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13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA

15 BARBARA TAVRES, an individual, on  
16 behalf of herself and all others similarly  
17 situated,

18 Plaintiff,

19 v.

20 BARNES & NOBLE, INC. a Delaware  
21 corporation,

22 Defendant.

Case No:

**CLASS AND COLLECTIVE ACTION**

**COMPLAINT FOR AGE DISCRIMINATION**

**JURY TRIAL DEMANDED**

23 **INTRODUCTION**

24 1. Plaintiff Barbara Tavres, on behalf of herself and all others similarly situated  
25 (collectively “Plaintiffs”), alleges Defendant Barnes & Noble, Inc. (“Defendant” or “Barnes &  
26 Noble”), through its employment practices, committed wide-spread and systemic age  
27 discrimination in violation of the Age Discrimination in Employment Act, as amended  
28 (“ADEA”), 29 U.S.C. § 621 *et seq.*, and the California Fair Employment and Housing Act  
29 (“FEHA”), Cal. Gov. Code § 12940 *et seq.* Accordingly, Ms. Tavres brings this class and  
30 collective action to obtain remedies for this disparate treatment and disparate impact  
31 discrimination.

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1           2.       Despite its longstanding status as one of the nation’s largest book retailers,  
2 Barnes & Noble has struggled to remain competitive in an increasingly digital and online  
3 literary marketplace. Since 1997, it has closed nearly 400 stores. In the last five years, its market  
4 value has shrunk by \$1 billion. In early July 2018, Barnes & Noble fired its CEO Demos  
5 Parneros over sexual abuse claims. As an August 2019 article in the *New York Times* declared:  
6 “Barnes & Noble has been sliding toward oblivion for years.”

7           3.       In August 2019, Barnes & Noble was purchased by the private equity hedge fund  
8 Elliott Management Corp. for \$683 million—a fraction of its former market value. Elliott  
9 Management, run by billionaire venture capitalist Paul Elliott Singer, is an investment firm  
10 known for maintaining a portfolio concentrated in distressed securities, typically consisting of  
11 the debt of bankrupt or near-bankrupt companies. It is widely considered a “vulture fund.” As a  
12 result of Elliott Management’s purchase of Barnes & Noble, the book retailer’s stock – publicly  
13 traded on the NYSE since 1993 – was delisted in August 2019.

14           4.       Four months before its purchase of Barnes & Noble, in April of 2019, Elliott  
15 Management also purchased the largest book retailer in the UK, Waterstones. Waterstones CEO  
16 Achilles “James” Daunt – credited in a *New York Times* article with steering the British retailer  
17 “out of a death spiral by rethinking every cranny of the company” – would take the helm at  
18 Barnes & Noble the same month Elliott Management purchased it.

19           5.       In an aggressive effort to reverse its fortunes, Barnes & Noble has pursued an  
20 uncompromising course of action designed to cut costs, increase sales, and revamp its public  
21 persona from that of a stale, aging retail operation to that of a fresh and exciting literary sales  
22 enterprise.

23           6.       A profile in *Publisher’s Weekly* (the industry’s leading trade publication),  
24 appearing shortly after Mr. Daunt took the top spot at Barnes & Noble, stated that he believed  
25 the book retailer’s “look has grown stale.” “Chain stores are exciting when they are shiny and  
26 new,” he said. “But they don’t age well.”

27           7.       Barnes & Noble’s strategic makeover under Mr. Daunt, according to an August  
28 8, 2019 profile in the *New York Times*, was designed to mimic Waterstones’s: “Once Mr. Daunt

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1 commences his overhaul of Barnes & Noble, he will again try to turn a large chain into what  
2 looks and feels like a collection of independent bookstores. Again, he will do battle with a  
3 culture of stifling uniformity.”

