

**UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE**

RICHARD SCARANTINO, Individually and )  
On Behalf of All Others Similarly Situated, )

Plaintiff, )

v. )

BARNES & NOBLE, INC., LEONARD )  
RIGGIO, GEORGE CAMPBELL JR., )  
MARK D. CARLETON, SCOTT S. )  
COWEN, WILLIAM T. DILLARD II, AL )  
FERRARA, PAUL B. GUENTHER, )  
PATRICIA L. HIGGINS, IRWIN D. SIMON, )  
KIMBERLY A. VAN DER ZON, )  
CHAPTERS HOLDCO INC., and )  
CHAPTERS MERGER SUB INC., )

Defendants. )

Case No. \_\_\_\_\_

JURY TRIAL DEMANDED

CLASS ACTION

**COMPLAINT FOR VIOLATION OF THE SECURITIES EXCHANGE ACT OF 1934**

Plaintiff, by his undersigned attorneys, for this complaint against defendants, alleges upon personal knowledge with respect to himself, and upon information and belief based upon, *inter alia*, the investigation of counsel as to all other allegations herein, as follows:

**NATURE OF THE ACTION**

1. This action stems from a proposed transaction announced on June 7, 2019 (the “Proposed Transaction”), pursuant to which Barnes & Noble, Inc. (“Barnes & Noble” or the “Company”) will be acquired by affiliates of Elliott Advisors (UK) Limited, Chapters HoldCo Inc. (“Parent”) and Chapters Merger Sub, Inc. (“Merger Sub,” and collectively with Parent, “Chapters”).

2. On June 6, 2019, Barnes & Noble’s Board of Directors (the “Board” or “Individual Defendants”) caused the Company to enter into an agreement and plan of merger (the “Merger

Agreement”) with Chapters. Pursuant to the terms of the Merger Agreement, Barnes & Noble’s stockholders will receive \$6.50 in cash for each share of Barnes & Noble common stock they own.

3. On July 9, 2019, defendants filed a Solicitation/Recommendation Statement (the “Solicitation Statement”) with the United States Securities and Exchange Commission (“SEC”) in connection with the Proposed Transaction.

4. The Solicitation Statement omits material information with respect to the Proposed Transaction, which renders the Solicitation Statement false and misleading. Accordingly, plaintiff alleges herein that defendants violated Sections 14(e), 14(d), and 20(a) of the Securities Exchange Act of 1934 (the “1934 Act”) in connection with the Solicitation Statement.

#### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over all claims asserted herein pursuant to Section 27 of the 1934 Act because the claims asserted herein arise under Sections 14(e), 14(d), and 20(a) of the 1934 Act and Rule 14a-9.

6. This Court has jurisdiction over defendants because each defendant is either a corporation that conducts business in and maintains operations within this District, or is an individual with sufficient minimum contacts with this District so as to make the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

7. Venue is proper under 28 U.S.C. § 1391 because a substantial portion of the transactions and wrongs complained of herein occurred in this District.

#### **PARTIES**

8. Plaintiff is, and has been continuously throughout all times relevant hereto, the owner of Barnes & Noble common stock.

9. Defendant Barnes & Noble is a Delaware corporation and maintains its principal executive offices at 122 Fifth Avenue, New York, New York 10011. Barnes & Noble's common stock is traded on the New York Stock Exchange under the ticker symbol "BKS."

10. Defendant Leonard Riggio is Chairman of the Board of the Company.

11. Defendant George Campbell Jr. is a director of the Company.

12. Defendant Mark D. Carleton is a director of the Company.

13. Defendant Scott S. Cowen is a director of the Company.

14. Defendant William T. Dillard II is a director of the Company.

15. Defendant Al Ferrara is a director of the Company.

16. Defendant Paul B. Guenther is a director of the Company.

17. Defendant Patricia L. Higgins is a director of the Company.

18. Defendant Irwin D. Simon is a director of the Company.

19. Defendant Kimberly A. Van Der Zon is a director of the Company.

20. The defendants identified in paragraphs 10 through 19 are collectively referred to herein as the "Individual Defendants."

