

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

*In re Barnes & Noble Pin Pad
Litigation*

)
) Case No. 12-cv-8617
)
) Hon. Andrea R. Wood
)
) Magistrate Judge Schenkier
)
)

**NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF
PLAINTIFFS’ OPPOSITION TO BARNES & NOBLE’S MOTION TO DISMISS
THE FIRST AMENDED CONSOLIDATED CLASS ACTION COMPLAINT**

PLEASE TAKE NOTICE that plaintiffs Ray Clutts, Heather Dieffenbach, Jonathan Honor, and Susan Winstead (collectively, “Plaintiffs”), individually and on behalf of all others similarly situated, by and through counsel, hereby submit as supplemental authority in opposition to Barnes & Noble’s pending Motion to Dismiss Plaintiffs’ First Amended Consolidated Class Action Complaint (ECF No. 59) the recent decision of the United States Court of Appeals for the Sixth Circuit in the consolidated appeal of *Galaria v. Nationwide Mutual Insurance Company*, Case No. 15-3386, and *Hancox v. Nationwide Mutual Insurance Company*, Case No. 15-3387, (collectively, “*Galaria*”), a copy of which is attached hereto as Exhibit 1.

The Court of Appeals for the Sixth Circuit reversed the trial court’s determination that the plaintiffs lacked Article III standing. It held that the plaintiffs had standing, aligning itself with the Seventh Circuit’s reasoning in *Remijas v. Neiman Marcus Group, LLC*, 794 F.3d 688 (7th Cir. 2015) and the Ninth Circuit in *Krottner v. Starbucks Corp.*, 628 F.3d 1139 (9th Cir. 2010), and distinguishing *Reilly v. Ceridian Corp.*, 664 F.3d 38 (3d Cir. 2011).

First, the *Galaria* court determined that “Plaintiffs’ allegations of a substantial risk of harm, coupled with reasonably incurred mitigation costs, are sufficient to establish a cognizable

Article III injury at the pleading stage of the litigation” where ill-intentioned criminals gained control of their data. Slip op. at 6–7. Next, the plaintiffs adequately alleged that their injuries were fairly traceable to the defendant’s conduct. The hackers exploited Nationwide’s allegedly lax security and stole the plaintiffs’ data. *Id.* at 10. Lastly, the plaintiffs established that a favorable ruling would redress their injuries. *Id.*

Galaria is further support for Plaintiffs’ standing here based on the imminent threat of injury and time and money spent to mitigate the imminent threat. As in *Galaria*, Plaintiffs allege that Barnes & Noble’s security failures enabled unauthorized persons—thieves—to steal Plaintiffs’ payment card information and the payment card information of customers at sixty-three Barnes & Noble locations. FAC ¶¶ 5–6. Plaintiffs took reasonable steps to mitigate the risk to their financial accounts, some of which were in fact recommended by Barnes & Noble. *See* FAC ¶¶ 73–74. Their injuries are fairly traceable to the data breach, and Barnes & Noble has acknowledged an increase in unauthorized purchases on compromised cards subsequent to the data breach. FAC ¶¶ 17, 52. Plaintiffs’ claims are redressable because they seek an award of nominal and compensatory damages, restitution, and injunctive relief.

For these reasons and the reasons set forth in Plaintiffs’ Opposition to Barnes & Noble’s Motion to Dismiss the First Amended Consolidated Class Action Complaint, Barnes & Noble’s motion to dismiss should be denied.

Date: September 12, 2016

Respectfully submitted,

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Certificate of Service by Electronic Means

The undersigned hereby certifies that the preceding document was caused to be served electronically on September 12, 2016, with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

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