 25. Assuming the conditions precedent have been met, no later than seven calendar days after  
7 the receipt of the Maximum Gross Settlement Amount from Defendant, the Claims Administrator shall  
8 issue the Class Representative Payments as directed by Class Counsel on behalf of Plaintiff in the amount  
9 approved by the Court, subject to all authorized and required deductions.

10 26. The Claims Administrator will issue IRS Form 1099-MISC to Plaintiff for the Class  
11 Representative Payment.

12 **E. Distribution to Participating Class Members**

13 27. The Net Settlement Fund will be allocated and paid to Participating Class Members evenly.

14 **F. Taxes**

15 28. The Parties agree the payments to Class members are not wages and that each Class  
16 member will be solely responsible for correctly characterizing this payment for tax purposes and for  
17 paying any taxes owed on this payment. The Settlement Administrator will issue to each Class member  
18 an IRS Form 1099 for this payment to the extent required. The Parties also agree that the approved Class  
19 Representative Payment to Plaintiff is not wages and that Plaintiff will be solely responsible for correctly  
20 characterizing this payment for tax purposes and for paying any taxes owed on this payment. Defendant  
21 will issue to Plaintiff an IRS Form 1099 for this payment. Defendant makes no representation as to the  
22 taxability of the amounts paid to Class members. Class members agree to pay federal or state taxes, if  
23 any, which are required by law to be paid by Class members with respect to this Agreement. Class  
24 members agree to indemnify Defendant and hold it harmless from any interest, taxes, or penalties  
25 assessed against any Class member by any governmental agency as a result of any Class member's non-  
26 payment of taxes on any amounts paid to Class members or their counsel under the terms of this  
27 Agreement.

1 **VI. APPOINTMENT AND DUTIES OF CLAIMS ADMINISTRATOR**

2 29. The Claims Administrator shall perform the following duties in connection with  
3 administration of the Settlement: (1) using the data provided by Defendant to prepare the Class Notice  
4 for each Class Member; (2) address verification measures; (3) emailing and mailing (as necessary) the  
5 Class Notice to Class Members; (4) tracking non-delivered Class Notices and taking reasonable steps to  
6 re-send them to Class Members' current addresses; (5) setting up a settlement website which contains  
7 copies of all papers and orders filed in connection with preliminary and final approval, including the final  
8 Settlement Agreement, Complaint, and Final Judgment; (6) tracking and timely reporting to Class  
9 Counsel and Counsel for Defendant about the received requests for exclusion; (7) calculating and paying  
10 the amounts due to each Participating Class Member pursuant to the Settlement; (8) issuing payments to  
11 Class Counsel and the Class Representative and associated tax forms; and (9) issuing any payments to  
12 the *cy pres* recipient. The Claims Administrator (along with any of its agents) shall represent and warrant  
13 that it will: (a) provide reasonable and appropriate administrative, physical and technical safeguards for  
14 any personally identifiable information (PII) which it receives from Defendant; (b) not disclose the PII  
15 to Plaintiff or any party or third parties, including agents or subcontractors, without Defendant's consent  
16 or as required by law; (c) not disclose or otherwise use the PII other than to carry out its duties as set  
17 forth herein; and (d) promptly provide Defendant with notice if PII is subject to unauthorized access, use,  
18 disclosure, modification, or destruction.

19 30. All disputes relating to the Claims Administrator's performance of its duties will be  
20 referred to the Court if necessary, which will have continuing jurisdiction over this Settlement until all  
21 payments and obligations contemplated by this Settlement have been fully carried out.

22 **VII. NOTICE TO THE CLASS OF THE SETTLEMENT**

23 **A. Provision of Notice Packets to the Class Members**

24 31. Within 30 calendar days after the Court enters its Preliminary Approval Order, Defendant  
25 will provide to the Claims Administrator a database that lists for each Class Member, to the extent  
26 available from Defendant's records, the individual's name, Social Security Number, email address, last  
27 known mailing address, and telephone number. This database will be drawn from Defendant's records  
28 and will be in a format acceptable to the Claims Administrator. The data provided to the Claims

1 Administrator, Defendant, and Class Counsel will remain confidential and will not be disclosed to anyone  
2 other than Class Counsel except as required by law, by applicable tax authorities, pursuant to Defendant's  
3 express written consent, or by order of the Court.

4 32. If any Class Notice sent via electronic mail to any Class Member is undeliverable, the  
5 Settlement Administrator shall, within seven calendar days of an undeliverable email, mail the Class  
6 Notice to each Class Member whose Class Notice was undeliverable. Before mailing, the Settlement  
7 Administrator shall make a good-faith attempt to obtain the most-current names and postal mail addresses  
8 for all Class Members to receive such postal mail, including cross-checking the names and/or postal mail  
9 addresses it received from Defendants, as well as any other sources, with appropriate databases (*e.g.*, the  
10 National Change of Address Database) and performing further reasonable searches (*e.g.*, through  
11 Lexis/Nexis) for more current names and/or postal mail addresses for Class Member. The address  
12 determined by the Settlement Administrator as the current mailing address shall be presumed to be the  
13 best mailing address for each Class Member. The Exclusion/Objection Deadlines shall be extended as  
14 necessary to ensure that the Class Member receiving a mailed notice has forty-five (45) calendar days to  
15 opt-out or object to the Settlement.

16 33. All Class Members' names and postal mail addresses obtained through these sources shall  
17 be protected as confidential and not used for purposes other than the notice and administration of this  
18 Settlement. The Settlement Administrator shall exercise its best judgment to determine the current  
19 mailing address for each Class Member.

20 34. If any Class Notice to a Class Member is returned to the Settlement Administrator with a  
21 forwarding address, the Settlement Administrator shall forward the postal mailing to that address. For  
22 any remaining returned postal mailings, the Settlement Administrator shall make a good-faith search of  
23 an appropriate database (as described in the preceding paragraph), and postal mailings shall be forwarded  
24 to any new postal mail address obtained through such a search. If any Class Notice is returned as  
25 undeliverable a second time, no further postal mailing shall be required. The Settlement Administrator  
26 shall maintain a log detailing the instances Class Notices are returned as undeliverable.



