

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 45 Days After the Mailed Notice	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 45 Days After the Mailed Notice 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, on or before September 1, 2023 or by **45 Days After the Mailed Notice** 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, on or before September 1, 2023 or by **45 Days After the Mailed Notice** 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 Settlement Administrator, American Legal Claim Services LLC (“ALCS”), at the address or email below, and postmarked, if mailed, or sent, if emailed, by the applicable deadline:

Hebert v. Barnes & Noble, Inc.
c/o Settlement Administrator
P. O. Box 23648
Jacksonville, FL 32241

Email: info@hebertclassaction.com

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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 December 8, 2023 at 1:30 p.m. in Department C-69, at the Superior Court for the County of San Diego, located at 330 W Broadway, San Diego,

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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 February, 2024, 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

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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 email, U.S. Mail, or professional or personal delivery to the Settlement Administrator at:

Hebert v. Barnes & Noble, Inc.
c/o Settlement Administrator
P. O. Box 23648
Jacksonville, FL 32241

Email: info@hebertclassaction.com

All requests for exclusion must be postmarked, if mailed, or sent, if emailed on or before September 1, 2023 or by **45 Days After the Mailed Notice**.

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.

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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 on or before September 1, 2023 or by **45 Days After the Mailed Notice**. 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 December 8, 2023, at 1:30 p.m., 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 December 8, 2023, at 1:30 p.m. 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 Settlement Administrators' website at <https://www.hebertclassaction.com>. **Please do not telephone the court or Defendant's counsel.**

24. Questions

If you have questions, email the Settlement Administrator at info@hebertclassaction.com. If you would like to speak with an attorney, contact Class Counsel.