4 8. According to Mr. Daunt, this strategy entailed “empowering store managers and  
5 other booksellers to create stores that meet the needs of their local communities.” As *Publisher’s*  
6 *Weekly* put it, “improvement will be led by the company’s booksellers.” “Booksellers” is  
7 corporate-speak for Barnes & Noble’s entry-level employees, whose duties entail operating cash  
8 registers, restocking empty shelves, and cleaning restrooms.

9 9. However much the financially-beleaguered company emphasized “bookseller”  
10 empowerment, the tailoring of stores to meet the needs of their communities, and the battle  
11 against uniformity, its cost-saving strategy coincided with and depended on the ruthless and  
12 unscrupulous purging of its workers age 40 and older in violation of federal and California anti-  
13 discrimination laws. As later explained to Ms. Tavres upon her termination—in a line almost  
14 certainly originating at the corporate communications level—Barnes & Noble was no longer  
15 interested in “book people.” “Going forward,” she was told, “we’re only hiring sales people.”

16 10. In its effort to avoid growing “stale” and to foster its “shiny and new” public  
17 image, Barnes & Noble determined that these older workers no longer looked the part. To  
18 accomplish this goal, Barnes & Noble engaged in a campaign of age discrimination. It  
19 terminated its employees age 40 and older and replaced them with a younger workforce. And in  
20 doing so, Barnes & Noble violated these workers’ rights to be free from age discrimination in  
21 the workplace under both federal and California law.

22 **THE PARTIES**

23 11. Ms. Tavres is a U.S. citizen born in 1960 and has been 40 years of age or older at  
24 all pertinent times referenced herein. Ms. Tavres currently resides in Hayward, California and  
25 has resided in California at all pertinent times referenced herein.

26 12. Barnes & Noble is a Delaware corporation with its principal executive offices  
27 located at 122 Fifth Avenue, in New York, New York. Barnes & Noble is one of the nation’s  
28 largest booksellers. Its business consists of the sale of trade books (hardcover and paperback

1 titles), mass market paperbacks, children’s books, eBooks and other digital content, bargain  
2 books, textbooks, magazines, gifts, café products and services, educational toys and games,  
3 music, and movies. It conducts these sales through its bookstores and online through its website  
4 located at www.barnesandnoble.com. According to documents filed with the SEC, as of April  
5 2019, Barnes & Noble operated 627 bookstores in all fifty states and employed approximately  
6 24,000 employees (7,000 full-time and 17,000 part-time).

7 **JURISDICTION AND VENUE**

8 13. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 29  
9 U.S.C. 626(c).

10 14. This Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a)  
11 because the amount in controversy exceeds \$75,000, exclusive of interest and costs, and is  
12 between citizens of different states.

13 15. This Court has supplemental jurisdiction over Ms. Tavres’s state law claims  
14 pursuant to 28 U.S.C. § 1367 because that claim arises out of the same operative facts as her  
15 federal claims and forms part of the same case or controversy.

16 16. This Court has personal jurisdiction over Barnes & Noble because Barnes &  
17 Noble engages in continuous and systematic business contacts within the State of California and  
18 maintains a substantial physical presence in this State, including by operating 69 stores in  
19 California and about a dozen stores in the Northern District. In addition, this Court has personal  
20 jurisdiction over Barnes & Noble because the causes of action set forth herein arise from or  
21 relate to Barnes & Noble’s contacts in this forum.

22 17. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) because a  
23 substantial part of the events or omissions giving rise to the claims occurred in this district.  
24 Assignment in the Oakland or San Francisco divisions is proper pursuant to Civil Local Rule 3-  
25 2(c) because a substantial part of the events giving rise to Ms. Tavres’s claims occurred in those  
26 divisions. The action arises in the County of Alameda, which is served by the San Francisco and  
27 Oakland divisions. See Civil Local Rule 3-2(d).

