

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT NEW YORK

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J.D. Salinger, individually and as  
Trustee of the J.D. Salinger Literary Trust,

Plaintiff,

- against -

JOHN DOE, writing under the name JOHN  
DAVID CALIFORNIA; WINDUPBIRD  
PUBLISHING LTD.; NICOTEXT A.B.; and  
ABP, INC. d/b/a SCB Distributors Inc.,

Defendants.  
----- x

09 Civ. 5095 ( ) DAB

ECF Case

**AFFIDAVIT**

STATE OF NEW YORK )

: ss.:

COUNTY OF NEW YORK )

PHYLLIS WESTBERG, being duly sworn, deposes and says:

1. I am the President of Harold Ober Associates, Inc. ("Ober"), a literary agency organized and existing under the laws of the State of New York which has, for over 68 years, represented the literary interests of J.D. Salinger, plaintiff in the above-captioned action. I am fully familiar with the facts and circumstances set forth hereinafter.

2. I submit this affidavit in support of Mr. Salinger's application for a preliminary injunction enjoining and restraining the defendants J.D. California ("California"), Windupbird Publishing Ltd. ("Windupbird"), Nicotext A.B. ("Nicotext") and ABP, Inc. d/b/a SCB Distributors Inc. ("SCB") from manufacturing, publishing, distributing, advertising, selling, or otherwise disseminating a book currently available for purchase online in the United States entitled *60 Years Later: Coming Through the Rye* (the "Sequel"), and scheduled to be available

in bookstores in the United States on September 15, 2009, which book is and is being marketed as a sequel to J.D. Salinger's acclaimed novel *The Catcher in the Rye* ("*Catcher*").

3. This new book is wholly unauthorized by Mr. Salinger or anyone acting on his behalf. To the contrary of any such authorization, as fully explained hereinafter, Mr. Salinger has made it publicly known for many years (and I am well acquainted with his wishes and instructions with regard to same), that he has absolutely no intention of publishing a sequel to *Catcher* or authorizing anyone else to do so. He is adamant in that position and has, over the years, instructed me to take action to ensure that this mandate is followed to the fullest extent permitted by law. Consequently, we have turned down requests by the likes of Harvey Weinstein and Steven Spielberg to make a movie of *Catcher*.

4. I learned from our English counterpart, Gillon Aitken (Mr. Salinger's literary subagent in that country) of the existence of this unauthorized sequel on May 14 and immediately advised Mr. Salinger of its existence. We obtained a copy and concluded that our lawyers should proceed to seek injunctive relief on Mr. Salinger's behalf. As detailed below, in the accompanying affidavit of Marcia B. Paul sworn to this same date ("Paul Aff't"), and in the supporting memorandum of law, this Sequel takes Mr. Salinger's iconic character Holden Caulfield, the narrator of *The Cather in the Rye*, ages him 60 years, and places him in many of the same settings, with many of the same names, family, facts and memories as in the original, and tries to use the same style and distinctive voice for the narration of the tale as in the original. This book is by no means a parody and it does not in any sense comment upon, criticize, or otherwise analyze *Catcher* or Mr. Salinger's writing style. Rather, it is wholesale piracy and, therefore, Mr. Salinger had no choice but to instruct his attorneys to take action.

## **Our Relationship with Salinger**

5. Ober is based in New York and has been in existence since 1929. In addition to Mr. Salinger, we represent many well known authors including F. Scott Fitzgerald, Pearl S. Buck, Agatha Christie, Paul Gallico and Ross Macdonald.

6. We have been Mr. Salinger's literary agency in the United States since about 1940 and I myself have been the principal agent responsible for Mr. Salinger and his copyrighted works since 1990. I have been with Ober since 1969 and I am involved in all aspects of our efforts to exploit and protect Mr. Salinger's copyrights in his works including *Catcher*. I, and those reporting to me, field all requests for permissions with respect to his works; deal with his publishers and negotiate any deals regarding his literary works on his behalf; negotiate renewals of translation agreements for his works worldwide; and police and take such steps as necessary to stop infringements of his copyrights. I consult with him as necessary on these matters.