21. Defendant Parent is a Delaware corporation and a party to the Merger Agreement.

22. Defendant Merger Sub is a Delaware corporation, a wholly-owned subsidiary of Parent, and a party to the Merger Agreement.

### **CLASS ACTION ALLEGATIONS**

23. Plaintiff brings this action as a class action on behalf of himself and the other public stockholders of Barnes & Noble (the "Class"). Excluded from the Class are defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any defendant.

24. This action is properly maintainable as a class action.

25. The Class is so numerous that joinder of all members is impracticable. As of June 5, 2019, there were approximately 73,206,809 shares of Barnes & Noble common stock outstanding, held by hundreds, if not thousands, of individuals and entities scattered throughout the country.

26. Questions of law and fact are common to the Class, including, among others, whether defendants will irreparably harm plaintiff and the other members of the Class if defendants' conduct complained of herein continues.

27. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. Plaintiff's claims are typical of the claims of the other members of the Class and plaintiff has the same interests as the other members of the Class. Accordingly, plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class.

28. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for defendants, or adjudications that would, as a practical matter, be dispositive of the interests of individual members of the Class who are not parties to the adjudications or would substantially impair or impede those non-party Class members' ability to protect their interests.

29. Defendants have acted, or refused to act, on grounds generally applicable to the Class as a whole, and are causing injury to the entire Class. Therefore, final injunctive relief on behalf of the Class is appropriate.

### **SUBSTANTIVE ALLEGATIONS**

#### ***Background of the Company and the Proposed Transaction***

30. Barnes & Noble is the nation's largest retail bookseller, and a leading retailer of

content, digital media, and educational products.

31. The Company operates 627 Barnes & Noble bookstores in fifty states, and one of the Web's premier e-commerce sites, BN.com (www.bn.com).

32. The Company's Nook Digital business offers a line-up of popular NOOK® tablets and eReaders and an expansive collection of digital reading and entertainment content through the NOOK Store®.

33. The NOOK Store (www.nook.com) features digital books, periodicals, and comics, and offers the ability to enjoy content across a wide range of popular devices through Free NOOK Reading Apps™ available for Android™, iOS®, and Windows®.

34. On June 6, 2019, Barnes & Noble's Board caused the Company to enter into the Merger Agreement with Chapters.

35. Pursuant to the terms of the Merger Agreement, Barnes & Noble's stockholders will receive \$6.50 in cash for each share of Barnes & Noble common stock they own.

36. According to the press release announcing the Proposed Transaction:

Barnes & Noble, Inc. (NYSE:BKS, "Barnes & Noble") announces today that it has entered into a definitive agreement to be acquired by funds advised by Elliott Advisors (UK) Limited ("Elliott") for \$6.50 per share in an all-cash transaction valued at approximately \$683 million, including the assumption of debt.

Elliott's acquisition of Barnes & Noble, the largest retail bookseller in the United States, follows its June 2018 acquisition of Waterstones, the largest retail bookseller in the United Kingdom. James Daunt, CEO of Waterstones, will assume also the role of CEO of Barnes & Noble following the completion of the transaction and will be based in New York.

The \$6.50 per share purchase price represents a 43% premium to the 10-day volume weighted average closing share price of Barnes & Noble's common stock ended June 5, 2019, the day before rumors of a potential transaction were reported in the media.

The announced transaction with Elliott is the culmination of an extensive Strategic Alternative Review conducted by the Special Committee of the Barnes & Noble

Board of Directors, which was announced on October 3, 2018. The Board of Directors of Barnes & Noble unanimously approved the transaction and recommend the transaction to Barnes & Noble shareholders. Leonard Riggio, the Founder and Chairman of Barnes & Noble, has also entered into a voting agreement in support of the transaction. . . .

The transaction is subject to customary closing conditions, including the receipt of regulatory and stockholder approval, and is expected to close in the third quarter of 2019. The merger agreement provides for the acquisition to be consummated through a merger structure. However, the parties expect to amend the agreement to utilize a tender offer structure, which is expected to reduce the time to closing by a number of weeks. . . .

