

**UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE**

DAVID SHAEV, Individually and on Behalf of
All Others Similarly Situated,

Plaintiff,

v.

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

Defendants.

Civil Action No. _____

COMPLAINT FOR VIOLATION OF THE
SECURITIES EXCHANGE ACT OF 1934

JURY TRIAL DEMANDED

Plaintiff, David Shaev (“Plaintiff”), by and through his attorneys, alleges the following on information and belief, except as to the allegations specifically pertaining to Plaintiff, which are based on personal knowledge.

NATURE OF THE ACTION

1. This action stems from a proposed transaction (the “Proposed Transaction” or “Merger”) initially announced on June 7, 2019, pursuant to which Chapters Holdco Inc. will acquire Barnes & Noble, Inc. (“B&N” or the “Company”) by way of a tender offer (the “Tender Offer” or “Transaction”).

2. On June 6, 2019, B&N’s board of directors (the “Board” or the “Individual Defendants”) caused the Company to enter into a merger agreement (the “Original Merger Agreement”) with Chapters Merger Sub Inc., a Delaware corporation and a wholly owned subsidiary of Chapters Holdco Inc., and Chapters Holdco Inc., a Delaware corporation controlled

by Elliott Associates, L.P., a Delaware limited partnership and Elliott International, L.P., a Cayman Islands limited partnership.

3. The Original Merger Agreement was subsequently amended on June 24, 2019 (the “Merger Agreement Amendment”). Pursuant to the terms of the Merger Agreement Amendment, the acquirer will purchase all of B&N’s outstanding shares at a purchase price of \$6.50 per share in cash (the “Merger Consideration”).

4. On July 9, 2019, B&N filed a Solicitation/Recommendation Statement on a Schedule 14D-9 (the “Solicitation Statement”) with the United States Securities and Exchange Commission (“SEC”) in connection with the Tender Offer. As described herein, the Solicitation Statement omits material information with respect to the Tender Offer, which renders it false and misleading in violation of Sections 14(d), 14(e), and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. §§ 78n(d), 78n(e), and 78t(a), and SEC Rule 14d-9, 17 C.F.R. 240.14d-9 (“Rule 14d-9”) promulgated thereunder.

5. Plaintiff seeks to enjoin Defendants (as defined below) from taking any steps to consummate the Transaction or, in the event the Transaction is consummated, to recover damages resulting from the Defendants’ wrongdoing described herein.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over all claims asserted herein pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa, and 28 U.S.C. § 1331, as Plaintiff alleges violations of Sections 14(d), 14(e), and 20(a) of the Exchange Act.

7. This Court has personal jurisdiction over all of the Defendants because each is either a corporation that conducts business within this District, or is an individual who is either present in this District for jurisdictional purposes or has 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.

8. 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

9. Plaintiff is and has been at all relevant times the owner of B&N common stock.

10. Defendant B&N is a Delaware corporation with its principal executive offices located at 122 Fifth Avenue, New York, NY 10011. B&N's common stock is listed on the NASDAQ under the symbol "BKS."

11. Defendant Leonard Riggio ("Riggio") is Chairman of the Board and founder of B&N. He holds 14,052,232 shares of B&N common stock.

12. Defendant George Campbell Jr. ("Campbell") is a director on the Board.

13. Defendant Scott S. Cowen ("Cowen") is a director on the Board.

14. Defendant William T. Dillard II ("Dillard") is a director on the Board.

15. Defendant Al Ferrara ("Ferrara") is a director on the Board.

16. Defendant Irwin D. Simon ("Simon") is a director on the Board.

17. Defendant Mark D. Carleton ("Carleton") is a director of the Board.

18. Defendant Paul B. Guenther ("Guenther") is a director of the Board.

19. Defendant Patricia L. Higgins ("Higgins") is a director of the Board.

20. Defendant Kimberly A. Van Der Zon ("Van Der Zon") is a director of the Board.

21. Defendants Riggio, Campbell, Cowen, Dillard, Ferrara, Simon, Carleton, Guenther, Higgins, and Van Der Zon are collectively referred to herein as the "Individual Defendants."