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**FACTUAL ALLEGATIONS**

1  
2 18. From 2006 to 2011, Ms. Tavres served as a Community Relations Manager  
3 (“CRM”) at a Barnes & Noble bookstore located in Oakland, California. From 2011 to 2014, she  
4 served in that position at a Barnes & Noble bookstore in Emeryville, California. In her role as a  
5 CRM, Ms. Tavres was responsible for planning events and activities designed to generate  
6 goodwill for Barnes & Noble within the community in which her assigned store was located,  
7 increase store traffic, and ultimately drive sales for that store. These events and activities  
8 included book fairs, literary readings, author meet-and-greets, book club meetings, children’s  
9 story times, and the like. Ms. Tavres and her CRM cohort’s other key responsibilities included  
10 making institutional sales, corporate sales, and sales to educators.

11 19. Ms. Tavres was a highly successful employee. She received glowing performance  
12 reviews and was consistently provided with annual raises to her base pay in recognition of her  
13 performance. Ms. Tavres was never subject to reprimand or discipline for any reason  
14 whatsoever during the period of her nearly 13-year employment with Barnes & Noble. On the  
15 contrary, she was a top performer. In her 2009-2010 performance review, her manager stated:  
16 “You have been in the top 3 stores for the past three years, and have always been a team player  
17 in assisting other stores and training new CRMs.” In her 2013-2014 performance review, her  
18 manager stated: “Barb has continued to do an outstanding job in delivering institutional sales. . .  
19 . Barb is a pleasure to work with and I look forward to many more years of success. . . . Year  
20 over year Barb has delivered excellent results with her institutional sales.”

21 20. Effective June 29, 2014, Barnes & Noble changed the job title of its CRMs.  
22 Going forward, CRMs became known as Community Business Development Managers  
23 (“CBDMs”).

24 21. Notwithstanding the formal change to her job title and description, from June 29,  
25 2014 to September 11, 2019, Ms. Tavres served as a CBDM at the same Barnes & Noble  
26 bookstore in Emeryville, California in which she had served as a CRM since 2011. Her duties  
27 and responsibilities remained largely the same.  
28

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1           22. Ms. Tavres continued to excel at Barnes & Noble, as reflected by her continued  
2 outstanding performance reviews. For example, in her 2015-2016 performance review, her  
3 manager stated: “Barb you have built the largest CBDM business in the district, totaling over  
4 \$400K in total CBDM sales. Furthermore, you have had several sales for the store which do not  
5 directly affect your metrics [i.e., she made sales that did not count toward her sales goal]. For  
6 instance, you have had multiple bulk gift card sales in the last year, and the store nearly make  
7 [sic] gift card goal, finishing second in the district to plan, based on your strong efforts.” The  
8 manager concluded: “Barbara, you have been a model for the CBDM position in our district. . . .  
9 [Y]ou had a strong year leading the CBDM business and you are a key contributor to the success  
10 of the Emeryville store.”

11           23. In recognition of Ms. Tavres’s excellent performance, in June 2016 Barnes &  
12 Noble named her the winner of its “Above & Beyond” award, stating: “Barbara Tavres has  
13 exceeded her previous year’s sales every year. She is a top performer in her role. . . . Last year,  
14 she brought in almost \$700,000 in sales, making her one of the top CBDMs in the region.”

15           24. Despite her nearly 13 years of exceptional service for Barnes & Noble, on  
16 September 9, 2019, Barnes & Noble employees Phil Alexander (her District Manager) and  
17 Brandy Albright (her Store Manager) informed Ms. Tavres during a closed-door meeting in Ms.  
18 Albright’s office that Ms. Tavres was being terminated effective September 11, 2019. When Mr.  
19 Alexander and Ms. Albright informed Ms. Tavres that she was being terminated, they stated that  
20 they were sorry to lose her because she was an exceptional employee and that they would be  
21 happy to give her a glowing referral, but that they had “no choice” but to “let her go.” Mr.  
22 Alexander and Ms. Albright did not detail the reasons for terminating Ms. Tavres, but Ms.  
23 Tavres understood that the formal, pretextual reason for her termination was that she had failed  
24 to meet her sales goal.