Evercore is acting as financial advisor and Baker Botts L.L.P. is acting as legal advisor to the Special Committee of Barnes & Noble and Guggenheim Securities LLC is acting as financial advisor and Paul, Weiss, Rifkind, Wharton & Garrison LLP is acting as legal advisor to the Board of Directors of Barnes & Noble. Credit Suisse Securities L.L.C. is acting as financial advisor and Debevoise & Plimpton LLP is acting as legal advisor to Elliott.

37. The Merger Agreement contains a “no solicitation” provision that prohibits the Individual Defendants from soliciting alternative proposals and severely constrains their ability to communicate and negotiate with potential buyers who wish to submit or have submitted unsolicited alternative proposals. Section 5.2(a) of the Merger Agreement provides:

The Company will, and will cause each of its Subsidiaries, officers, directors and employees, and will use its reasonable best efforts to cause the Representatives of the Company to, immediately cease and cause to be terminated any and all existing activities, discussions or negotiations with any Person (other than an Excluded Party for so long as such Person or group is an Excluded Party) conducted heretofore with respect to any Alternative Transaction Proposal and, with respect to any such Person with whom such activities, discussions or negotiations have been terminated, the Company shall promptly require such Person to return or destroy, in accordance with the terms of the applicable confidentiality agreement, any information furnished by or on behalf of the Company. The Company shall promptly terminate access by any Person (other than an Excluded Party for so long as such Person or group is an Excluded Party) to any physical or electronic data rooms relating to any Alternative Transaction Proposal. From and after the date of this Agreement until the earlier to occur of the Effective Time and the termination of this Agreement in accordance with Article VII, the Company shall not, and shall cause its Subsidiaries, officers, directors and employees not to, and shall use its reasonable best efforts to cause its Representatives not to, directly or indirectly, (i) solicit or initiate, or knowingly induce, facilitate or encourage, any inquiries or the

making of any proposal or offer that constitutes or would reasonably be expected to lead to an Alternative Transaction Proposal, (ii) enter into, continue or otherwise participate in any discussions or negotiations regarding, or furnish to any Person any information with respect to, or to knowingly cooperate in any way that would otherwise reasonably be expected to lead to, any Alternative Transaction Proposal except, in each case, prior to 11:59 p.m., Eastern Time, on June 13, 2019 (the “Keep-Shop Expiration Time”), from an Excluded Party (for so long as such Person or group is an Excluded Party) or (iii) approve or recommend, make any public statement approving or recommending, or enter into any agreement relating to, any inquiry, proposal or offer that constitutes or would reasonably be expected to lead to an Alternative Transaction Proposal, except in each case as provided herein; provided, however, that, notwithstanding anything to the contrary in this Agreement, the Company and its Representatives may (A) seek to clarify the terms and conditions of any proposal or offer to determine whether such inquiry or proposal would reasonably be expected to lead to a Superior Proposal and (B) inform any Person that makes an Alternative Transaction Proposal of the restrictions imposed by this Section 5.2. Promptly following the execution and delivery of this Agreement, the Company shall deliver to Parent a list of the Excluded Parties and a summary of the material terms of the Alternative Transaction Proposals submitted by such parties.

38. Additionally, the Company must promptly advise Chapters of any proposals or inquiries received from other parties. Section 5.2(c) of the Merger Agreement states:

In addition to the obligations of the Company set forth in Sections 5.2(a), (b), (d) and (e) hereof, as promptly as practicable (and in any event within 24 hours) following receipt of any Alternative Transaction Proposal by the Company, the Company shall (i) provide Parent with written notice of such Alternative Transaction Proposal (other than an Alternative Transaction Proposal made by an Excluded Party prior to the date hereof), which notice shall include a summary of the material terms thereof (including, if applicable, copies of any written requests, proposals or offers, including proposed agreements) and the name of the Person or group making such Alternative Transaction Proposal and (ii) provide Parent with all information as is reasonably necessary to keep Parent informed on a current basis of all material oral or written communications regarding, and the status and terms of, any Alternative Transaction Proposal (including any material amendments thereto) (including any Alternative Transaction Proposal or material amendment thereto made by an Excluded Party).