7. I communicate in writing with Mr. Salinger (he is now totally deaf) frequently. He is currently 90 years of age and has several age-related health problems. Just last week, he broke his hip, required surgery, and is now in a rehabilitation facility. As a consequence, he has become increasingly reliant upon me to manage his literary affairs and protect his interests in accordance with his wishes. Nonetheless, he is fully aware of the existence of this unauthorized sequel, and has authorized me and his lawyers to institute this action to halt this blatant violation of his rights.

### ***The Catcher in the Rye***

8. Ober represented Mr. Salinger in connection with the publication of *Catcher*, when it was first published in 1951 by Little Brown and Company, Inc. ("Little Brown"). Little Brown is incorporated under the laws of this State and maintains its principal place of business here. Since that time, *Catcher* has been one of the most acclaimed novels of all time. Over

35 million copies of it have been sold worldwide. Even today, 58 years after its first publication, *Catcher* is in a category with only a few other books of all time. It has been a perennial presence on high school required reading lists for over 50 years. Copies of various testaments to the commercial success of *Catcher* are annexed hereto as Exhibit A.

9. From the time it was first released, *Catcher* also met with critical acclaim. *Time* magazine, fifty years after publication, named *Catcher* one of the 100 greatest novels written in between 1923 and 2005. In 1998, The Modern Library named *Catcher* the 64<sup>th</sup> greatest English language novel and its readers voted the book its 19<sup>th</sup> favorite novel of all time. In 2008, *The New York Times* stated that “[e]xcept perhaps for Mark Twain, no other American writer has registered with such precision the humor – and the pathos – of false sophistication and the vital banality of big city pretension”. *The New York Review of Books* stated that “[n]o book dealing formally with education is ever likely to influence secondary education so much as *The Catcher In the Rye*”. Copies of these and selected other critical reviews of the novel are annexed hereto as Exhibit B.

10. *Catcher* is the story of Holden Caulfield, narrated by him in his (Salinger’s) distinctive voice and told in flashback. Since Holden tells his own story in his own voice, he appears on every single page, every paragraph and every sentence of *Catcher*. Holden is a disaffected 16-year old boy, who, after he is kicked out of his prep school just prior to Christmas, decides to hang out for a few days in New York City before returning to his parents’ home. He spends a few days meeting people both new and old, wandering from encounter to encounter, never sure of what to do with himself, and constantly drawn back to Central Park. The entire narrative consists of short, choppy sentences and extremely long paragraphs, and reads as if it were dictated in stream of consciousness by one precocious, observant and cynical young man.

While the narrative takes place over only a few days, Holden is prone to digression, so he recounts prior events in the form of frequent and long digressions. Principal characters besides Holden include his high school friends Ackley and Stradlater, his teacher Mr. Spencer, his sister/best friend Phoebe, his deceased brother Allie, and his other brother D.B., who lives in Hollywood. A copy of *Catcher* is annexed to the Paul Aff't, Ex. A.

11. *Catcher* is not Salinger's only work to feature Holden Caulfield. Holden first appeared in a short story, "Slight Rebellion Off Madison", that was published in *The New Yorker* in 1946, and which Salinger later adapted as part of *The Catcher in the Rye*. He has also appeared in other works by Salinger, including the short story "I'm Crazy," published in *Collier's* magazine (December 22, 1945). Holden's family members appear in "Last Day of the Last Furlough", published in *The Saturday Evening Post* (July 15, 1944), "This Sandwich Has No Mayonnaise" (*Esquire*, October 1945), and the unpublished short stories "The Last and Best of the Peter Pans" and "The Ocean Full of Bowling Balls".

12. Because of its immense popularity and continuing vitality, *Catcher* has become the benchmark against which any coming of age story is measured. References in book reviews to *Catcher* and to Holden Caulfield are ubiquitous. Examples of articles demonstrating this are annexed hereto as Exhibit C.