25           25. The purported reason for Ms. Tavres’s termination—i.e., that she had failed to  
26 meet her sales goal for FY 2019—given to Ms. Tavres and many similarly situated older  
27 workers required to meet such “sales goals,” was designed to appear as a facially neutral means  
28 of terminating older employees. But the real reason for her discharge—and the formal and

1 constructive discharge of other employees similarly situated—was discriminatory animus based  
2 on age.

3 26. Earlier on September 9—just prior to terminating Ms. Tavres—Mr. Alexander  
4 and other management-level Barnes & Noble employees had participated in a recurring weekly  
5 teleconference. During that teleconference, Mr. Alexander informed the other participants of the  
6 following corporate directive: “Look, we’re no longer hiring book people. Going forward, we’re  
7 only hiring sales people.” That is, consistent with this corporate directive to purge Barnes &  
8 Noble of its “book people” (which was code for older workers) and to replace them with “sales  
9 [or marketing] people” (which was code for younger workers), Mr. Alexander called his  
10 meeting with Ms. Tavres and terminated her—despite her sterling record of sales for Barnes &  
11 Noble, which over a 13-year period amounted to millions of dollars. One of Ms. Tavres’s  
12 colleagues was distraught and heartbroken upon learning that Ms. Tavres was being terminated  
13 informed Ms. Tavres of the directive to rid the company of its “book people.”

14 27. Ms. Tavres is aware of at least two younger employees who were hired to replace  
15 older employees terminated in this concerted campaign of age discrimination. Both were, at the  
16 time they were hired, in their early-to-mid 20s. Both were trained by employees age 40 years of  
17 age or older and both replaced employees 40 years of age or older. Neither had any sales  
18 experience prior to being hired as CBDMs, despite Barnes & Noble’s standard job qualifications  
19 for CBDMs requiring “a minimum of 2 years of outbound sales experience.”

20 28. The first was hired as a CBDM in or around 2016. The second was hired as a  
21 CBDM about six months to a year later and was trained by—and then replaced—Ms. Sandy  
22 Graves, another former CBDM who was age 40 or older at all relevant times, and was  
23 eventually promoted to Marketing Business Development Manager (MBDM)—a position for  
24 which Ms. Tavres was passed over about a year before she was terminated.

25 29. Rudy Romero, who managed Ms. Tavres’s store in Emeryville, was empowered  
26 by District Manager Phil Alexander to harass, intimidate, and ultimately terminate or  
27 constructively terminate Barnes & Noble employees age 40 and older. Mr. Romero did so by,  
28 among other things, sabotaging those employees’ ability to effectively do their jobs by either

1 interfering with their duties or mistreating their customers and clients with whom they needed to  
2 maintain professional relationships in order meet their sales goals and keep their jobs. Mr.  
3 Alexander’s response to Mr. Romero’s behavior in those instances was to effectively ignore it or  
4 otherwise give Mr. Romero a proverbial slap on the wrist—thereby tacitly approving of and  
5 encouraging such sabotage.

6 30. Ms. Tavres response to Mr. Romero’s sabotage was consummately  
7 professional—she would communicate her concerns to Mr. Romero’s superior, Mr. Alexander.  
8 In one such communication following a particularly unprofessional interaction between Mr.  
9 Romero and one of Ms. Tavres’s important institutional clients, she summed up her concerns  
10 and described her business philosophy as follows: “I would just like to know how we can make  
11 Rudy understand that building relationships is EVERYTHING! My bottom line is: love,  
12 community and building strong relationships, which = sales.”

13 31. Mr. Alexander’s response to these two incidents was to say he would take care of  
14 it or that he would talk to Mr. Romero about it. In any event, on information and belief, Mr.  
15 Romero was not disciplined for this behavior.