1           35. At least one reminder will be sent to Class Members following the initial Class Notice.  
2 These reminders will be sent to Class Members who have not already submitted an opt-out request or  
3 objection. These reminders will be sent via email to those Class Members whose emailed notices were  
4 not returned as undeliverable and via mail for those Class Members who received their initial Class  
5 Notice in the mail.

6           36. The Settlement Administrator will provide Class Notice by (i) electronic mail notice  
7 without material variation from the form attached of Exhibit A as approved by the Court; (ii) if necessary  
8 in accordance with Paragraph 32, first-class mail (where available) without material variation from the  
9 form attached of Exhibit A as approved by the Court; and (iii) a content-neutral settlement website  
10 accessible to Class Members managed by the Settlement Administrator and approved by counsel for the  
11 Parties, which will contain further information about the Settlement, including relevant pleadings. The  
12 Class Notice shall comply with California Rule of Court 3.769 and due process.

13           37. The Claims Administrator will use standard devices, including the National Change of  
14 Address database or equivalent, to obtain forwarding addresses prior to mailing and will use appropriate  
15 skip tracing to take appropriate steps to maximize the probability that the Class Notice will be received  
16 by all Class Members. Class Members to whom the Class Notice is resent after having been returned  
17 undeliverable to the Claims Administrator shall have 10 calendar days thereafter, or until the response  
18 deadline has expired, whichever is later, to mail, fax or email the request for exclusion or an objection.  
19 Class Notices that are re-sent shall inform the recipient of this adjusted deadline. If a Class Member's  
20 Class Notice is returned to the Claims Administrator more than once as non-deliverable, no additional  
21 Class Notice shall be sent.

22           38. The Claims Administrator shall provide weekly reports to Class Counsel and Defendant's  
23 Counsel as to the mailings of Class Notice and the receipt of requests for exclusion and objections prior  
24 to the close of the period in which claims can be made.

25           **B. Settlement Website**

26           39. The Claims Administrator will create a settlement website which shall contain copies of  
27 all papers and orders filed in connection with preliminary and final approval, including the final  
28

1 Settlement Agreement and the operative Complaint. These documents will be posted not later than the  
2 mailing of the Class Notice and will remain posted until the date of final approval. To comply with  
3 California Rules of Court, Rule 3.771, unless otherwise ordered by the court, the Claim Administrator  
4 will also post on its website the Final Approval Order and Judgment for no more than 60 days after entry  
5 of Final Approval Order. Alternatively, to comply with California Rules of Court, Rule 3.771, the  
6 settlement checks shall include the following language on the check:

7           A Court has approved settlement of the class action and entered judgment for claims  
8           asserted against Defendant in *Hebert v. Barnes & Noble, Inc.*, San Diego County  
9           Superior Court, Case No. 37-2019-00007178-CU-MC-CTL.

9           **C.     Objections to Settlement**

10           40.    The Class Members will have 45 calendar days after the date on which the Claims  
11           Administrator mails the Class Notice to object to the Settlement by serving on the Claims Administrator  
12           a written objection. Any written objection must state (a) the case name and number; (b) the basis for and  
13           an explanation of the objection; (c) the name, address, telephone number, and email address of the Class  
14           member making the objection; and (d) a statement of whether the Class member intends to appear at the  
15           Final Approval Hearing, either with or without counsel. In addition, any objection must be personally  
16           signed by the Class Member. The objection must be postmarked on or before the 45-day deadline. If  
17           emailed or faxed, the sent date must be on or before the 45-day deadline. Class Members to whom the  
18           Class Notice is re-sent after having been returned undeliverable to the Claims Administrator shall have  
19           10 calendar days thereafter, or until the response deadline has expired, whichever is later, to mail, fax or  
20           email an objection.

21           41.    A Class Member who does not serve a written objection in the manner and by the deadline  
22           specified above will be deemed to have waived any objection and will be foreclosed from making any  
23           objections to the Settlement whether by appeal or otherwise. If a Class Member submits an objection and  
24           a request for exclusion, the objection shall be disregarded, the exclusion will be honored, and the Class  
25           Member will be excluded from the Class.

26           42.    Any Class Member who has elected not to participate in the Settlement pursuant to the  
27           procedure set forth in Paragraph 44 below may not submit an objection to the Settlement.

1           43. The Claims Administrator shall provide the Parties a copy of any objections received  
2 within one day of receipt. Counsel for the Parties shall file any objections and any response thereto at  
3 least seven calendar days before the Final Approval Hearing.

4           **D. Election Not to Participate in the Class Settlement**

5           44. The Class Members will have 45 calendar days after the date on which the Claims  
6 Administrator mails the Class Notice to request to be excluded from the Settlement by serving on the  
7 Claims Administrator a written request for exclusion according to the procedures set forth in the Class  
8 Notice. If additional information is required, the Claims Administrator will communicate with the Class  
9 Member. To be valid, the request for exclusion must be postmarked on or before the 45-day deadline. If  
10 emailed or faxed, the sent date must be on or before the 45-day deadline. Class Members to whom the  
11 Class Notice is re-sent after having been returned undeliverable to the Claims Administrator shall have  
12 10 calendar days thereafter, or until the response deadline has expired, whichever is later, to mail, fax or  
13 email the request for exclusion. No request for exclusion will be accepted if postmarked for delivery to  
14 the Claims Administrator after the deadline indicated.

15           45. Any Class Member who does not properly and timely submit a request for exclusion will  
16 automatically be bound by all terms and conditions of the Settlement, including its release of claims, if  
17 the Settlement is approved by the Court and will be bound by the Final Approval Order, regardless of  
18 whether the Class Member has objected to the Settlement.

19           46. A Class Member who properly and timely submits a request for exclusion will not be bound  
20 by the Settlement and will remain free to contest any claim brought by Plaintiff that would have been  
21 barred by the Settlement, and nothing in this Settlement will constitute or be construed as a waiver of  
22 any defense which Defendant has or could assert against such a claim.

23           **E. Reports and Declaration by Claims Administrator**

24           47. No later than 15 calendar days after expiration of the 45-day deadline for submission of  
25 written requests not to participate in the Class Settlement, the Claims Administrator will submit to Class  
26 Counsel and Defendant's Counsel a report setting forth the persons (identified by name and the last four  
27 digits of their Social Security Number) who as of that date have submitted (a) valid requests for  
28

1 exclusion, and (b) invalid requests to be excluded from the Settlement (the Opt-Out Report). If the Claims  
2 Administrator subsequently receives a request not to participate in the Settlement, it will promptly  
3 distribute an updated Opt-Out Report.