13. On Mr. Salinger's behalf, we have at all times registered and maintained copyright protection for *Catcher*. In or around June 11, 1951, *Catcher* was registered for copyright protection with Registration No. A00000056070/1951-06-11. In or around January 22, 1979, the copyright in *Catcher* was renewed. A copy of that renewal bearing number RE00000018341/1979-01-22 showing that the copyright is valid and subsisting and in good status is annexed hereto as Exhibit D.

14. In 2008, Mr. Salinger decided to create The J.D. Salinger Literary Trust under the laws of the State of New Hampshire. During his lifetime, Mr. Salinger is the sole trustee of that Trust. The copyright in *Catcher* was assigned to the Trust and duly recorded in the Copyright Office. A copy of proof of such recordation is annexed hereto as Exhibit E.

**Salinger's Refusal to Create or Authorize the Creation of Derivatives**

15. Although *Catcher* and the character of Holden Caulfield have a distinctive place in contemporary American culture, neither Salinger nor anyone else (with or without his permission) has written any new narrative for Holden Caulfield or created any works derivative of *Catcher* in the 58 years since the novel's release. For over 50 years, Salinger has been fiercely protective of both his intellectual property and his privacy has been well-documented. He is equally protective of his work. While we continue to oversee the publication of his various works including *Catcher*; *Franny and Zooey*; *Raise High the Roof Beam, Carpenters* and *Seymour, an Introduction*; and *Nine Stories*; Salinger has not published or authorized the publication of any new works since 1965.

16. As early as 1954, Mr. Salinger's publisher, Little Brown, was instructed not to license his short stories for publication in anthologies. He has refused to license any audio rights to *Catcher*. He also refuses to grant film, television or stage adaptations because he feels strongly that he wants his fiction and his characters to remain intact as he wrote them – unstaged, unfilmed and free of outside interpretation by actors, directors, producers, set designers, *etc.* Therefore, other than one 1949 film version of one of his early short stories, Salinger has explicitly instructed us not to permit any adaptations of any of his works, and we have not done so, nor has he. Numerous filmmakers, from Steven Spielberg of Dreamworks to Harvey Weinstein, then at Miramax, have tried unsuccessfully to obtain the rights to make a film version

of *Catcher*. This adamant refusal to allow any manipulation or derivative works of *Catcher* has been well documented in the press; examples are included in Exhibits B and G annexed hereto.

17. Based upon my 40 years as a literary agent and 19 years of representing Mr. Salinger, I have no doubt that if Salinger were, contrary to his stated intention, to write and publish a sequel to *Catcher*, it would command substantial payment, including at least a \$5 million advance.

18. While Salinger's copyright in *Catcher* is potentially therefore quite valuable, it is his wish not to further exploit it. That too goes for Holden Caulfield, the character he created and who narrates *Catcher*. As he told *The Boston Sunday Globe* in a rare 1980 statement: "There's no more Holden Caulfield. Read the book again. It's all there. Holden Caulfield is only a frozen moment in time". A copy of an article referencing that statement is annexed hereto as Exhibit F.

19. To enforce those wishes, Mr. Salinger has instructed me to take legal action on his behalf and retain lawyers to do so on several occasions. In 1974, he instituted action to prevent the distribution of unauthorized copies of a collection of early short stories he had written ("*22 Stories*") and succeeded in obtaining an injunction. In 1987, he took action before this Court to stop the publication of a biography which included numerous quotations from and paraphrases of letters he had written during World War II and was likewise successful. In 2003-2004, through English counsel, he compelled the BBC to agree not to rebroadcast a portion of a program called *The Big Read* which included an unauthorized dramatization of *Catcher*. In 2002, when we learned that a stage adaptation of *Catcher* was in the works at The Brown Bag Theatre Company in San Francisco, I sent a cease and desist letter and that company cancelled the project and apologized in response.

## **We Learn of the Unauthorized Sequel**

20. Given this consistent posture with regard to the refusal to authorize derivative works based on *Catcher*, I was shocked to learn on May 14 from the British literary agent with whom we work on Mr. Salinger's literary properties that a book purporting to be a "sequel" to *Catcher* had just been released in England. Our British counterpart, Gillon Aitken of Aitken Alexander Associates Ltd immediately brought this book to my attention. He had seen an article that day in *The Guardian*, a copy of which is annexed hereto as part of Exhibit G, in which the author, who calls himself J.D. California, unabashedly referred to the book as a sequel and the principal character in it as Holden Caulfield.