22. B&N and the Individual Defendants are referred to herein as "Defendants."

SUBSTANTIVE ALLEGATIONS

23. B&N is “one of the nation’s largest booksellers, provides customers a unique experience across its omni-channel distribution platform. . . . The Company’s principal business is the sale of trade books (generally hardcover and paperback titles), mass market paperbacks (such as mystery, romance, science fiction and other popular fiction), children’s books, eBooks and other digital content, NOOK® and related accessories, bargain books, textbooks, magazines, gifts, café products and services, educational toys & games, music and movies direct to customers through its bookstores or on www.barnesandnoble.com.” B&N 2019 10-K, filed with the SEC on June 19, 2019.

24. Although the Solicitation Statement provides B&N’s shareholders with an overview of the Tender Offer, it omits critical information that renders the Solicitation Statement materially incomplete or misleading in violation of the Exchange Act. Consequently, B&N’s shareholders lack the information necessary to allow them to make an informed decision when determining whether to tender their shares.

25. Specifically, the Solicitation Statement contains materially incomplete or misleading information concerning (i) the financial analyses performed by Evercore Group, L.L.C (“Evercore”), the financial advisor for the Special Committee of the Board (“the “Special Committee”), in support of Evercore’s fairness opinion and (ii) the financial analyses performed by Guggenheim Securities, LLC (“Guggenheim Securities”), the financial advisor for the Board in support of Guggenheim Securities’ fairness opinion.

Material Omissions Concerning Evercore’s Fairness Opinion

26. The Solicitation Statement omits material information concerning the opinion rendered by Evercore, dated as of June 6, 2019, which determined that “the Merger Consideration

to be received by the holders of Shares in the Merger was fair, from a financial point of view, to such holders.” Solicitation Statement at 50.

27. **First**, the Solicitation Statement omits material information from Evercore’s *Discounted Cash Flow (“DCF”) Analysis*. The *DCF Analysis* was intended to “calculate ranges of implied equity value of the Company as of April 28, 2019, the first day of the Company’s fiscal year 2020, utilizing estimates of the unlevered, after-tax free cash flows that the Company was expected to generate over the period beginning with its first fiscal quarter of 2020 through fiscal year 2024, under the different financial scenarios reflected in each of the Management Projections and Sensitivity Analysis.” Solicitation Statement at 53.

28. However, the Solicitation Statement failed to disclose free cash flow projections Evercore used in the *DCF Analysis* and, thus, provides a wholly insufficient description thereof.

29. The Solicitation Statement also fails to disclose the basis Evercore used to choose the range of multiples of earnings before interest, taxes, depreciation and amortization (“EBITDA”) and the perpetuity growth rates used in the *DCF Analysis*.

30. Likewise, there is no disclosure of the numeric inputs Evercore used to calculate the discount rates in its *DCF Analysis*.

31. Nor is there any disclosure of whether Evercore incorporated B&N’s \$344.2 million net operating loss tax carry forwards (“NOLs”) into its *DCF Analysis*, and if so how.

32. Such information is material to B&N’s shareholders in deciding whether or not to tender their shares. The Solicitation Statement’s failure to disclose all of the relevant information taken into consideration for the purpose of Evercore’s analyses, prevents shareholders from making an informed decision on whether to tender their shares.

33. **Second**, the Solicitation Statement omits material information from Evercore's *Net Present Value of Future Stock Price Analysis*. In its analysis, Evercore used discount rates of 11.5% to 12.5%. "The discount rates were based on Evercore's judgment of the estimated range of cost of equity for the Company based on application of the capital asset pricing model and its professional judgment given the nature of the Company's business and its industry." Solicitation Statement at 54. However, there is no disclosure in the Solicitation Statement of the numeric inputs factored into Evercore's calculation of the discount rates.