4 48. No later than the date when Plaintiff files the motion for final approval of the Settlement,  
5 the Claims Administrator will prepare and submit for filing in support of the motion a declaration  
6 attesting to its mailing of the Class Notice, its receipt of requests for exclusion and objections, and its  
7 inability to deliver the Class Notice to potential Class Members due to invalid addresses. As applicable,  
8 the Claims Administrator will prepare and submit for filing in support of the motion for final approval  
9 any supplemental declaration or other documents or submissions required by the Court.

#### 10 **VIII. RIGHT TO RESCIND**

11 49. If 5% or more of the Class Members submit requests not to participate in the Settlement,  
12 Defendant will have the exclusive right in Defendant's sole discretion to rescind the Settlement.  
13 Defendant must exercise this right within 10 days after the date on which the Claims Administrator first  
14 informs Defendant that at least 5% of the potential Class Members have made requests to be excluded  
15 from the Settlement. Defendant shall pay for all administrative costs if it rescinds the settlement. Neither  
16 Party nor their counsel shall encourage any Class Member to opt out of the settlement.

#### 17 **IX. DISTRIBUTION OF THE SETTLEMENT PAYMENTS**

18 50. Defendant will cause the Maximum Gross Settlement Amount to be wired to the Claims  
19 Administrator no later than 15 calendar days after the Final Effective Date.

20 51. No later than 15 calendar days after the Final Effective Date, the Claims Administrator will  
21 provide counsel for Defendant and Class Counsel with a list of those members of the Class who did not  
22 submit timely requests for exclusion and the Gross Individual Settlement Payment for each Participating  
23 Class Member on that list.

24 52. Within 15 calendar days after the receipt of the Maximum Gross Settlement Amount from  
25 Defendant, the Claims Administrator will distribute to every Participating Class Member his or her share  
26 of the Settlement Payment.  
27  
28

1           53. The Claims Administrator will timely issue IRS Form 1099-MISC to each Participating  
2 Class Member that reflects the settlement payment to the extent required by law.

3           54. If any Participating Class Member does not cash his or her check(s) within 180 calendar  
4 days after issuance, the Claims Administrator shall void the check 15 calendar days after the check-  
5 cashing deadline and distribute any remaining funds to Wise Readers to Leaders, “a not-for-profit  
6 organization dedicated to closing the literacy achievement gap for youth from underserved communities  
7 and to nurturing future leaders for a diverse world through service learning, cross-cultural leadership and  
8 enrichment programs.” More information can be found at <https://wisereaderstoleaders.org/>. Any interest  
9 payment required by Code of Civil Procedure Section 384 shall be deducted from the proceeds of any  
10 uncashed checks and in any event shall not increase the Maximum Gross Settlement Amount. The Court  
11 shall set a date when the parties shall report to the Court the total amount that was actually paid to Class  
12 Members and a plan for distributing any remaining funds pursuant to Section 384. The Parties agree that  
13 this obligation shall satisfy and fully discharge Defendant’s obligations under California Code of Civil  
14 Procedure Section 384.

15 **X. RELEASE OF CLAIMS**

16 **A. Released Claims by Class Members Who Do Not Exclude Themselves**

17           55. Upon the payment by Defendant of the Maximum Gross Settlement Amount, as of the date  
18 the Final Approval Order is entered by the Court and except as to such rights or claims as may be created  
19 by this Settlement, each Participating Class Member shall be deemed to have released the Released  
20 Parties from all Class Members’ Released Claims.

21 **B. Released Claims by Plaintiff**

22           56. Upon the payment by Defendant of the Maximum Gross Settlement Amount, as of the date  
23 the Final Approval Order is entered by the Court and except as to such rights or claims as may be created  
24 by this Settlement, the Class Representative will be deemed to have released claims as follows:

25           In addition to the Class Members’ Released Claims described above, in exchange  
26 for the consideration recited in this Agreement, including but not limited to the  
27 Class Representative Payment, Plaintiff releases, acquits, and discharges and  
28 covenants not to sue Defendant and any of the Releasees for any claim, whether  
known or unknown, which Plaintiff has ever had or hereafter may claim to have,  
arising on or before the date Plaintiff signs this Agreement, including without

1 limitation any claims relating to or arising out of any aspect of Plaintiff's  
2 relationship with Defendant, the termination of that relationship, any claims for  
3 unpaid compensation, wages, reimbursement for business expenses, penalties,  
4 waiting time penalties, or any other claims under the California Labor Code  
5 (including, without limitation, the Labor Code Private Attorneys General Act of  
6 2004 (PAGA)) and the California Industrial Welfare Commission wage orders  
7 promulgated thereunder, the California Business and Professions Code, the federal  
8 Fair Labor Standards Act, 29 U.S.C. section 201, *et seq.*, or any state, county or  
9 city law or ordinance regarding wages or compensation; any claims for employee  
10 benefits, including without limitation, any claims under the Employee Retirement  
11 Income Security Act of 1974, any claims of employment discrimination on any  
12 basis, including without limitation, any claims under Title VII of the Civil Rights  
13 Act of 1964, the Civil Rights Act of 1866, 42 U.S.C. section 1981, the Civil Rights  
14 Act of 1991, the Americans with Disabilities Act of 1991, the Family and Medical  
15 Leave Act of 1993, the California Government Code, or any other state, county or  
16 city law or ordinance regarding employment discrimination. Plaintiff further agrees  
17 never to pursue any claim she has released by signing this Agreement, whether by  
18 means of a lawsuit, arbitration or otherwise, and whether as a named plaintiff, class  
19 member, aggrieved employee, or otherwise. Plaintiff further agrees never to file a  
20 civil action against Defendant or any Releasee on behalf of herself, the State of  
21 California, or any allegedly aggrieved employees of Defendant for civil penalties  
22 under PAGA based on any claim Plaintiff has released herein. Plaintiff  
23 acknowledges and agrees that the foregoing general release and covenant not to sue  
24 is given in exchange for the consideration provided to Plaintiff under this  
25 Agreement by Defendant. However, this release and covenant shall not apply to  
26 claims for workers' compensation benefits, unemployment insurance benefits,  
27 pension or retirement benefits, or any other claim or right that as a matter of law  
28 cannot be waived or released.