16 32. On September 24, 2019, Ms. Tavres requested, in writing, a copy of her  
17 personnel file from Brandy Albright. Ms. Albright responded and indicated that she would “pass  
18 [the request] along to HR.” Ms. Tavres has not received her personnel file. Because it has been  
19 more than 30 days since Ms. Tavres issued her written request to Barnes & Noble, Barnes &  
20 Noble has violated California Labor Code § 1198.5.

### 21 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

22 33. On or about October 28, 2019, Ms. Tavres filed a complaint against Barnes &  
23 Noble with the DFEH (Matter No. 201910-08072728), cross-filed with the EEOC (Charge No.  
24 555-2020-00164C). The administrative complaint asserted class and collective claims for age  
25 discrimination in employment under the ADEA and FEHA. The DFEH issued a “right to sue”  
26 notice on October 28, 2019 and Ms. Tavres received the notice on the same day. The EEOC  
27 issued a “right to sue” notice on November 15, 2019 and Ms. Tavres received the notice on  
28



1 November 19, 2019. Accordingly, Ms. Tavres has exhausted her administrative remedies and  
2 this complaint is timely.

3 **ADEA COLLECTIVE ALLEGATIONS**

4 34. With respect to her ADEA claims and pursuant to 29 U.S.C. § 216(b), Ms. Tavres brings  
5 this case as a collective action on behalf of herself and all other similarly situated individuals:  
6 i.e., any individual employed by Barnes & Noble in the U.S., was terminated by Barnes &  
7 Noble, was age 40 or older at the time of termination, and whose termination became effective  
8 during the Class Period (defined below). Together, these individuals were the targets and/or  
9 victims of a decision, series of decisions, policy, practice, or plan infected by discrimination.

10 35. Barnes & Noble has engaged in a systematic pattern and practice of intentionally  
11 discriminating against individuals, including Ms. Tavres, who are age 40 or older by terminating  
12 their employment because of their age.

13 36. Barnes & Noble has also implemented policies and practices that have a disparate impact  
14 on workers age 40 and older, such that workers age 40 or older are terminated from employment  
15 at a disproportionate rate compared with workers who are under 40 years old.

16 **FEHA CLASS ALLEGATIONS**

17 37. With respect to her FEHA claims and pursuant to Fed. R. Civ. P. 23, Ms.  
18 Tavres brings this lawsuit as a class action on behalf of herself and all similarly situated  
19 former Barnes & Noble employees in California. The proposed class is defined as: All  
20 employees of Barnes & Noble who were actually or constructively discharged within the Class  
21 Period and who were 40 years of age or older when so discharged (“Class Members” or the  
22 “Class”). Defendant, its subsidiaries, officers, directors, managing agents and members of  
23 those persons’ immediate families, the Court, Court personnel, and legal representatives, heirs,  
24 successors or assigns of any excluded person or entity are excluded from the Class.

25 38. The Class Period is defined as the period commencing on the date that is within  
26 one (1) year prior to the filing of this action and ending at the time this action proceeds to final  
27 judgment or settles (the “Class Period”).  
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1           39. Subject to additional information obtained through further investigation and  
2 discovery, the foregoing definition of the Class may be expanded or narrowed by amendment  
3 or amended complaint. Plaintiff further reserves the right to name additional Class  
4 representatives and to identify subclasses as necessary and appropriate.

5           40. **Numerosity.** The Class for whose benefit this action is brought is so numerous  
6 that joinder of all Class Members is unfeasible and impracticable. While Plaintiff does not  
7 presently know the exact number of Class Members, Plaintiff is informed and believes that the  
8 entire Class consists of potentially hundreds of individuals and that those Class Members can  
9 be readily determined and identified through Defendant’s files and other documents  
10 maintained by Defendant and, if necessary, through appropriate discovery.