34. **Third**, the Solicitation Statement omits material information from Evercore's *Selected Precedent Transaction Analysis*. For informational purposes, Evercore "performed an analysis of selected precedent transactions to compare multiples paid in other transactions to the multiples implied by the Merger Consideration. Evercore analyzed eight transactions that were announced between 2009 and 2017 involving acquisitions in the bookstore and specialty retailer sectors." Solicitation Statement at 56. In its analysis, Evercore relied on B&N's EBIT and EBITDA from the last 12 months, none of which are disclosed in the Solicitation Statement.

35. **Fourth**, the Solicitation Statement omits material information from Evercore's *Selected Public Companies Analysis*. As with Evercore's Selected Precedent Transaction Analysis, the Solicitation Statement also failed to disclose B&N's EBIT and EBITDA from the last 12 months, despite being accounted for in Evercore's calculations.

36. **Fifth**, the Solicitation Statement omits material information from Evercore's *Premium Paid Analysis*. Evercore "reviewed and analyzed premia paid in all-cash transactions with transaction values between \$500 million and \$1 billion since January 2014. Using publicly available information, Evercore calculated the premia paid as the percentage by which the per share consideration paid or proposed to be paid in each such transaction exceeded the closing

market prices per share of the target companies one day and four weeks prior to announcement of each transaction.” Solicitation Statement at 57. Not only is there is no disclosure in the Solicitation Statement of the low and high premiums paid in the analyzed transactions, but the Solicitation Statement fails to disclose all the premiums for the analyzed transactions.

37. The Solicitation Statement touts Evercore’s endorsement of the fairness of the Proposed Transaction. Thus, in all fairness, the financial information and valuation methods used to generate Evercore’s analyses, as well as the line items, numeric inputs and range of ultimate values resulting from those analyses must also be disclosed.

Material Omissions Concerning Guggenheim Securities’ Fairness Opinion

38. Likewise, the Solicitation Statement omits material information concerning the opinion rendered by Guggenheim Securities, dated as of June 6, 2019, which determined that “the Merger Consideration to be received by the holders of Shares in the Merger was fair, from a financial point of view, to such holders.” Solicitation Statement at 59.

39. ***First***, the Solicitation Statement omits material information from Guggenheim Securities’ *DCF Analysis*. In a similar manner to Evercore’s *DCF Analysis*, the Solicitation Statement failed to disclose B&N’s free cash flow projections.

40. In its *DCF Analysis*, “Guggenheim Securities used a discount rate range of 9.50%—11.50% based on its estimate of Barnes & Noble’s weighted average cost of capital.” Solicitation Statement at 65. However, the Solicitation Statement omits the numeric inputs used by Guggenheim Securities to calculate the discount rate range.

41. Furthermore, the Solicitation Statement fails to disclose whether Guggenheim Securities incorporated B&N’s \$344.2 million NOLs into its DCF Analysis, and if so how.

42. **Second**, the Solicitation Statement omits material information from Guggenheim Securities' *Selected Publicly Traded Companies Analysis*. For the purposes of this analysis, Guggenheim Securities analyzed the Company's "historical stock price performance, trading metrics and historical and projected/forecasted financial, performance compared to corresponding data for selected publicly traded companies that Guggenheim Securities deemed relevant." Solicitation Statement at 66-67. The Solicitation Statement did not disclose any of the selected publicly traded companies' metrics, as used in Guggenheim Securities' analysis.

43. **Third**, the Solicitation Statement omits material information from Guggenheim Securities' *Selected Precedent Merger and Acquisition Transactions Analysis*. Specifically, the Solicitation Statement fails to disclose the multiples for all of the reviewed merger and acquisition transactions, as used in Guggenheim Securities' analysis.