39. Moreover, the Merger Agreement contains a highly restrictive “fiduciary out” provision permitting the Board to change its recommendation of the Proposed Transaction under

extremely limited circumstances, and grants Chapters a “matching right” with respect to any “Superior Proposal” made to the Company. Section 5.2(e) of the Merger Agreement provides:

Notwithstanding anything to the contrary set forth in Section 5.2(d), at any time prior to obtaining the Company Stockholder Approval: (x) the Board of Directors of the Company or any committee thereof may make a Company Adverse Recommendation Change in response to an Intervening Event if the Board of Directors of the Company or such committee has determined in good faith, after consultation with its outside legal counsel, that the failure to take such action would be reasonably likely to be inconsistent with the directors’ fiduciary duties under applicable Law or (y) the Board of Directors of the Company or any committee thereof may, following receipt of a bona fide written Alternative Transaction Proposal that did not result from a breach of this Section 5.2 and that the Board of Directors of the Company or such committee determines in good faith (after consultation with its outside legal counsel and financial advisor) constitutes a Superior Proposal, make a Company Adverse Recommendation Change or cause the Company to terminate this Agreement pursuant to Section 7.1(c)(i) in order to enter into a definitive agreement with respect to such Superior Proposal (a “Company Acquisition Agreement”), but only if the Board of Directors of the Company or such committee has determined in good faith, after consultation with its outside legal counsel, that the failure to make a Company Adverse Recommendation Change or terminate this Agreement and enter into a Company Acquisition Agreement with respect to such Superior Proposal would be reasonably likely to be inconsistent with the directors’ fiduciary duties under applicable Law. Prior to the Company taking any action permitted:

(i) under Section 5.2(e)(x), (I) the Company shall have (1) provided Parent four Business Days’ prior written notice (such period of time, the “Company Notice Period”), which notice shall (x) state that an Intervening Event has occurred, (y) provide a reasonably detailed description of such Intervening Event and (z) state that the Company intends to make an Adverse Recommendation Change, (2) to the extent requested by Parent, engaged (and used its reasonable best efforts to cause its Representatives to engage) in good faith negotiations with Parent during the Company Notice Period to amend this Agreement in a manner that would obviate the need to make a Company Adverse Recommendation Change, (3) considered in good faith any bona fide offer made by Parent to the Company during the Company Notice Period and (II) following the expiration of the Company Notice Period, and taking into account any negotiations with, or consideration of any bona fide offers made by, Parent during the Company Notice Period, the Board of Directors of the Company or the applicable committee thereof again makes the determination set forth in Section 5.2(e)(x);

(ii) under Section 5.2(e) (y), with respect to a Superior Proposal received (A) from a Person or Group who is not an Excluded Party or (B) following the Keep-Shop Expiration Time, (I) the Company shall have (1) provided Parent four Business



Days' prior written notice, which notice shall state (x) that the Company has received a Superior Proposal, (y) the material terms of such Superior Proposal and (z) that the Company intends to make a Company Adverse Recommendation Change or to terminate this Agreement and enter into a Company Acquisition Agreement, (2) to the extent requested by Parent, engaged (and used its reasonable best efforts to cause its Representatives to engage) in good faith negotiations with Parent during the Company Notice Period to amend this Agreement and (3) considered in good faith any bona fide offer made by Parent to the Company during the Company Notice Period, and (II) following the expiration of the Company Notice Period, and taking into account any negotiations with, or consideration of any bona fide offers made by, Parent during the Company Notice Period, the Board of Directors of the Company or the applicable committee thereof again makes the determination set forth in Section 5.2(e)(y) (it being understood and agreed that any amendments or other revisions to the financial terms or any other material term of any Alternative Transaction Proposal that was previously the subject of a notice hereunder will be deemed to be a new Alternative Transaction Proposal, and shall require a new notice to Parent as provided above, but, with respect to any such subsequent notice, the Company Notice Period shall be deemed to be three Business Days); or