11           41. **Typicality.** Plaintiff’s claims are typical of the claims of the members of the  
12 Class. Plaintiff, like all Class Members, was discharged because of her age. Furthermore, the  
13 factual bases of Defendant’s misconduct are common to all Class Members and represent a  
14 common thread of unlawful conduct resulting in injury to all members of the Class.

15           42. **Commonality.** Common questions of law and fact exist as to all members of  
16 the Class and predominate over any questions solely affecting individual members. Issues of  
17 law and fact common to the Class include:

- 18           a. Whether Defendant’s conduct violated the ADEA’s prohibition of disparate  
19 treatment discrimination;
- 20           b. Whether Defendant’s conduct violated the ADEA’s prohibition of disparate  
21 impact discrimination;
- 22           c. Whether Defendant’s conduct violated FEHA’s prohibition of disparate  
23 treatment discrimination;
- 24           d. Whether Defendant’s conduct violated FEHA’s prohibition of disparate impact  
25 discrimination;
- 26           e. Whether Class Members have been damaged by Defendant’s actions or conduct;
- 27           f. The effect upon and the extent of injuries suffered by the Class and the  
28 appropriate amount of compensation;

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- 1           g.    Whether declaratory and injunctive relief are appropriate to curtail Defendant’s
- 2                   conduct as alleged herein; and
- 3           h.    Whether Defendant acted with malice, oppression and/or fraud thereby
- 4                   justifying an award of punitive damages;
- 5           i.    Whether Defendant acted with willfully, i.e., with knowledge or intention,
- 6                   thereby justifying an award of liquidated damages;

7           43.   **Adequacy.** Ms. Tavres will fairly and adequately represent the interests of the  
8    Class and has no interests adverse to or in conflict with other Class Members. Ms. Tavres’s  
9    retained counsel will vigorously prosecute this case, have previously been designated class  
10   counsel in cases in the State and Federal courts of California, and are highly experienced in  
11   employment law, class and complex, multi-party litigation.

12           44.   **Superiority.** A class action is superior to other available methods for the fair  
13   and efficient adjudication of this controversy since, among other things, joinder of all Class  
14   Members is impracticable, and a class action will reduce the risk of inconsistent adjudications  
15   or repeated litigation on the same conduct. Further, the expense and burden of individual  
16   lawsuits would make it virtually impossible for Class Members, Defendant, or the Court to  
17   cost-effectively redress separately the unlawful conduct alleged. Thus, absent a class action,  
18   Defendant would unjustly retain the benefits of its wrongdoing and Class Members would go  
19   without redress for the illegal and reprehensible discrimination they suffered. Plaintiff knows  
20   of no difficulties to be encountered in the management of this action that would preclude its  
21   maintenance as a class action, either with or without sub-classes.

22           45.   Adequate notice can be given to Class Members directly using information  
23   maintained in Defendant’s records, or through notice by publication.

24           46.   Accordingly, class certification is appropriate under Fed. R. Civ. P. 23.

25                                                           **COUNT I**

26           *(Disparate Treatment – Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq.)*

27                                                           (On behalf of Plaintiff and similarly situated individuals)

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1 47. Plaintiff re-alleges and incorporates the above paragraphs by reference as fully  
2 set forth herein.

3 48. The ADEA claims herein are brought by Plaintiff and all similarly situated  
4 individuals.

5 49. Under the ADEA, 29 U.S.C. § 621 *et seq.*, it is unlawful for an employer to, *inter*  
6 *alia*, discharge any individual or otherwise discriminate against any individual with respect to  
7 her compensation, terms, conditions, or privileges of employment because of such individual's  
8 age.

9 50. Throughout the liability period, Barnes & Noble has engaged in a pattern and  
10 practice of discriminating against individuals who are age 40 or older by knowingly and  
11 intentionally, through its employment practices, treating individuals who are 40 years of age or  
12 older adversely and treating individuals who are under the age of 40 preferentially.