44. **Fourth**, the Solicitation Statement omits material information from Guggenheim Securities' analysis of the *Premia Paid in Selected Precedent Merger and Acquisition Transactions*. Despite Guggenheim Securities "[reviewing], based on publicly available information, the implied premia paid or proposed to be paid in connection with the selected precedent merger and acquisition transactions" (Solicitation Statement at 69) it analyzed as part of its Selected Precedent Merger and Acquisition Transactions Analysis, the Solicitation Statement fails to disclose all of the "the implied premia paid or proposed to be paid" in each of the reviewed merger and acquisition transactions.

45. **Fifth**, the Solicitation Statement omits material information from Guggenheim Securities' analysis of *Wall Street Equity Research Analyst Stock Price Targets*. "Guggenheim Securities noted that such Wall Street equity research analyst stock price targets for the Shares

were \$5.00 – \$10.00 per share with a median of \$5.00 per share.” Solicitation Statement at 70. However, the Solicitation Statement fails to disclose all of the aforementioned price targets.

46. It is well established that the real informative value of a financial advisor’s work is not in its conclusion, but in the valuation analyses that buttress that result. Yet, the Solicitation Statement readily omits information material to B&N’s shareholders’ decision of whether or not to tender their shares of B&N common stock into the Tender Offer. Absent this information, B&N shareholders are unable to determine whether the Proposed Transaction is indeed fair and whether tendering their shares is in their best interest.

47. Based on the foregoing disclosure deficiencies in the B&N’s Solicitation Statement, Plaintiff seeks injunctive and other equitable relief to prevent the irreparable injury that B&N stockholders will suffer, absent judicial intervention.

CLASS ACTION ALLEGATIONS

48. Plaintiff brings this action as a class action pursuant to Fed. R. Civ. P. 23 on behalf of himself and the other public shareholders of B&N (the “Class”). Excluded from the Class are Defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any of the Defendants.

49. This action is properly maintainable as a class action for the following reasons:

a. The Class is so numerous that joinder of all members is impracticable. As of July 5, 2019, there were 73,136,910 shares of B&N common stock issued and outstanding, held by hundreds, if not thousands, of individuals and entities scattered throughout the country.

b. Questions of law and fact are common to the Class, including, among others: (i) whether Defendants have violated Sections 14(d), 14(e), and 20(a) of the Exchange Act in connection with the Tender Offer; and (ii) whether Plaintiff and the Class would be irreparably

harm if the Transaction is consummated pursuant to the Solicitation Statement as currently composed.

c. Plaintiff is an adequate representative of the Class, has retained competent counsel experienced in litigation of this nature, and will fairly and adequately protect the interests of the Class.

d. Plaintiff's claims are typical of the claims of the other members of the Class and Plaintiff does not have any interests adverse to the Class.

e. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for the party opposing the Class.

f. Questions of law or fact common to class members predominate over any questions affecting only individual members.

g. A class action is superior to other available methods for fairly and efficiently adjudicating this controversy.

h. 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, preliminary and final injunctive relief on behalf of the Class as a whole is entirely appropriate.

CAUSES OF ACTION

COUNT I

Claim for Violation of Section 14(d) of the Exchange Act [15 U.S.C. § 78n(d)] and Rule 14d-9 Promulgated Thereunder [17 CFR § 240.14d-9] (Against All Defendants)

50. Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein.

51. Section 14(d)(1) of the Exchange Act mandates compliance with certain disclosure and filing requirements in connection with any tender offer for more than five percent of a class of equity security registered under Section 12 of the Exchanges Act.

52. Section 14(d)(4) of the Exchange Act provides, in relevant part: “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 [SEC] may prescribe as necessary or appropriate in the public interest or for the protection of investors.” 15 U.S.C. § 78n(d)(4).

53. Rule 14d-9, promulgated by the SEC in accordance with Section 14(d) of the Exchange Act, provides: “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 information required by Items 1 through 8 of Schedule 14D-9 (§ 240.14d-101) or a fair and adequate summary thereof.” 17 CFR § 240.14d-9(d).