Plaintiff expressly waives any rights or benefits available to Plaintiff under the provisions of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Plaintiff understands fully the statutory language of Civil Code section 1542, and with this understanding nevertheless elects to, and does, assume all risks for claims that have arisen, whether known or unknown, which Plaintiff ever had or hereafter may claim to have arising on or before the date of Plaintiff's signature to this Agreement and specifically waives all rights Plaintiff may have under California Civil Code section 1542.

1 **XI. DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL AND INTERIM STAY OF**  
2 **PROCEEDINGS OTHER THAN SETTLEMENT**

3 57. As soon as reasonably possible upon execution of this Settlement by the Parties, Plaintiff  
4 shall apply to the Court for the entry of an Order Granting Preliminary Approval of the Settlement and  
5 Notice which shall provide for, among other things, the following:

- 6 a. Scheduling a final fairness and approval hearing as to whether the proposed  
7 Settlement should be finally approved as fair, reasonable, and adequate as to the  
8 Class.
- 9 b. Approving as to form and content the proposed Class Notice described herein;
- 10 c. Directing the delivery of the Class Notice as described by the Settlement to the  
11 Class Members;
- 12 d. Preliminarily approving the Settlement;
- 13 e. Preliminarily certifying the Class for settlement purposes only; and
- 14 f. Approving Peter R. Dion-Kindem and Lonnie C. Blanchard III as Class Counsel,  
15 Vicki Hebert as Class Representative, and ALCS as Claims Administrator.

16 58. After the Preliminary Approval Order is entered by the Court, Plaintiff shall file a request  
17 for final approval and an award of attorney’s fees and costs and Class Representative Payment at least  
18 seven days before the date of the final fairness and approval hearing set by the Court.

19 **XII. DUTIES OF THE PARTIES REGARDING FINAL COURT APPROVAL**

20 59. In connection with the final approval by the Court of the Settlement, Plaintiff will submit  
21 a proposed Order and Judgment Granting Final Approval of the Class Action Settlement, which shall  
22 provide, among other things, as follows:

- 23 a. Certifying the Class for purposes of this Settlement only;
  - 24 b. Approving the Settlement, adjudging the terms thereof to be fair, reasonable, and  
25 adequate, and directing consummation of its terms and provisions;
  - 26 c. Approving Class Counsels’ application for an award of attorney’s fees and  
27 reimbursement of costs;
- 28

- d. Approving the Class Representative’s service payment; and
- e. Entering Judgment pursuant to California Rules of Court, Rule 3.769(h).

Notice of the Final Judgment shall be given by Plaintiff to Class Members by posting a copy of the Judgment on the settlement website, which notice shall satisfy the requirements of California Rules of Court, Rule 3.771.

**XIII. EFFECT OF NON-APPROVAL**

60. If this Agreement is not preliminarily or finally approved by the Court, if a Final Approval Order is not entered, and/or if Defendant exercises the option to rescind, this Agreement shall be null and void. In such event, (1) nothing in this Agreement shall be construed as a determination, admission, or concession of any issue in the Action, and nothing in this Settlement may be offered into evidence in any trial on the merits of the claims asserted in the Complaint filed in the Action or in any subsequent pleading; (2) the Parties expressly reserve their rights with respect to the prosecution and defense of the Action as if this Agreement never existed; and (3) Defendant shall be responsible for any costs for Notice or claims administration incurred by the Claims Administrator. If there is any reduction in the attorney’s fees or costs awards or the Class Representative Payment, such reduction may be appealed but is not a basis for rendering this Agreement void, voidable, and/or unenforceable.

**XIV. CONFIDENTIALITY PRECEDING MOTION FOR PRELIMINARY APPROVAL AND PUBLIC STATEMENTS**

61. Except for disclosures authorized by Defendant or necessary to prepare the motion for preliminary approval, the terms of this Settlement shall remain confidential until it is presented to the Court in connection with the motion for preliminary approval.

62. The Parties agree that no press releases or affirmative statements will be made to the media at any time, except as otherwise agreed in writing by the Parties.

**XV. MUTUAL FULL COOPERATION**

63. The Parties will fully cooperate with each other and use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary or ordered by the Court or otherwise, to accomplish the terms of this Settlement, including, but not limited to, executing



1 such documents and taking such other action as may reasonably be necessary to obtain preliminary and  
2 final approval of this Settlement and to implement its terms.

3 **XVI. NO PRIOR ASSIGNMENTS**

4 64. Each of the Parties represents, covenants, and warrants that such Party has not directly or  
5 indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person  
6 or entity any portion of any claims, causes of action, demands, rights, and liabilities of any nature or  
7 description released under this Settlement.

8 **XVII. NOTICES**

9 65. Unless otherwise specifically provided by this Settlement, all notices, demands, or other  
10 communications given under this Settlement shall be in writing and will be deemed to have been duly  
11 given as of the third business day after mailing by United States registered or certified mail, return-receipt  
12 requested, addressed as follows:

13 **To Plaintiffs and the Class:**

14 PETER R. DION-KINDEM, Bar No. 95267  
15 THE DION-KINDEM LAW FIRM  
16 PETER R. DION KINDEM, P.C.  
17 2945 Townsgate Road, Suite 200  
Westlake Village, CA 01361  
Telephone: 818.883.4900

18 **To Defendant:**

19 QUINN EMANUEL URQUHART & SULLIVAN, LLP  
20 Shon Morgan (Bar No. 187736)  
shonmorgan@quinnemanuel.com  
21 John Baumann (Bar No. 288881)  
jackbaumann@quinnemanuel.com  
22 865 South Figueroa Street, 10th Floor  
23 Los Angeles, California 90017-2543  
Telephone: (213) 443 3000  
24 Facsimile: (213) 443 3100  
25  
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1 **XVIII. CONSTRUCTION**

2 66. This Settlement is the result of the Parties' arms-length negotiations. This Settlement will  
3 not be construed in favor of or against any Party by reason of the extent to which any Party or such  
4 Party's counsel participated in the drafting of this Settlement.