(iii) with respect to a Superior Proposal received from an Excluded Party prior to the Keep-Shop Expiration Time, (A) the Company shall have (1) provided Parent two Business Days' prior written notice (the "Keep-Shop Notice Period"), which notice shall state (x) that the Company has received a Superior Proposal from an Excluded Party, (y) the material terms of such Superior Proposal and (z) that the Company intends to make a Company Adverse Recommendation Change or to terminate this Agreement and enter into a Company Acquisition Agreement, (2) to the extent requested by Parent, engaged (and used its reasonable best efforts to cause its Representatives to engage) in good faith negotiations with Parent during the Keep-Shop Notice Period to amend this Agreement, and (3) considered in good faith any bona fide offer made by Parent to the Company during the Keep-Shop Notice Period, and (B) following the expiration of the Keep-Shop Notice Period and any negotiations with, or consideration of any bona fide offers made by, Parent during the Keep-Shop Notice Period, the Company Special Committee again makes the determination set forth in Section 5.2(e)(y) (it being understood and agreed that any amendments or other revision to the financial terms or any other material terms of any Alternative Transaction Proposal that was previously the subject of a notice hereunder will be deemed to be a new Alternative Transaction Proposal, and shall require a new notice to Parent as provided above).

40. The Merger Agreement also provides for a "termination fee" of \$14.5 million payable by the Company to Chapters if the Individual Defendants cause the Company to terminate the Merger Agreement.

***The Solicitation Statement Omits Material Information, Rendering It False and Misleading***

41. Defendants filed the Solicitation Statement with the SEC in connection with the Proposed Transaction.

42. As set forth below, the Solicitation Statement omits material information with respect to the Proposed Transaction, which renders the Solicitation Statement false and misleading.

43. First, the Solicitation Statement omits material information regarding the Company's financial projections.

44. The Solicitation Statement fails to disclose the Company's projected unlevered free cash flows and all underlying line items.

45. The disclosure of projected financial information is material because it provides stockholders with a basis to project the future financial performance of a company, and allows stockholders to better understand the financial analyses performed by the company's financial advisor in support of its fairness opinion.

46. Second, the Solicitation Statement omits material information regarding the analyses performed by the Company's financial advisors in connection with the Proposed Transaction, Evercore Group L.L.C. ("Evercore") and Guggenheim Securities ("Guggenheim").

47. With respect to Evercore's Discounted Cash Flow Analysis, the Solicitation Statement fails to disclose: (i) unlevered, after-tax free cash flows and all underlying line items; (ii) the ranges of terminal values for the Company; (iii) Evercore's basis for applying terminal year enterprise value to EBITDA multiples ranging from 3.0x to 4.0x and a perpetuity growth rate range of (3.0 %) to 0.0%; (iv) the individual inputs and assumptions underlying the discount rates ranging from 9.5% to 10.5%; (v) the Company's average net debt as used in the analysis; and (vi) the number of fully diluted shares of the Company.

48. With respect to Evercore's Net Present Value of Future Stock Price Analysis, the Solicitation Statement fails to disclose: (i) the Company's estimated net debt and fully diluted shares as used in the analysis; and (ii) the individual inputs and assumptions underlying the discount rates of 11.5% to 12.5%.

49. With respect to Evercore's Premium Paid Analysis, the Solicitation Statement fails to disclose: (i) the transactions observed by Evercore in the analysis; and (ii) the premiums paid in the transactions.

50. With respect to Guggenheim's Discounted Cash Flow Analyses, the Solicitation Statement fails to disclose: (i) after-tax unlevered free cash flows and all underlying line items; (ii) the terminal values for the Company; (iii) the individual inputs and assumptions underlying the discount rate range of 9.50%-11.50%; and (iv) Guggenheim's basis for using a reference range of perpetual growth rates of (4.00)%-0.00%.