54. Pursuant to Rule 14d-9, Item 8 of a Schedule 14D-9 requires a Company’s directors to: “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.” 17 CFR § 240.14d-101 Schedule 14D-9. That information includes all “material 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.”

55. As discussed herein, the Solicitation Statement misrepresented and/or omitted material facts concerning (i) the financial analyses performed by Evercore, the financial advisor for the Special Committee, in support of Evercore’s fairness opinion and (ii) the financial analyses

performed by Guggenheim Securities, the financial advisor for the Board, in support of Guggenheim Securities' fairness opinion.

56. Defendants prepared, reviewed, filed and disseminated the false and misleading Solicitation Statement to B&N's shareholders. In doing so, Defendants knew or recklessly disregarded that the Solicitation Statement failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

57. The omissions and incomplete and misleading statements in the Solicitation Statement are material in that a reasonable shareholder would consider them important in deciding whether to tender their shares. In addition, a reasonable investor would view such information as altering the "total mix" of information made available to shareholders.

58. By virtue of their positions within the Company and/or roles in the process and in the preparation of the Solicitation Statement, Defendants were undoubtedly aware of this information and had previously reviewed it, including participating in the negotiation process and reviewing both Evercore and Guggenheim Securities' complete financial analyses purportedly summarized in the Solicitation Statement.

59. B&N is deemed liable as a result of the Individual Defendants' negligence and/or recklessness in preparing and reviewing the Solicitation Statement.

60. Defendants knew or should have known Plaintiff and the Class would rely upon the Solicitation Statement in determining whether to tender their shares into the Tender Offer.

61. As a direct and proximate result of Defendants' unlawful course of conduct in violation of Section 14(d) of the Exchange Act and Rule 14d-9 promulgated thereunder, and absent injunctive relief from the Court, Plaintiff and the Class will suffer irreparable injury by being

denied the opportunity to make an informed decision as to whether tender their shares into the Tender Offer.

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

COUNT II

Claim for Violation of Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] (Against All Defendants)

63. Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein.

64. Section 14(e) of the Exchange Act makes it “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, or to engage in any fraudulent, deceptive, or manipulative acts or practices, in connection with any tender offer or request or invitation for tenders, or any solicitation of security holders in opposition to or in favor of any such offer, request, or invitation.” 15 U.S.C. § 78n(e).

65. As discussed herein, the Solicitation Statement misrepresented and/or omitted material facts concerning (i) the financial analyses performed by Evercore, the financial advisor for the Special Committee, in support of Evercore’s fairness opinion and (ii) the financial analyses performed by Guggenheim Securities, the financial advisor for the Board, in support of Guggenheim Securities’ fairness opinion.

66. Defendants prepared, reviewed, filed and disseminated the false and misleading Solicitation Statement to B&N’s shareholders. In doing so, Defendants knew or recklessly disregarded that the Solicitation Statement failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

67. The omissions and incomplete and misleading statements in the Solicitation Statement are material in that a reasonable shareholder would consider them important in deciding whether to tender their shares. In addition, a reasonable investor would view such information as altering the “total mix” of information made available to shareholders.

68. By virtue of their positions within the Company and/or roles in the process and in the preparation of the Solicitation Statement, Defendants were undoubtedly aware of this information and had previously reviewed it, including participating in the negotiation process and reviewing both Evercore and Guggenheim Securities’ complete financial analyses purportedly summarized in the Solicitation Statement.

69. B&N is deemed liable as a result of the Individual Defendants’ negligence and/or recklessness in preparing and reviewing the Solicitation Statement.

70. Defendants knew or should have known Plaintiff and the Class would rely upon the Solicitation Statement in determining whether to tender their shares into the Tender Offer.

71. As a direct and proximate result of Defendants’ unlawful course of conduct in violation of Section 14(e) of the Exchange Act, and absent injunctive relief from the Court, Plaintiff and the Class will suffer irreparable injury by being denied the opportunity to make an informed decision as to whether to tender their shares into the Tender Offer.

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

COUNT III

Claim for Violations of Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)] (Against the Individual Defendants)

73. Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein.