5 **XIX. CAPTIONS AND INTERPRETATIONS**

6 67. Paragraph and section titles, headings, or captions contained in this Settlement are inserted  
7 as a matter of convenience and for reference and in no way define, limit, extend, or describe the scope  
8 of this Settlement or any of its provisions. Each term of this Settlement is contractual and not merely a  
9 recital, except for those set forth in Section I, above.

10 **XX. MODIFICATION**

11 68. This Settlement may not be changed, altered, or modified, except in writing and signed by  
12 the Parties and approved by the Court. This Settlement may not be discharged except by performance in  
13 accordance with its terms or by a writing signed by the Parties.

14 **XXI. APPLICABLE LAW**

15 69. All terms and conditions of this Agreement will be governed by and interpreted according  
16 to the laws of the State of California, without giving effect to any conflict of law or choice of law  
17 principles.

18 **XXII. INTEGRATION CLAUSE**

19 70. This Settlement and all the attached Exhibits which by this reference are incorporated into  
20 this Settlement constitutes the entire agreement between the Parties relating to the Settlement and  
21 transactions contemplated by the Settlement. All prior or contemporaneous agreements, understandings,  
22 representations, and statements, whether oral or written and whether by a Party or a Party's counsel, are  
23 merged into this Settlement. No rights under this Settlement may be waived except in writing executed  
24 by all Parties.

25 **XXIII. BINDING ON ASSIGNS**

26 71. This Settlement will be binding upon and will inure to the benefit of the Parties and their  
27 respective heirs, trustees, executors, administrators, successors, and assigns.  
28

1 **XXIV. COUNTERPARTS**

2 72. This Settlement may be executed in counterparts, and when each Party has signed and  
3 delivered at least one such counterpart, each counterpart will be deemed an original and, when taken  
4 together with other signed counterparts, will constitute one Settlement, which will be binding upon and  
5 effective as to all Parties.

6 73. This Settlement may be signed by manual signature. Photocopies of signatures (including  
7 facsimile, electronic, or email copies of the signature pages) shall have the same force and effect as a  
8 manual signature.

9 74. If any deadline or due date is a holiday, Saturday, or Sunday, the day or deadline shall  
10 continue to the next business day.

11 **XXV. PARTIES' AUTHORITY TO SIGN**

12 75. The signatories to this Settlement represent that they are fully authorized to enter this  
13 Settlement on behalf of themselves or their respective principals.

14 *Signatures on following page*

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Date: \_\_\_\_\_, 2022

\_\_\_\_\_  
Vicki Hebert

BARNES & NOBLE, INC.

Date: \_\_\_\_\_, 2022

By: \_\_\_\_\_

By \_\_\_\_\_

*Approved as to form but not as parties to this agreement*

PETER R. DION-KINDEM, P.C.

Date: \_\_\_\_\_, 2022

By: \_\_\_\_\_

Peter R. Dion-Kindem  
Attorney for Plaintiff Vicki Hebert, but not as a party  
to this Agreement

THE BLANCHARD LAW GROUP, APC

Date: \_\_\_\_\_, 2022

By: \_\_\_\_\_

Lonnie C. Blanchard III  
Attorney for Plaintiff Vicki Hebert, but not as a party  
to this Agreement

QUINN EMANUEL URQUHART & SULLIVAN, LLP

Date: \_\_\_\_\_, 2022

By: \_\_\_\_\_

Shon Morgan  
John Baumann  
Attorney for Defendant Barnes & Noble, Inc., but not  
as a party to this Agreement

01/12/2023

Date: \_\_\_\_\_



Vicki Hebert

BARNES & NOBLE, INC.

Date: 1/17/2023, 2022

DocuSigned by:

Bradley A. Feuer

By: Bradley A. Feuer

*Approved as to form but not as parties to this agreement*

PETER R. DION-KINDEM, P.C.

Date: 1/12/2023

By: Peter R. Dion-Kindem

Peter R. Dion-Kindem  
Attorney for Plaintiff Vicki Hebert, but not as a party to this Agreement

THE BLANCHARD LAW GROUP, APC

Date: 1/12/2023

By: Lonnie C. Blanchard

Lonnie C. Blanchard III  
Attorney for Plaintiff Vicki Hebert, but not as a party to this Agreement

QUINN EMANUEL URQUHART & SULLIVAN, LLP

Date: January 17, 2023, 2022

By: John Baumann

Shon Morgan  
John Baumann  
Attorney for Defendant Barnes & Noble, Inc., but not as a party to this Agreement

# Exhibit A

*Vicki Hebert v. Barnes & Noble, Inc.*  
**SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO**  
**Case No. 37-2019-00007178-CU-MC-CTL**

This Notice has been approved by the Superior Court of the State of California for the County of San Diego (the “Court”) and is to notify Class Members that a proposed settlement has been reached between the parties in the class action entitled *Vicki Hebert v. Barnes & Noble, Inc.* (the “Settlement”). Defendant Barnes & Noble, Inc. is referred herein as “Defendant.” This is not a solicitation from a lawyer. Your legal rights are affected whether you act or don’t act.

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT**

EXCLUDE YOURSELF BY <b>[DATE - 45 Days After Notice is Mailed]</b> .	If you exclude yourself, you won’t get a payment under the settlement. This is the only option that allows you to ever be part of any other lawsuit against Defendant about the legal claims in this case.
OBJECT IN WRITING BY <b>[DATE - 45 Days After Notice is Mailed]</b> AND GO TO FINAL APPROVAL HEARING	You can tell the Court why you don’t like the settlement. To do this, you must send a written objection to the Claim Administrator.
DO NOTHING	If the settlement is approved, you will receive a payment.

The Court has granted preliminary approval of the Settlement and has conditionally certified a class for settlement purposes only.

**IMPORTANT DATES**

- If you want to object to the Settlement, your objection must be postmarked, if mailed, or sent, if emailed or faxed, on or before **[DATE - 45 Days After Notice is Mailed]** or else your objections will be deemed waived.
- If you do not want to participate in the Settlement, you must submit a request for exclusion, postmarked, if mailed, or sent, if emailed or faxed, on or before **[DATE -45 Days After Notice is Mailed]** or else you will be bound by the Settlement. If you submit a request for exclusion, you will *not* receive a share of the Settlement.