51. With respect to Guggenheim's Selected Publicly Traded Companies Analysis, the Solicitation Statement fails to disclose the individual multiples and metrics for the companies observed by Guggenheim in the analysis.

52. With respect to Guggenheim's Selected Precedent Merger and Acquisition Transactions Analysis, the Solicitation Statement fails to disclose the individual multiples and metrics for the transactions observed by Guggenheim in the analysis.

53. With respect to Guggenheim's Premia Paid in Selected Precedent Merger and Acquisition Transactions, the Solicitation Statement fails to disclose the premiums paid in the transactions observed by Guggenheim in the analysis.

54. With respect to Guggenheim's Wall Street Equity Research Analyst Stock Price Targets, the Solicitation Statement fails to disclose: (i) the price targets observed by Guggenheim

in the analysis; and (ii) the sources thereof.

55. When a banker's endorsement of the fairness of a transaction is touted to shareholders, the valuation methods used to arrive at that opinion as well as the key inputs and range of ultimate values generated by those analyses must also be fairly disclosed.

56. Third, the Solicitation Statement omits material information regarding potential conflicts of interest of Evercore and Guggenheim.

57. The Solicitation Statement fails to disclose the circumstances under which the "additional discretionary fee may be paid to Evercore by Barnes & Noble," as well as the estimated amount of such fee.

58. The Solicitation Statement fails to disclose the timing and nature of the past services Guggenheim provided to Barnes & Noble, as well as the amount of compensation Guggenheim received for providing such services.

59. The Solicitation Statement fails to disclose the amount of compensation Guggenheim received for providing past services to Parent and its affiliates.

60. Full disclosure of investment banker compensation and all potential conflicts is required due to the central role played by investment banks in the evaluation, exploration, selection, and implementation of strategic alternatives.

61. The omission of the above-referenced material information renders the Solicitation Statement false and misleading, including, *inter alia*, the following section of the Solicitation Statement: The Solicitation or Recommendation.

62. The above-referenced omitted information, if disclosed, would significantly alter the total mix of information available to the Company's stockholders.

**COUNT I**

**(Claim for Violation of Section 14(e) of the 1934 Act Against Defendants)**

63. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

64. Section 14(e) of the 1934 Act states, in relevant part, that:

It shall be unlawful for any person to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading . . . in connection with any tender offer or request or invitation for tenders[.]

65. Defendants disseminated the misleading Solicitation Statement, which contained statements that, in violation of Section 14(e) of the 1934 Act, in light of the circumstances under which they were made, omitted to state material facts necessary to make the statements therein not misleading.

66. The Solicitation Statement was prepared, reviewed, and/or disseminated by defendants.

67. The Solicitation Statement misrepresented and/or omitted material facts in connection with the Proposed Transaction as set forth above.

68. By virtue of their positions within the Company and/or roles in the process and the preparation of the Solicitation Statement, defendants were aware of this information and their duty to disclose this information in the Solicitation Statement.

69. The omissions in the Solicitation Statement are material in that a reasonable shareholder will consider them important in deciding whether to tender their shares in connection with the Proposed Transaction. In addition, a reasonable investor will view a full and accurate disclosure as significantly altering the total mix of information made available.

70. Defendants knowingly or with deliberate recklessness omitted the material information identified above in the Solicitation Statement, causing statements therein to be

materially incomplete and misleading.

71. By reason of the foregoing, defendants violated Section 14(e) of the 1934 Act.

72. Because of the false and misleading statements in the Solicitation Statement, plaintiff and the Class are threatened with irreparable harm.

73. Plaintiff and the Class have no adequate remedy at law.

## COUNT II

### **(Claim for Violation of 14(d) of the 1934 Act Against Defendants)**

74. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

75. Section 14(d)(4) of the 1934 Act states:

Any solicitation or recommendation to the holders of such a security to accept or reject a tender offer or request or invitation for tenders shall be made in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

76. Rule 14d-9(d) states, in relevant part:

Any solicitation or recommendation to holders of a class of securities referred to in section 14(d)(1) of the Act with respect to a tender offer for such securities shall include the name of the person making such solicitation or recommendation and the information required by Items 1 through 8 of Schedule 14D-9 (§ 240.14d-101) or a fair and adequate summary thereof[.]