21. After discussions with Mr. Salinger about this development, I instructed Mr. Aitken to try to get in contact with the author and/or publisher and demand that they cease publication and distribution of the book. We suspected that J.D. California may be a pseudonym, as we could not find any reference to his existence prior to May 2009. We have been unable to date to learn his true identity or precise whereabouts, although a May 30 online article in the *Daily Telegraph* has his photograph and describes him as a "New York based author". A copy of that article is annexed hereto as Exhibit H. California claims, in a biography posted online on his publisher's website, to be a Swedish-American travel writer and former gravedigger who became fascinated with *Catcher* when he discovered a "well-thumbed" copy of it in an abandoned cabin in Cambodia. A copy of that biography, which appears to have been created for the purposes of publication and promotion of this book, is annexed hereto as Exhibit I.

22. Mr. Aitken was ultimately able to get in touch with a Swedish literary agency, Lennart Sane Agency A.B., which claims to represent the publisher and author for purposes of sale of foreign rights in the Sequel. It is based in Karlshamn, Sweden and has a branch office in



Marbella, Spain. A copy of parts of the section of the Lennart Sane website is annexed hereto as Exhibit J.

23. Through Lennart Sane, we learned that the publisher of this book is also a Swedish company, defendant Nicotext, which maintains a website at [www.nicotext.com](http://www.nicotext.com), a copy of parts of which is annexed hereto as Exhibit K. It “currently publish[es] ... books in the U.S., U.K, Sweden, Norway, Denmark, Australia, and South Africa”. That website lists the Lennart Sane Agency as a contact for international rights, and a company called Turnaround in the United Kingdom and SCB Distributors in the United States, each for sales to book sellers.

24. In response to Mr. Aitken’s cease and desist email to Lennart Sane, Mr. Phillip Sane advised that the publisher would not cease publication as the Sequel “is a completely freestanding novel that has nothing to do with Catcher In The Rye”. Mr. Sane also claimed that the book had been falsely described in the British press and offered to send a copy to Mr. Aitken. Copies of the email exchange between Mr. Aitken and Mr. Sane are annexed hereto as Exhibit L.

25. According to the copyright page of the Sequel (Paul Aff’t, Ex. B, p. 4), the publisher is Windupbird Publishing Ltd. The address linked on Windupbird’s website appears to be for a box at a Mailboxes, Etc. in London, England. The copyright is claimed in the name of John David California under the United Kingdom Copyright, Designs and Patents Act of 1988. The book purports to be edited by one Beth Bruno and credits “Structural Development” to one Jaclyn Bond. We have also learned that the publicist for this book is Midas Public Relations in London, England.

26. An internet search identified Beth Bruno as apparently based in the New York area; a copy of her website page describing her book editing activities is annexed hereto as Exhibit M. Jaclyn Bond appears to be the author of at least one book published by Nicotext.

According to the white pages website, there are two listings for “Jaclyn Bond” in Texas and one in Georgia. We do not have any information as to the role played by either Ms. Bruno or Ms. Bond beyond that on the copyright page of the Sequel.

27. Nicotext appears to have over 70 titles available in the United States on Amazon.com alone. Copies of the relevant pages from Amazon are annexed hereto as Exhibit N.

28. SCB appears to be located in Gardena, California, but purports to ship books to booksellers nationwide including to booksellers in the State of New York. It is apparently owned by ABP, Inc. We do not know whether it buys titles from Nicotext for resale in this country or has a formal agency agreement with Nicotext.