All objections to and requests to be excluded from the Settlement must be submitted to the Claims Administrator, American Legal Claim Services LLC (“ALCS”), at the address, email, or fax below, and postmarked, if mailed, or sent, if emailed or faxed, by the applicable deadline:

Hebert v. Barnes & Noble, Inc.  
c/o ALCS

-----

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Tel. -----

Fax -----

Email: -----

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**BASIC INFORMATION**

**1. What is this settlement about?**

On February 6, 2019, Plaintiff filed a Class Action Complaint in the Superior Court of California for the County of San Diego. On April 2, 2019, Defendant removed the case to the United States District Court, Southern District of California. On April 10, 2019, Plaintiff filed the Operative First Amended Complaint. On July 21, 2020, the case was remanded back to the San Diego Superior Court. On March 19, 2021, the Court granted Defendant’s motion for summary judgment. Plaintiff filed an appeal on May 5, 2021. The Court of Appeal reversed the judgment and remanded the case back to the San Diego Superior Court on August 12, 2022.

In the First Amended Complaint, Plaintiff alleged that Defendant violated Section 1681b(b) of the Fair Credit Reporting Act (“FCRA”) by procuring or causing to be procured consumer reports for employment purposes without first making the requisite disclosures. Defendant denies all the allegations in Plaintiff’s Complaint and First Amended Complaint. Defendant asserts that Defendant did not violate any FCRA provisions and does not owe any amounts to the Class Members.

On November 9, 2022, the Parties attended a mediation session presided over by John Bates, a mediator with significant experience in FCRA class actions. The Parties were represented by their respective counsel during the good-faith negotiations facilitated by Mr. Bates. After many hours of negotiation, Mr. Bates made a mediator’s proposal, which the Parties accepted.

Class Counsel have conducted a thorough investigation into the facts and law of this case and have diligently pursued an investigation of the Class Members’ claims against Defendant, including reviewing and analyzing hundreds of pages of relevant documents, researching the applicable law and the potential defenses and preparing a damage analysis based on same, propounding written discovery to Defendant, reviewing Defendant’s discovery responses, taking the depositions of Defendant’s representatives and percipient witnesses, and prosecuting an appeal. Based on their independent investigation and evaluation, Class Counsel believe that the Settlement is fair, reasonable, and adequate and is in the best interest of the Class considering all known facts and circumstances, including the risk of significant delay, the risk of not obtaining certification, the defenses asserted by Defendant, and potential appellate issues.

Defendant denies that it committed any of the violations alleged in the Lawsuit and denies that it has done anything wrong. Defendant further denies that a class can be properly certified for trial in this case. Nothing about the Settlement may be used against Defendant or anyone else employed by Defendant or acting on Defendant’s behalf, as an admission or indication of any fault or liability.

The Court has made no ruling on the merits of the claims or defenses in the Lawsuit.

**2. What is a class action?**

A class action is a lawsuit in which the claims and rights of many similarly situated people (“class members”) are decided in a single court proceeding. One or more representative plaintiffs (“class representatives”) file a lawsuit asserting claims on behalf of all the class members.

**3. Why is there a settlement?**

The parties participated in extensive settlement discussions, including a full day of mediation before a neutral third-party mediator. Following the mediation, the parties reached the Settlement based on the recommendation of the mediator. The Settlement represents a compromise regarding disputed claims, considering the risks and

uncertainties of continued litigation. Plaintiff's counsel has determined that the Settlement is fair, reasonable, and adequate and is in the best interests of the members of the Settlement Class.

#### **4. Why am I receiving this notice?**

The Class includes all persons residing in the United States (including all territories and other political subdivisions of the United States) as to whom Barnes & Noble procured or caused to be procured a consumer report for employment purposes using the disclosure form challenged in this lawsuit from February 6, 2014 through the date of Final Approval and Judgment.

You were sent this notice because the records of Defendant show that you are a member of the Class at issue in this Settlement.

Class Members who do not timely submit a valid request to exclude themselves from the Settlement following the procedure described in Section 10 shall become members of the Settlement Class and shall be entitled to participate in the Settlement.

### **THE SETTLEMENT BENEFITS—WHAT YOU GET**

#### **5. What does the settlement provide?**

Under the Settlement, Defendant will pay \$600,000. These settlement funds will be used to pay (1) a Service Payment to Plaintiff to compensate Plaintiff for Plaintiff's services to the Settlement Class; (2) Class Counsels' attorney's fees and costs to compensate them for their services to the Settlement Class; (3) the reasonable fees and expenses of the Claims Administrator; and (4) money to all Class Members who do not opt-out of the settlement pursuant to the allocation plan.

### **HOW YOU GET A PAYMENT**

#### **6. How can I get a payment?**

You don't need to take any action to receive money from the Settlement. However, if you have recently moved, plan to move in the future, or have changed your email address or mail address and Defendant does not have your most recent address and email address, be sure to contact the Claims Administrator to provide your most recent mailing address and email address. This is important because the addresses on file will be used for the distribution of checks.

#### **7. How will my settlement payment be calculated?**

Under the Settlement, Defendant will pay up to \$600,000 (the "Maximum Gross Settlement Amount"). These settlement funds will be used to pay (a) the Class Representative Payment to Vicki Hebert in the amount of up to \$10,000; (b) Class Counsels' attorney's fees in an amount up to \$200,000 (approximately 33-1/3% of the Gross Settlement Amount) incurred or to be incurred in the Settlement of the Action and any appeals; (c) Class Counsel's costs and expenses associated with the Action in an amount of up to \$15,000 incurred or to be incurred in the Settlement of the Action and any appeals; (d) the fees and expenses of the Claims Administrator, which are estimated at \$52,374; and (e) the remainder of approximately \$322,626 is the Maximum Settlement Distribution Amount to all Class Members pursuant to the plan of allocation and will be used to pay Participating Class Members. Participating Class Members are those members of the Class who have not requested to be excluded as discussed in Section 10.

The Net Settlement Fund will be allocated and paid to Participating Class Members evenly.

