

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
J.D. SALINGER, individually, and as	:	
TRUSTEE OF THE J.D. SALINGER	:	09 Civ. 05095 (DAB)
LITERARY TRUST,	:	
	:	
Plaintiff,	:	
	:	
-against-	:	
	:	REPLY TO COUNTERCLAIM
FREDRIK COLTING, writing under the name	:	
JOHN DAVID CALIFORNIA; WINDUPBIRD	:	
PUBLISHING LTD.; NICOTEXT A.B.; and	:	
ABP, INC. d/b/a SCB DISTRIBUTORS, INC.,	:	
	:	
Defendants.	:	
-----X	:	

Plaintiff J.D. Salinger (“Salinger”), by his attorneys, Davis Wright Tremaine LLP, as and for his reply to the August 17, 2009 counterclaim (“Counterclaim”) of defendants Fredrik Colting, writing under the name John David California, Windupbird Publishing Ltd. and ABP, Inc. d/b/a SCB Distributors, Inc. (“Counter-Defendants”), respectfully alleges as follows:

**COUNTERCLAIM OF DEFENDANTS COLTING, WINDUPBIRD AND SCB**

108. To the extent that the allegations of paragraph 108 are deemed to be allegations of law, plaintiff is not required to plead thereto; to the extent the allegations of the said paragraph are deemed to be allegations of fact, denies each and every allegation thereof.

109. To the extent that the allegations of paragraph 109 are deemed to be allegations of law, plaintiff is not required to plead thereto; to the extent the allegations of the said paragraph are deemed to be allegations of fact, admits that Counter-Defendants have infringed Salinger’s copyright in the *Catcher In The Rye* and the character Holden Caulfield and that Counter-

Defendants have engaged in common law unfair competition, and denies that the counterclaim “arises” therefrom.

### **JURISDICTION AND VENUE**

110. To the extent that the allegations of paragraph 110 are deemed to be allegations of law, plaintiff is not required to plead thereto; to the extent the allegations of the said paragraph are deemed to be allegations of fact, denies each and every allegation thereof.

111. To the extent that the allegations of paragraph 111 are deemed to be allegations of law, plaintiff is not required to plead thereto; to the extent the allegations of the said paragraph are deemed to be allegations of fact, denies each and every allegation thereof.

### **PARTIES**

112. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 112.

113. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 113.

114. Admits, upon information and belief, the allegations of paragraph 114.

115. Admits the allegations of paragraph 115.

### **FACTS**

116. Admits, upon information and belief, that Colting is the author of the Sequel under the pseudonym J.D. California, which Counter-Defendants published.

117. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 117.

118. Denies each and every allegation of paragraph 118, except refers to the Complaint for a full and complete recitation of the contents thereof.

119. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 119, except refers to the Answer for a full and complete recitation of the contents thereof.

120. To the extent the allegations of 120 are deemed to be allegations of law, plaintiff is not required to plead thereto; to the extent the allegations of the said paragraph are deemed to be allegations of fact, denies each and every allegation thereof.

121. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 121.

122. To the extent the allegations of paragraph 122 are deemed to be allegations of law, plaintiff is not required to plead thereto; to the extent the allegations of the said paragraph are deemed to be allegations of fact, denies each and every allegation thereof.

### **COUNTERCLAIM**

123. For his answer to paragraph 123, repeats and realleges his responses set forth in paragraphs 108 through and including 122 hereinabove, as if the same were fully set forth herein.

124. Denies each and every allegation of paragraph 124, except refers to the Complaint for a full and complete recitation of the contents thereof.

125. Denies each and every allegation of paragraph 125, except refers to the Complaint for a full and complete recitation of the contents thereof.

126. To the extent the allegations of paragraph 126 are deemed to be allegations of law, plaintiff is not required to plead thereto; to the extent the allegations of the said paragraph are deemed to be allegations of fact, admits that plaintiff has asserted the claims set forth in the Complaint against all defendants.

127. Denies each and every allegation of paragraph 127.

128. To the extent the allegations of paragraph 128 are deemed to be allegations of law, plaintiff is not required to plead thereto; to the extent the allegations of the said paragraph are deemed to be allegations of fact, denies each every allegation thereof.

129. To the extent the allegations of paragraph 129 are deemed to be allegations of law, plaintiff is not required to plead thereto; to the extent the allegations of the said paragraph are deemed to be allegations of fact, denies each every allegation thereof.

130. To the extent the allegations of paragraph 130 are deemed to be allegations of law, plaintiff is not required to plead thereto; to the extent the allegations of the said paragraph are deemed to be allegations of fact, denies each every allegation thereof.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

131. The Counterclaim fails, in whole or in part, to state a claim upon which relief may be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

132. The Counterclaim is moot because the alleged controversy underlying the request for declaratory judgment is already before the jurisdiction of this Court.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

133. This court lacks subject matter jurisdiction over the Counterclaim.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

134. By way of defense, plaintiff repeats and reincorporates by reference herein, his Complaint.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

135. The Counterclaim does not plead an actual case or controversy.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

136. By pleading the Counterclaim, Counter-Defendants do not succeed in shifting any burden of proof applicable to any of the claims in either the Complaint or the Counterclaim.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

137. Counter-Defendants have unclean hands and, as such, cannot invoke the jurisdiction of this court sitting in equity.

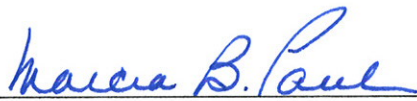
**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

138. To the extent the Counterclaim pleads "economic and irreparable harm" to Counter-Defendants, any such claim would be issue-precluded.

WHEREFORE, plaintiff respectfully requests that this Court dismiss the Counterclaim in its entirety, with prejudice, and award plaintiff all of the remedies sought in the Complaint, and for such other and further relief as this Court shall seem just and proper.

Dated: New York, New York  
September 14, 2009

DAVIS WRIGHT TREMAINE LLP

By:   
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