13 51. As a direct and proximate result of Barnes & Noble's intentional discrimination,  
14 Plaintiff and similarly situated individuals have been discharged and otherwise discriminated  
15 against with respect to their compensation, terms, conditions, or privileges of employment  
16 because of their age.

17 52. Barnes & Noble's actions constitute unlawful discrimination in violation of the  
18 ADEA.

19 **COUNT II**

20 *(Disparate Impact – Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq.)*

21 *(On behalf of Plaintiff and similarly situated individuals)*

22 53. Plaintiff re-alleges and incorporates the above paragraphs by reference as fully  
23 set forth herein.

24 54. The ADEA claims herein are brought by Plaintiff and all similarly situated  
25 individuals.

26 55. Under the ADEA, 29 U.S.C. § 621 *et seq.*, it is unlawful for an employer to, *inter*  
27 *alia*, implement an otherwise facially neutral employment policy, practice, or procedure which  
28 has a disproportionate adverse effect on people 40 years of age or older.

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1 56. Throughout the liability period, Barnes & Noble has used policies, practices, and  
2 procedures which have disproportionately affected employees age 40 and older. These include  
3 but are not limited to: setting sales goals for its CBDMs; arbitrarily increasing those sales goals  
4 nearly without exception year over year; denying CBDMs eligibility for commission pay by  
5 placing them on “improvement plans” for not meeting sales goals; and finally firing CBDMs for  
6 not meeting those goals. These policies, practices, and procedures are not job-related for the  
7 position at issue, not consistent with business necessity, and not based on any other reasonable  
8 factor.

9 57. These policies, practices, and procedures have disproportionately disparately  
10 impacted employees age 40 and older.

11 58. As a direct and proximate result of Barnes & Noble’s policies, practices, and  
12 procedures, Plaintiff and similarly situated individuals have been discharged and otherwise  
13 discriminated against with respect to their compensation, terms, conditions, or privileges of  
14 employment because of their age.

15 59. Barnes & Noble’s actions constitute unlawful discrimination in violation of the  
16 ADEA.

17 **COUNT III**

18 *(Disparate Treatment – Fair Employment and Housing Act, Cal. Gov. Code § 12940 et seq.)*

19 (On behalf of Plaintiff and similarly situated individuals)

20 60. Plaintiff re-alleges and incorporates the above paragraphs by reference as fully  
21 set forth herein.

22 61. The FEHA claims herein are brought by Plaintiff and all similarly situated  
23 individuals.

24 62. The FEHA, Cal. Gov. Code § 12940 *et seq.*, prohibits an employer from  
25 discriminating on the basis of age.

26 63. Barnes & Noble is an employer covered by FEHA.

27 64. Plaintiff and similarly situated individuals were employees of Barnes & Noble.  
28

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1 65. Barnes & Noble formally and/or constructively discharged Plaintiff and similarly  
2 situated individuals.

3 66. Plaintiff and similarly situated individuals were age 40 or older at the time of  
4 their discharge.

5 67. The age of Plaintiff and similarly situated individuals was a substantial  
6 motivating reason for their discharge.

7 68. As a direct and proximate result of Barnes & Noble’s conduct, Plaintiff and  
8 similarly situated individuals were harmed.

9 69. Barnes & Noble’s conduct was a substantial factor in causing harm to Plaintiff  
10 and similarly situated individuals.

11 70. Barnes & Noble’s actions constitute unlawful discrimination in violation of  
12 FEHA.

13 **COUNT IV**

14 *(Disparate Impact – Fair Employment and Housing Act, Cal. Gov. Code § 12940 et seq.)*

15 (On behalf of Plaintiff and similarly situated individuals)

16 71. Plaintiff re-alleges and incorporates the above paragraphs by reference as fully  
17 set forth herein.

18 72. The FEHA claims herein are brought by Plaintiff and all similarly situated  
19 individuals.

20 73. The FEHA, Cal. Gov. Code § 12940 *et seq.*, prohibits an employer from  
21 discriminating on the basis of age.