## **8. When would I get my payment?**

The parties have presented the Settlement to the Court for its review. The Court has granted preliminary approval to the Settlement. As described in this Notice, the Court will hold a hearing on [DATE], 2023 in Department C-69, at the Superior Court for the County of San Diego, located at 330 W Broadway, San Diego, California 92101 to determine (1) whether the proposed settlement should be approved as fair, reasonable and adequate to settlement Class Members; (2) whether the application for attorney's fees and costs should be approved; and (3) whether the application for the Class Representative service payment and payment to the Class Administrator should be approved. If the Court approves the settlement, an Order Granting Final Approval will be entered. You don't have to attend the Final Approval Hearing.

Within 45 days after the Court's order granting final approval of the Settlement becomes final and non-appealable, the Claims Administrator will mail checks to all Participating Class Members. It is expected that checks will be mailed out sometime in [Insert Month,] 2023, but that date is subject to change.

### **Settlement Checks Not Cashed Within Six Months Will Be Forfeited.**

If any Participating Class Member does not cash his or her check within 180 calendar days after issuance, the Claims Administrator shall void the check 15 calendar days after the check-cashing deadline and distribute any remaining funds to Wise Readers to Leaders, "a not-for-profit organization dedicated to closing the literacy achievement gap for youth from underserved communities and to nurturing future leaders for a diverse world through service learning, cross-cultural leadership and enrichment programs." More information can be found at <https://wisereaderstoleaders.org/>. Any interest payment required by Code of Civil Procedure Section 384 shall be deducted from the proceeds of any uncashed checks and in any event shall not increase the Maximum Gross Settlement Amount. The Court shall set a date when the parties shall report to the Court the total amount that was actually paid to Class Members and a plan for distributing any remaining funds pursuant to Section 384. The Parties agree that this obligation shall satisfy and fully discharge Defendant's obligations under California Code of Civil Procedure Section 384.

## **9. What claims am I releasing if I remain in the Class?**

Upon the payment by Defendant of the Maximum Gross Settlement Amount, as of the date the Final Approval Order is entered by the Court and except as to such rights or claims as may be created by this Settlement, each Participating Class Member shall be deemed to have released the Released Parties from all Class Members' Released Claims.

Released Parties are Defendant and Defendant's past and present parent, subsidiary, and affiliated corporations, entities, divisions, units, successors, general and limited partners, joint venturers and affiliates, and each of their benefits plans, respective current and former directors, officers, managers, employees, principals, members, agents, insurers, reinsurers, shareholders, trustees, agents, attorneys, advisors, representatives, general partners, limited partners, joint venturers, and affiliated companies, and each of their respective executors, predecessors, successors, assigns and legal representatives.

Class Members' Released Claims are all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorney's fees, damages, actions or causes of action arising out of or relating to the facts alleged or asserted in the operative complaint in the Action including, but not limited to, any claim for an alleged violation of the Fair Credit Reporting Act. This release shall apply to claims arising at any point during the Class Period.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

### **10. How do I exclude myself from the settlement?**

If you fall within the Class definition, you are a Class Member and will be bound by the Settlement's release of claims unless you elect to be excluded. If you elect to be excluded, you will **not** receive any money from the Settlement, will not be bound by the Settlement, including its release of claims, and will be free to pursue your own claim against Defendant. To be excluded, you must **timely** submit a signed and dated request for exclusion. To be valid, the request for exclusion must be in writing, must include your name, address, telephone number, and last four digits of your Social Security number. The written request for exclusion must also indicate your intent to be excluded from the Settlement in *Hebert v. Barnes & Noble, Inc.* Case No. 37-2019-00007178-CUMC-CTL. All requests for exclusion must be sent via fax, email, U.S. Mail, or professional or personal delivery to the Claims Administrator at:

Hebert v. Barnes & Noble, Inc.  
c/o ALCS

-----

-----

Tel. -----

Fax -----

Email: -----

All requests for exclusion must be postmarked, if mailed, or sent, if emailed or faxed, on or before **[DATE -45 Days After Notice is Mailed]**.

A Class Member who does not complete and submit a timely written exclusion in the manner and by the deadline specified above will automatically become a participating Class Member, and, if the Court approves the Settlement, will be bound by all terms and conditions of the Settlement and by the Judgment. An eligible Class Member who timely submits a written exclusion will not participate or be bound by the Settlement or the Judgment. Any member of the Settlement Class who does not request exclusion may, if they wish, enter an appearance through his or her own attorney.

You cannot exclude yourself by phone.

If you submit a valid written exclusion under this paragraph, you will not get any settlement payment, you cannot object to the settlement, and you cannot appear at the Final Approval Hearing to voice any objections to the Settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue Defendant or continue any suit you have pending against Defendant.

### **11. If I don't exclude myself, can I sue Defendant for the same thing later?**

No. Unless you exclude yourself, you give up the right to sue Defendant for claims that this settlement resolves. If you have a pending lawsuit, speak to your lawyer in that lawsuit immediately. You must exclude yourself from this Class to continue those parts of any lawsuit you have pending that include the legal issues released by this settlement.

### **12. If I exclude myself, can I get money from this settlement?**

If you exclude yourself, you will not receive any money from this settlement.

### **13. Can Defendant retaliate against me because of what I do in response to this notice?**

No. If you are a current employee of Defendant, your decision as to whether to participate in this settlement will not affect your employment. Defendant will not take any adverse employment action against you because of your decision whether or not to participate in this settlement.

### **THE LAWYERS REPRESENTING YOU**

### **14. Do I have a lawyer in this case?**

The Court has approved the law firms of Peter R. Dion-Kindem of Peter R. Dion-Kindem, P.C. and Lonnie C. Blanchard III of The Blanchard Law Group, APC as Class Counsel. Their contact information is:

PETER R. DION-KINDEM  
PETER R. DION KINDEM, P.C.  
2945 Townsgate Road, Suite 200  
Westlake Village, CA 01361  
Telephone: 818.883.4900  
[peter@dion-kindemlaw.com](mailto:peter@dion-kindemlaw.com)

LONNIE C. BLANCHARD III  
THE BLANCHARD LAW GROUP, APC  
177 East Colorado Boulevard, Suite 200  
Pasadena, California 91105  
Telephone: 213.599.8255  
[lonnieblanchard@gmail.com](mailto:lonnieblanchard@gmail.com)

### **15. How will the lawyers be paid?**

Class Counsel will request that the Court approve a payment of up to \$200,000 of the Gross Settlement Amount in fees to compensate them for their time and effort in bringing this case and also approve a payment of up to \$15,000 to reimburse them for the out-of-pocket costs and expenses they have incurred during the litigation. These amounts will come out of the Gross Settlement Amount of \$600,000. Class Counsel believe the attorney's fees and costs requested are fair and reasonable and Defendant has agreed not to oppose the request. These fee and cost payments will be paid only if the Court approves them. The Class Counsel will also request that the Court to approve Class Representative Payment of up to Ten Thousand Dollars (\$10,00.00) for Plaintiff Vicki Hebert. This amount is in recognition of the service performed by Plaintiff in representing the Class and advancing the litigation. This payment will be paid in addition to Plaintiff's Gross Individual Settlement Payment as a Class Member. The Class Representative Payment will be paid only if the Court approves it.