### **The Sequel**

29. We obtained a copy of the Sequel and I have reviewed it. I am thoroughly familiar with the content of *Catcher*. Both books are told in the first person by the same exact character: Holden Caulfield, although California refers to him as “Mr. C”. There is no question, however, as is clear from reviewing the two works and may be readily observed from the comparison charts annexed in the Paul Aff’t as Exhibit C, that the characters are one in the same, as they have the same family members by name, roommates, friends, acquaintances, and experienced many of the same events either by Mr. C’s recounting of past experiences or by way of his contemporaneous mirroring of Holden’s earlier adventures. Both books take place largely in New York City during a short window of time. *Catcher* opens with Holden getting kicked out of Pensey, a high class boarding school and going to hang out in New York City; the Sequel opens with Mr. C leaving his nursing home to hang out in New York City. In both books, the character repeatedly hangs out in Central Park and visits the carousel there with his sister Phoebe. These examples are but illustrative.

30. The Sequel also periodically contains some italicized text which is supposed to be Salinger's voice. At the very outset, the italics say: "I am bringing him back. After all these years I finally decided to bring him back". Mr. Salinger himself appears as a character in Chapter 20 for a brief 13 pages. All in all, these italicized references only serve to reinforce the erroneous perception that this is an authorized sequel and/or that Mr. Salinger himself has written it.

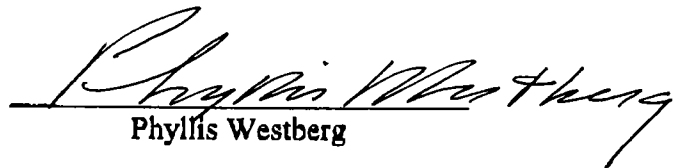
31. The Sequel has already been extensively reviewed in the British press and online, including more than one interview of the author, and there has already been a veritable firestorm of press coverage. Samples of that coverage containing numerous key admissions by Mr. California are included in Exhibit G.

32. The Sequel has been marketed and advertised as just that – a sequel to *The Catcher in the Rye*. Indeed, the back cover of the book states: "60 Years Later is an astonishing debut and a marvelous sequel to one of our most beloved classics". Examples of other marketing materials and advertisements which categorize the book as a sequel and the principal character as Holden Caulfield, notwithstanding Mr. Sane's claim that it is "a completely freestanding novel that has nothing to do with *Catcher*" are included in Exhibit I.

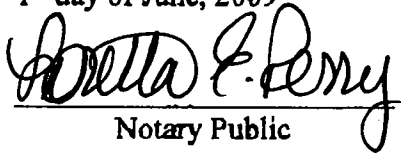
33. The Sequel is currently available for purchase in London in both stores and online including through Amazon.co.uk and through several English online book retailers. It is also available for purchase through those retailers on the United States. The book is currently available on eBay's United States website for purchase in the U.S. It is listed on Amazon.com as available for preorder, with a publication date of September 15, 2009. (I notified Amazon.com that this book infringed Mr. Salinger's copyright and asked that it take down the listing; Amazon responded that the book "may" be a parody and therefore declined to do so. Annexed hereto as Exhibit O are copies of my correspondence with Amazon to that effect.) Likewise, I am advised

that in response to a telephone inquiry, SCB said the book was available for preorder by bookstores with a delivery date in advance of the same September 15<sup>th</sup> publication date.

34. We understand that given the ability of consumers in the United States to purchase copies online from English retailers, we cannot completely stop the distribution of this unauthorized Sequel in this country. We can, however, make sure that SCB, and Amazon and others do not sell the book in this country as it is, we believe, and as is explained in the accompanying memorandum of law, an infringement of Mr. Salinger's copyright in the Holden Caulfield character, as well as an unauthorized derivative work. Once we receive injunctive relief from this Court, we intend to advise online and other retailers in England that they should not ship the book into this country. For the foregoing reasons, we seek a preliminary injunction to protect Mr. Salinger's rights with regard to sale of the Sequel in this country, whether emanating from this country or abroad.

  
Phyllis Westberg

Sworn to before me this  
1<sup>st</sup> day of June, 2009

  
Notary Public

**LORETTA E. PERRY**  
**NOTARY PUBLIC, State of New York**  
No. 24-4931617  
Qualified in Kings County  
Commission Expires August 1, 2010