Item 8 requires that directors must “furnish such additional information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not materially misleading.”

77. The Solicitation Statement violates Section 14(d)(4) and Rule 14d-9 because it omits the material facts set forth above, which renders the Solicitation Statement false and/or misleading.

78. Defendants knowingly or with deliberate recklessness omitted the material information set forth above, causing statements therein to be materially incomplete and

misleading.

79. The omissions in the Solicitation Statement are material to plaintiff and the Class, and they will be deprived of their entitlement to make a fully informed decision with respect to the Proposed Transaction if such misrepresentations and omissions are not corrected prior to the expiration of the tender offer.

80. Plaintiff and the Class have no adequate remedy at law.

### **COUNT III**

#### **(Claim for Violation of Section 20(a) of the 1934 Act Against the Individual Defendants and Chapters)**

81. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

82. The Individual Defendants and Chapters acted as controlling persons of Barnes & Noble within the meaning of Section 20(a) of the 1934 Act as alleged herein. By virtue of their positions as directors of Barnes & Noble and participation in and/or awareness of the Company's operations and/or intimate knowledge of the false statements contained in the Solicitation Statement filed with the SEC, they had the power to influence and control and did influence and control, directly or indirectly, the decision making of the Company, including the content and dissemination of the various statements that plaintiff contends are false and misleading.

83. Each of the Individual Defendants and Chapters was provided with or had unlimited access to copies of the Solicitation Statement alleged by plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause them to be corrected.

84. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had the power to control and influence the particular transactions giving rise to the violations as alleged

herein, and exercised the same. The Solicitation Statement contains the unanimous recommendation of the Individual Defendants to approve the Proposed Transaction. They were thus directly connected with and involved in the making of the Solicitation Statement.

85. Chapters also had direct supervisory control over the composition of the Solicitation Statement and the information disclosed therein, as well as the information that was omitted and/or misrepresented in the Solicitation Statement.

86. By virtue of the foregoing, the Individual Defendants and Chapters violated Section 20(a) of the 1934 Act.

87. As set forth above, the Individual Defendants and Chapters had the ability to exercise control over and did control a person or persons who have each violated Section 14(e) of the 1934 Act and Rule 14a-9, by their acts and omissions as alleged herein. By virtue of their positions as controlling persons, these defendants are liable pursuant to Section 20(a) of the 1934 Act.

88. As a direct and proximate result of defendants' conduct, plaintiff and the Class are threatened with irreparable harm.

89. Plaintiff and the Class have no adequate remedy at law.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff prays for judgment and relief as follows:

A. Enjoining defendants and all persons acting in concert with them from proceeding with, consummating, or closing the Proposed Transaction;

B. In the event defendants consummate the Proposed Transaction, rescinding it and setting it aside or awarding rescissory damages;



C. Directing the Individual Defendants to file a Solicitation Statement that does not contain any untrue statements of material fact and that states all material facts required in it or necessary to make the statements contained therein not misleading;

D. Declaring that defendants violated Sections 14(e), 14(d), and 20(a) of the 1934 Act, as well as Rule 14a-9 promulgated thereunder;

E. Awarding plaintiff the costs of this action, including reasonable allowance for plaintiff's attorneys' and experts' fees; and

F. Granting such other and further relief as this Court may deem just and proper.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury.

Dated: July 16, 2019

**RIGRODSKY & LONG, P.A.**

**OF COUNSEL:**

**RM LAW, P.C.**

Richard A. Maniskas  
1055 Westlakes Drive, Suite 300  
Berwyn, PA 19312  
Telephone: (484) 324-6800  
Facsimile: (484) 631-1305  
Email: rm@maniskas.com

By: /s/ Gina M. Serra  
Brian D. Long (#4347)  
Gina M. Serra (#5387)  
300 Delaware Avenue, Suite 1220  
Wilmington, DE 19801  
Telephone: (302) 295-5310  
Facsimile: (302) 654-7530  
Email: bdl@rl-legal.com  
Email: gms@rl-legal.com  
  
*Attorneys for Plaintiff*

# CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**  
**RICHARD SCARANTINO**

**(b)** County of Residence of First Listed Plaintiff \_\_\_\_\_  
 (EXCEPT IN U.S. PLAINTIFF CASES)

**(c)** Attorneys (Firm Name, Address, and Telephone Number)  
 Gina M. Serra, RIGRODSKY & LONG, P.A.  
 300 Delaware Avenue, Suite 1220, Wilmington, DE 19801  
 (302) 295-5310

**DEFENDANTS**  
**BARNES & NOBLE, INC., LEONARD RIGGIO, GEORGE CAMPBELL JR., MARK D. CARLETON, SCOTT S. COWEN, WILLIAM T. DILLARD II, AL FERRARA, PAUL B. GUENTHER, et al.**

County of Residence of First Listed Defendant New York County, NY  
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input checked="" type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutional of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	FEDERAL TAX SUITS	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
			LABOR	
			<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	
			IMMIGRATION	
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	

**V. ORIGIN** (Place an "X" in One Box Only)

1 Original Proceeding     2 Removed from State Court     3 Remanded from Appellate Court     4 Reinstated or Reopened     5 Transferred from Another District (specify)     6 Multidistrict Litigation - Transfer     8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
15 U.S.C. §§ 78n(d), 78n(e), 78t(a), and 17 C.F.R. 240.14d-9

Brief description of cause:  
Violation of Sections 14(e), 14(d), and 20(a) of the 1934 Act and Rule 14a-9

**VII. REQUESTED IN COMPLAINT:**     CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    DEMAND \$ \_\_\_\_\_    CHECK YES only if demanded in complaint: JURY DEMAND:  Yes     No

**VIII. RELATED CASE(S) IF ANY** (See instructions):    JUDGE \_\_\_\_\_    DOCKET NUMBER \_\_\_\_\_

DATE: 07/16/2019    SIGNATURE OF ATTORNEY OF RECORD: /s/ Gina M. Serra

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
  
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
  
- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
  
- IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
  
- V. **Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
  
- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
  
- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
  
- VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

**CERTIFICATION OF PLAINTIFF**

I, Richard Scarantino (“Plaintiff”), hereby declare as to the claims asserted under the federal securities laws that:

1. Plaintiff has reviewed the complaint and authorizes its filing.
2. Plaintiff did not purchase the security that is the subject of this action at the direction of Plaintiff’s counsel or in order to participate in any private action.
3. Plaintiff is willing to serve as a representative party on behalf of the class, either individually or as part of a group, and I will testify at deposition or trial, if necessary. I understand that this is not a claim form and that I do not need to execute this Certification to share in any recovery as a member of the class.
4. Plaintiff’s purchase and sale transactions in the Barnes & Noble, Inc. (NYSE: BKS) security that is the subject of this action during the class period is/are as follows:

**PURCHASES**

<b>Buy Date</b>	<b>Shares</b>	<b>Price per Share</b>
6/6/19	100	\$5.96

**SALES**

<b>Sell Date</b>	<b>Shares</b>	<b>Price per Share</b>

*Please list additional transactions on separate sheet of paper, if necessary.*

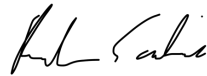
5. Plaintiff has complete authority to bring a suit to recover for investment losses on behalf of purchasers of the subject securities described herein (including Plaintiff, any co-owners, any corporations or other entities, and/or any beneficial owners).

6. During the three years prior to the date of this Certification, Plaintiff has not moved to serve as a representative party for a class in an action filed under the federal securities laws.

7. Plaintiff will not accept any payment for serving as a representative party on behalf of the class beyond Plaintiff's *pro rata* share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the class as ordered or approved by the Court.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 15th day of July, 2019.



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Richard Scarantino

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Barnes & Noble Hit with Securities Class Action Over 'Materially Incomplete' Merger Solicitation Statement](#)

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