### **OBJECTING TO THE SETTLEMENT**

### **16. How do I object to the settlement?**

You may object to the Settlement by submitting a written objection. To be valid and effective, any objections must be postmarked, if mailed, or sent, if emailed or faxed, on or before **[DATE -45 Days After Notice is Mailed]**. The objection must be in writing and must state (a) the case name and number; (b) the basis for and an explanation of the objection; (c) the name, address, telephone number, and email address of the class member making the objection; and (d) a statement of whether the class member intends to appear at the Final Approval Hearing, either with or without counsel. In addition, any objection must be personally signed by the class member.

You may, but do not have to, be represented by your own attorney to object. If you object through an attorney, you will be solely responsible for the attorney's fees and costs.

If you appear at the Final Approval Hearing to make a spoken objection without having submitted a written objection, you will be treated as having waived that objection.

Any Class Member who does not object before the final approval hearing will be deemed to have approved the Settlement and to have waived such objections and shall not be able to make any objections (by appeal or otherwise) to the Settlement.

### **17. What is the difference between objecting and excluding myself?**

Objecting is simply telling the Court that you don't like something about the settlement. Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself by submitting a timely written exclusion, you have no right to object because the case no longer affects you.

## **THE COURT'S FAIRNESS HEARING**

The Court will hold a hearing to decide whether to approve the settlement. You may attend and you may ask to speak, but you are not required to.

### **18. When and where will the Court decide whether to approve the settlement?**

The Court will hold a final approval hearing on [DATE], 2023, at [TIME], in Department C-69 of the San Diego County Superior Court, 330 W Broadway, San Diego, California 92101 before the Honorable Katherine Bacal to determine whether the Settlement should be finally approved. The Court will also be asked to approve the Class Representative Payment and Class Counsels' request for the Attorney's Fees and Costs Payment. The hearing may be postponed without further notice to the Class. You don't have to appear, but you may appear at your own expense. If you wish to object to the Settlement in person, you must have given notice of your objections under the procedures set forth in Section 16. If you appear at the Final Approval Hearing to make a spoken objection without having submitted a written objection, you will be treated as having waived that objection.

### **19. Do I have to come to the hearing?**

No. If you agree to the settlement or sent an objection, you don't have to come to Court to talk about it. If you are an objector, so long as you mailed your written objection on time as described above, the Court will consider it. However, you may attend and speak, or you may also retain your own lawyer to attend.

### **20. May I speak at the hearing?**

You may appear at the Final Fairness Hearing set for [DATE/TIME] in Department C-69 of the Superior Court for the County of San Diego, 330 W Broadway, San Diego, California 92101 and ask the Court for permission to speak at the hearing. If you appear at the Final Fairness Hearing to make a spoken objection without having submitted a written objection, you will be treated as having waived that objection. Again, you cannot speak at the hearing if you excluded yourself and are not a Class Member.

### **21. No cost to you**

The Settlement does not require you to pay money out of pocket. However, you are responsible for all taxes owed on the money you are paid pursuant to the Settlement.

### **22. Tax advice caveat**

Any perceived tax advice in this Notice was not intended or written to be used and it cannot be used by any recipient for the purpose of avoiding any tax penalties that may be imposed. This Notice imposes no limitation

on the disclosure of the tax treatment or tax structure of any transaction. Neither Plaintiff's counsel nor Defendant's counsel can give you tax advice.

### **23. This notice provides only a summary**

This Notice provides only a summary of the basic terms of the Settlement. For the precise terms of the Settlement, you are referred to the Joint Stipulation of Class Settlement and Class Settlement Agreement and Release ("Joint Stipulation"), which is on file with the Clerk of the Court. The pleadings and other records in this litigation, may also be examined in person at any time during regular business hours with the Clerk of Court, San Diego County Superior Court, 330 W Broadway, San Diego, California 92101 or Online by going to <https://www.sdcourt.ca.gov>. You can also access the records at the Claim Administrators' website at [INSERT URL]. **Please do not telephone the court or Defendant's counsel.**

### **24. Questions**

If you have questions, contact the Claims Administrator at (---) ----- . If you would like to speak with an attorney, contact Class Counsel.

# Exhibit 1



## Disclosure

[IMPORTANT -- PLEASE READ CAREFULLY BEFORE SIGNING AUTHORIZATION]DISCLOSURE REGARDING BACKGROUND INVESTIGATION Barnes & Noble, Inc. ("the Company") may obtain information about you for employment purposes from a third party consumer reporting agency such as First Advantage Background Services Corp. ("First Advantage"), P.O. Box 105292, Atlanta, GA 30348,1-800-845-6004. Thus, you may be the subject of a "consumer report" and/or an "investigative consumer report" which may include information about your character, general reputation, personal characteristics, and/or mode of living, and which can involve personal interviews with sources such as your neighbors, friends, or associates. You have the right, upon written request made within a reasonable time after receipt of this notice, to request disclosure of the nature and scope of any investigative consumer report. The scope of this notice and authorization is continuing allowing the Company to obtain consumer reports and investigative consumer reports now and throughout the course of your employment to the extent permitted by law.

Please note: Nothing contained herein should be construed as legal advice or guidance. Employers should consult their own counsel about their compliance responsibilities under the FCRA and applicable state law. First Advantage expressly disclaims any warranties or responsibility or damages associated with or arising out of information provided herein.

Date September 27, 2018

**BN0000003**