74. The Individual Defendants acted as controlling persons of B&N within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as directors of B&N, and participation in or awareness of the Company's operations 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 which Plaintiff contends are false and misleading.

75. Each of the Individual Defendants were provided with or had unlimited access to copies of the Solicitation Statement and other statements alleged by Plaintiff to be misleading prior to or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

76. In particular, each of the Individual Defendants had a supervisory role over the operations of the Company and, therefore, are presumed to have had the power to control or influence the particular transactions giving rise to the securities violations alleged herein, and exercised the same. The Solicitation Statement contains the unanimous recommendation of each of the Individual Defendants to tender into the Tender Offer. They were thus directly connected with and involved in the making of the Solicitation Statement.

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

78. As a direct and proximate result of Individual Defendants' conduct, Plaintiff and the Class will be irreparably harmed. Plaintiff and the Class have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment and relief as follows:

A. Ordering that this Action may be maintained as a class action and certifying Plaintiff as the Class representative and Plaintiff's counsel as Class counsel;

B. Preliminarily and permanently enjoining Defendants and all persons acting in concert with them from proceeding with the Tender Offer or consummating the Transaction;

C. Directing the Individual Defendants to disseminate 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. In the event Defendants consummate the Transaction, rescinding it and setting it aside or awarding rescissory damages to Plaintiff;

E. Directing Defendants to account to Plaintiff his damages sustained because of the wrongs complained of herein;

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

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

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: July 17, 2019

RIGRODSKY & LONG, P.A.

OF COUNSEL:

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By: /s/ Gina M. Serra

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Attorneys for Plaintiff

PLAINTIFF CERTIFICATION
UNDER THE FEDERAL SECURITIES LAWS

I, David B. Shaev, hereby state:

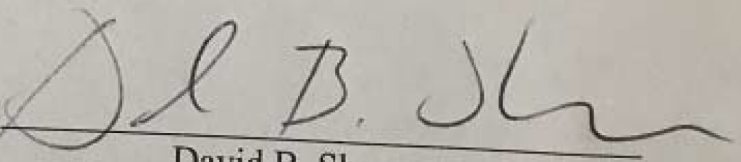
1. I have reviewed the complaint against Barnes & Noble, Inc. ("Barnes & Noble") and certain of its directors and officers. I have authorized the filing of the complaint and a lead plaintiff motion on my behalf.
2. I am willing to serve as a representative party on behalf of the Class, including providing testimony at deposition and trial, if necessary.
3. I currently own 25 Barnes & Noble shares, which I bought on March 18, 1999, for \$34 3/8 per share.
4. I did not purchase these securities at the direction of counsel, or in order to participate in any private action arising under the federal securities laws.
5. During the three-year period preceding the date of signing this certification, I have sought to serve as a representative on behalf of a class in the following private action arising under the federal securities laws:

Shaev v. PHH Corp., 1:18-cv-08847 (D.N.J.)
6. I will not accept any payment for serving as a representative party on behalf of the Class except to receive a pro rata share of any recovery, or as ordered or approved by the Court, including the award to a representative party of reasonable costs and expenses, including lost wages relating to the representation of the Class.

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

Executed this 14 day of July, 2019

By:


David B. Shaev

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
David Shaev

(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., SCOTT S. COWEN, WILLIAM T. DILLARD II, AL FERRARA, MARK D. CARLETON, 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	PERSONAL INJURY <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 PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other 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	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <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)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<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 Constitutionality of State Statutes
REAL PROPERTY <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	CIVIL RIGHTS <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 PRISONER PETITIONS Habeas Corpus: <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 Other: <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			

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 DEMAND \$
UNDER RULE 23, F.R.Cv.P.

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Unassigned

DOCKET NUMBER 1:19-cv-01320-UNA

DATE

07/17/2019

SIGNATURE OF ATTORNEY OF RECORD

/s/ Gina M. Serra

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

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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.