22 74. Barnes & Noble is an employer covered by FEHA.

23 75. Plaintiff and similarly situated individuals were employees of Barnes & Noble.

24 76. Barnes & Noble has and had an employment policy, practice, and/or procedure  
25 that had a disproportionate, adverse effect on its employees age 40 and older.

26 77. Plaintiff and similarly situated individuals are age 40 and older.

27 78. Plaintiff and similarly situated individuals were harmed.  
28

1 79. Bamed & Noble's policy, practice, and/or procedure was a substantial factor in  
2 causing harm to Plaintiff and similarly situated individuals.

3 80. Barnes & Noble's actions constitute unlawful discrimination in violation of  
4 FEHA.

5 **DEMAND FOR JURY TRIAL**

6 81. Pursuant to Fed. R. Civ. P. 38(b), Plaintiff, on behalf of herself and all others  
7 similarly situated, hereby demands a trial by jury of all claims asserted in this complaint so  
8 triable.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, prays for  
11 judgment in her favor and relief against Defendant, as follows:

- 12 (a) As to the first and second causes of action, an order certifying this case as a collective  
13 action and appointing Plaintiff and her counsel to represent Plaintiff and all others  
14 similarly situated;
- 15 (b) As to the third and fourth causes of action, an order certifying this case as a class action  
16 and appointing Plaintiff and her counsel to represent the Class;
- 17 (c) For injunctive relief restraining further acts of discrimination by Defendant;
- 18 (d) For injunctive relief reinstating Plaintiff and Class members;
- 19 (e) For declaratory relief in the form of a declaration that Defendant's employment practices  
20 as alleged herein are illegal because they discriminate on the basis of age;
- 21 (f) Back pay and front pay;
- 22 (g) Liquidated damages equal to the amount of back pay;
- 23 (h) Actual damages;
- 24 (i) Compensatory damages including, but not limited to, damages for pain and suffering;
- 25 (j) Punitive and exemplary damages;
- 26 (k) Attorney's fees and costs;
- 27 (l) Statutory penalties in the amount of \$750 for violation of Cal. Labor Code § 1198.5;
- 28

1 (m) An injunction directing Barnes & Noble to comply with Cal. Labor Code § 1198.5 and  
2 costs and attorney's fees related thereto; and

3 (n) For all such other and further relief as the Court may deem just, proper, and equitable.  
4

5 Dated: November 20, 2019

Respectfully submitted,

6 PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP  
7

8 By /s/ David M. Given

9 David M. Given

10 Nicholas A. Carlin

11 Brian S. Conlon

12 Attorneys for Plaintiff  
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PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP  
39 Mesa Street, Suite 201 – The Presidio  
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Telephone: (415) 398-0900



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
BARBARA TAVRES, an individual, on behalf of herself and all others similarly situated,
(b) County of Residence of First Listed Plaintiff Alameda County
(c) Attorneys (Firm Name, Address, and Telephone Number)
Phillips, Erlewine, Given & Carlin LLP
39 Mesa Street, Suite 201 - The Presidio, San Francisco, CA 94129
(415) 398-0900

DEFENDANTS
BARNES & NOBLE, INC. a Delaware corporation,
County of Residence of First Listed Defendant New York
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
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
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)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT
PERSONAL INJURY
REAL PROPERTY
CIVIL RIGHTS
PRISONER PETITIONS
FORFEITURE/PENALTY
LABOR
IMMIGRATION
BANKRUPTCY
PROPERTY RIGHTS
SOCIAL SECURITY
FEDERAL TAX SUITS
OTHER STATUTES

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):
29 U.S.C. § 621 et seq.
Brief description of cause:
Age discrimination.

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMAND \$ 75,000.01
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

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

DATE 11/20/2019
SIGNATURE OF ATTORNEY OF RECORD /s/ David M. Given

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE