

# **EXHIBIT D**

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, : 09 Civ. ( )  
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Plaintiff, : ECF Case  
 :  
- against - : **COMPLAINT**  
 :  
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. :  
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Plaintiff J.D. SALINGER, individually and as Trustee of the J.D. Salinger Literary Trust (“Salinger”) by his undersigned attorneys, Davis Wright Tremaine LLP, as and for his complaint against defendants JOHN DOE writing under the pseudonym JOHN DAVID CALIFORNIA (“California”), WINDUPBIRD PUBLISHING LTD. (“Windupbird”), NICOTEXT A.B. (“Nicotext”) and ABP, INC. d/b/a SCB Distributors Inc. (“SCB”), alleges as follows:

**NATURE OF THE ACTION**

1. This is an action to preliminarily and permanently enjoin the reproduction, publication, advertisement, distribution or other dissemination of a book entitled *60 Years Later: Coming Through the Rye*, written by defendant California and published by defendants Windupbird and Nicotext, on the grounds that it is an unauthorized sequel (the “Sequel”) of the acclaimed copyrighted novel *The Catcher in the Rye* (“Catcher”) written by Salinger. The Sequel infringes Salinger’s copyright rights in both his novel and the character Holden Caulfield, who is the narrator and essence of that novel.

2. *Catcher* is one of the all-time classic American novels, achieving phenomenal critical and commercial success. It has been named one of the 100 best novels by both *Time*

magazine and The Modern Library, and is taught in schools across the country. It has been described in reviews as “a crucial American novel...,” an “unusually brilliant novel” and “a cult book, a rite of passage for the brainy and disaffected.” (*The New York Times*.)

3. Seeking to capitalize on this success, defendants have published and are poised to distribute in this country, a book with a cover describing it as a “sequel to one of our most beloved classics”. The Sequel’s author, “J.D. California”, explains that “Just like the first novel, he leaves, but this time he’s not at a prep school, he’s at a retirement home in upstate New York.... It’s pretty much like the first book in that he roams around the city, inside himself and his past”.

4. The author is not wrong in this respect, as the Sequel begins, as does *Catcher*, with Holden Caulfield’s departure from an institution (prep school in *Catcher*; a nursing home in the Sequel) and ends with Holden and his sister Phoebe at the carousel in Central Park. In between, Holden hangs out aimlessly in New York for a few days, encountering many of the same people, visiting many of the same settings, and ruminating in the same (or, in the case of the Sequel, an imitative) voice. The Sequel is not a parody and it does not comment upon or criticize the original. It is a rip-off pure and simple.

5. Mr. Salinger, who is fiercely protective of his intellectual property, and has never allowed any derivative works to be made using either *The Catcher in the Rye* or his Holden Caulfield character, did not and would not approve of defendants’ use of his intellectual property. The right to create a sequel to *The Catcher in the Rye* or to use the character of Holden Caulfield in any other work belongs to Salinger and Salinger alone, and he has decidedly chosen not to exercise that right. Indeed, in 1980, Salinger stated to the press, “There’s no more to

Holden Caulfield. Read the book again. It's all there. Holden Caulfield is only a frozen moment in time.”

6. Accordingly, Salinger seeks a judgment and order from this Court finding that *60 Years Later* infringes both Salinger's copyright in the Holden Caulfield character and his exclusive right to create works derivative of *The Catcher in the Rye*, and preliminarily and permanently enjoining defendants from reproducing, publishing, distributing, advertising or otherwise disseminating the infringing work.

### **JURISDICTION AND VENUE**

7. This action arises under and pursuant to the Copyright Act of 1976, as amended, 17 U.S.C. § 101 *et seq.*, and under the laws of the State of New York.

8. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) and (b) because it arises under the copyright laws of the United States. This action also asserts a pendent claim under the common law of New York, which claim is so related to the copyright claims that they form part of the same case and controversy, and hence fall within the scope of this Court's supplemental jurisdiction under 28 U.S.C. §§ 1338(b) and 1367.

9. Venue in this action lies in the Southern District of New York pursuant to 28 U.S.C. §§ 1391(b), (c) and (d) and 1400(a).

10. The Court has personal jurisdiction over defendants pursuant to Fed. R. Civ. P., Rule 4(k)(1)(A) and C.P.L.R. §§ 301 and/or 302, because, on information and belief, defendant California resides in the State of New York and committed the tort of copyright infringement in this State and the claims for relief arise out of tortious acts whether within or without the State causing injury to person or property within New York; defendants should reasonably expect their tortious acts to have consequences in this State since the infringing book is available for purchase in New York and likely will be purchased, if not enjoined, by numerous people in New

York and has been misleadingly and deceptively advertised and promoted in New York; and defendants derive substantial revenue from interstate or international commerce.

### **THE PARTIES**

11. Plaintiff J.D. Salinger, who appears in this case both individually and as Trustee of the J.D. Salinger Literary Trust (the “Trust”), is the acclaimed author of numerous works of fiction, including *Nine Stories*; *Franny and Zooey*; *Raise High the Roof Beam, Carpenters and Seymour, an Introduction*; and, most relevantly, *The Catcher in the Rye*. Little Brown & Co., headquartered in New York, is Salinger’s publisher and the publisher of *Catcher*. Salinger’s long time literary agency, Harold Ober Associates, is also located in this State. Salinger published actively from 1940 through 1965, and has not published any new works since that time. He lives in New Hampshire, where he is protective of his privacy and has chosen to remain out of the public spotlight. He created the Trust in 2008 and is the sole trustee thereof during his lifetime.

12. Defendant John Doe writing under the pseudonym John David California is the author of the Sequel, who has been reported to be “New York based”. His precise whereabouts are unknown, despite due investigation. According to California’s biography on his publisher’s website, he was “[b]orn in California to a Swedish mother and an American father...” Upon information and belief, “John David California” is not the true name of the individual who wrote the Sequel. Accordingly, plaintiff has named “John Doe” as a defendant, and means by “John Doe” or “John David California” that individual who wrote the novel *60 Years Later* and who has given public statements about the Sequel under the name “John David California” to, *inter alia*, *The Guardian* (May 14, 2009) (<http://www.guardian.co.uk/books/2009/may/14/catcher-in-the-rye-sequel>); *The Daily Telegraph* (May 30, 2009) (<http://www.telegraph.co.uk/news/worldnews/northamerica/usa/5413559/JD-Salinger-considers-legal-action-to-stop-The-Catcher->

in-the-Rye-sequel.html); and to the website thebookseller.com (May 20, 2009) (<http://www.thebookseller.com/news/86208-salingers-lawyers-looking-into-rye-sequel.html.rss>).

13. Defendant Windupbird Publishing Ltd. is listed as the publisher of the Sequel on the copyright page of that work, which states: “First published in Great Britain 2009 by Windupbird Publishing Ltd”. According to its website, Windupbird is located in London, England. Its address is 22 Notting Hill Gate a Mailboxes, Etc. storefront in London.

14. Defendant Nicotext, which has its principal place of business in Boras, Sweden, is also a publisher of the Sequel according to the Sequel’s Amazon.com listing (<http://www.amazon.com/60-Years-Later-Coming-Through/dp/9185869546>), which states: “Publisher: Nicotext”. A cease and desist demand with respect to the Sequel from Mr. Salinger’s British literary agent received an email response from an individual named Fredrik Colting at the email address [colting@nicotext.com](mailto:colting@nicotext.com). According to Nicotext’s website, Colting is one of the principals of Nicotext. (<http://www.nicotext.com/eng/?sida=forlaget>.)

15. Also according to Nicotext’s website, defendant ABP, Inc. d/b/a SCB Distributors, located in Gardena, California, is the United States distributor to booksellers of books published by Nicotext. Upon information and belief, SCB is an agent of Nicotext. It is currently accepting pre-orders of the Sequel from booksellers and intends to begin distributing the Sequel on or before September 15, 2009.

## **FACTUAL BACKGROUND**

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

16. *The Catcher in the Rye* is the classic 1951 novel by J.D. Salinger. It tells the story of Holden Caulfield, a disaffected 16-year old boy, who, after he is kicked out of his prep school just prior to Christmas, embarks on a journey to New York City, where he spends a few days meeting people both new and old. He wanders from encounter to encounter, never sure what to

do with himself, and constantly drawn back to Central Park. His adventures come to an end when he finally meets with the one person he trusts and enjoys spending time with: his sister Phoebe.

17. Much of the plot of *Catcher* involves Holden roaming New York. He takes cabs to several places, walks great distances, visits Grand Central Station and the Museum of Natural History, and makes multiple trips to Central Park.

18. Unlike the plots of more traditional novels, Holden has no explicit goal, and there is no particular arc he attempts to complete. Indeed, as Holden's various encounters continue, he arrives no closer to any resolution. The plot is thus best described as a series of incidents over the course of his trip to New York told in the first person of the protagonist.

19. *The Catcher in the Rye* is narrated by Holden and is told in Holden's distinctive voice. Indeed, a 1961 *New York Times* article about *Catcher* described this language as "Holdenese". The tone of the book is Holden's own tone, and it is extremely casual and filled with slang. The narrative is peppered with words like "phony," "crumby," "lousy," "hell," "bastard," *etc.*, all words in Holden's vernacular.

20. The entire narrative is told in short, choppy sentences, and reads as if it were dictated by a character, leaning towards stream of consciousness. Indeed, the narrator often addresses the reader directly: "...that I finished telling you..." "If you want to know the truth..."

21. The story of *The Catcher in the Rye* is told in flashback, with the narrator explaining upfront that he is going to tell a story, and at the end, revealing that he is now in a mental hospital and "That's all I'm going to tell about".

22. While the narrative of *Catcher* takes place over only a few days, Holden is prone to digressions, and thus much of the novel actually describes events that occurred before Holden's time in Manhattan. Many of the incidents in the novel set off memories in Holden, and lead him to digress. He makes pronouncements like "I forgot to tell you about..." or "Anyway, that's what I was thinking about while I sat in that vomity-looking chair in the lobby" that set off side stories that can last for a couple of pages.

23. Holden's encounters during the few days of the action of the story involve several other characters, including 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.

### **Holden Caulfield**

24. Holden Caulfield, the protagonist of *The Catcher in the Rye*, is one of the most recognized characters in American literature. He is a precocious 16-year old boy struggling to find his way in the world and an angst-filled cynic. In addition to having a slang-peppered vocabulary, Holden lies a lot, and is sarcastic – to both the characters he interacts with and to the reader. He addresses the reader directly and explains to the reader when he is being honest, prefacing statements with "If you want to know the truth."

25. Holden is quick to criticize, and, throughout the novel, points out many things that he hates: "God, I hate that stuff"; "It isn't important, I know, but I hate it when somebody has cheap suitcases."

26. Holden feels disconnected from his prep school, Pencey, and is happy to leave it behind. Indeed, he feels disconnected from most of those around him, with the notable exception of his sister Phoebe and his deceased brother Allie. He sees his brother D.B. as a sell-out for working in Hollywood.

27. Holden fixates on many ideas, and repeats himself throughout the book. Many of his fixations are philosophical. For instance, throughout the novel, Holden wonders where the ducks in the pond in Central Park go in the winter when the water freezes. He returns to this question repeatedly, and asks it to those around him.

28. While Holden may be more mature than his years in some ways, it is clear that during his adventures in New York City, he is in over his head. He brings a prostitute to his hotel room, only to chicken out and send her away. He gets physically beaten up twice in the novel. He constantly wanders around Manhattan with no goal in mind and enters phone booths without knowing who to call or without being in the mood to make a call at all. Even the mere act of walking through the bathroom at night is a challenge for Holden, as he stumbles in the dark unable to find the light switch, stepping on things along the way.

29. Salinger has written other works featuring Holden Caulfield. That character 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 also appeared in 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".

### **The Success of *Catcher***

30. *The Catcher in the Rye* is one of the most successful novels of all time. It became a commercial and critical success soon after its release in 1951, and it has never lost that status. It has been a perennial presence on high school required reading lists for over 50 years.

31. In 1951, *Time* magazine described Salinger as writing with “love, brilliance and 20-20 vision”. In 2005, *Time* named *Catcher* one of the 100 greatest novels of 1923-2005. The Modern Library named *Catcher* the 64<sup>th</sup> greatest English-language novel in 1998, and its readers voted the book their 19<sup>th</sup> favorite novel. Customers of Manhattan’s famed Strand Bookstore voted *Catcher* their fourth favorite book of any kind, trailing only *To Kill a Mockingbird*, *Pride and Prejudice*, and *The Great Gatsby*.

32. *The Catcher in the Rye* has received extraordinary critical praise. Upon the book’s release in 1951, *The New York Times* called it an “unusually brilliant novel.” In 2008, *The New York Times* wrote of *Catcher* 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.” In 1963, *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*.”

33. *The Catcher in the Rye* has been an extraordinary commercial success. It has been translated into dozens of languages, and has sold more than 35 million copies worldwide. As of May 27, 2009 – 58 years after its publication – *The Catcher in the Rye* **currently** sells more copies on Amazon.com than *Harry Potter and the Sorcerer’s Stone*, *The DaVinci Code*, *To Kill a Mockingbird* or *Of Mice and Men*.

34. *The Catcher in the Rye* has taken on a specific place in American culture and is the benchmark against which any coming-of-age story is measured. Book and movie reviews regularly compare works to *Catcher* (“‘Igby Goes Down’ ... is the second film in recent months ... to take its cue from ‘The Catcher in the Rye’ by giving us a fresh-scrubbed, upscale teenage rebel with a brain to match his attitude”).

35. The character of Holden Caulfield has his own place in American culture as the prototype of the angst-filled, cynical teen coming into his own. For instance, *The New York Times* has featured *headlines* including “Holden Caulfield From the East Bay,” “Holden Caulfield on Ritalin,” “Who’s Afraid of Holden Caulfield?” “A Female Holden Caulfield for the 1990’s,” *etc.* Other cultural icons are regularly compared to Holden. As the fictional Harry Potter turned 15, Time.com noted that “he could be the Holden Caulfield of wizards.” The *Times*’s original review of the film *The Graduate* described Dustin Hoffman’s lead role as “a character very much reminiscent of Holden Caulfield in J.D. Salinger’s *Catcher in the Rye*.”

### **Salinger’s Protection of His Intellectual Property**

36. For over fifty years, as has been extensively reported in the media, J.D. Salinger has been fiercely protective of both his intellectual property and his privacy. He has not published any work since 1965 and, other than a 1949 film of one of his early short stories, Salinger has never permitted any adaptations of any of his works. He has publicly disavowed any intention to do so during his lifetime.

37. J.D. Salinger has not published or authorized the publication of any new narrative for Holden Caulfield since the first publication of *The Catcher in the Rye* in 1951, and has expressly and publicly stated that he will not do so.

38. J.D. Salinger has not published or authorized the publication of any work derivative of *The Catcher in the Rye* since it was first published in 1951.

39. While numerous filmmakers – including Harvey Weinstein and Steven Spielberg – have sought the rights to make a film version of *The Catcher in the Rye*, Salinger has always declined. Salinger publicly stated in 1980, “There’s no more to Holden Caulfield. Read the book again. It’s all there. Holden Caulfield is only a frozen moment in time”.

40. Salinger has been forced to bring legal action in the past when individuals have attempted to exploit his intellectual property. In 1974, Salinger successfully sued to enjoin the distribution of unauthorized copies of early short stories he had written. In 1986, Salinger successfully sued to prevent the unauthorized publication of letters he had written. In 2003-2004, Salinger successfully halted further broadcast of a BBC program that included a dramatization of *Catcher*.

41. Salinger's copyright in *The Catcher in the Rye* is worth an enormous amount of money and his right of first publication of a sequel is likewise of great monetary value. His right **not** to publish a sequel is unquantifiable.

**Salinger Owns a Valid and Subsisting Copyright in *Catcher***

42. In or around June 11, 1951, *Catcher* was duly registered for copyright protection in the United States Copyright Office in the name of J.D. Salinger as copyright proprietor. That Registration bore No. A00000056070/1951-06-11.

43. In or around January 22, 1979, the copyright in *Catcher* was duly renewed. A copy of that renewal bearing number RE00000018341/1979-01-22 is annexed hereto as Exhibit A.

44. In or around October 24, 2008, Salinger assigned the copyright in *Catcher*, along with other works authored by him, to the Trust and duly recorded that assignment. A copy of the record of that recordation, bearing number V3570D891, is annexed hereto as Exhibit B.

45. *Catcher* is subject to valid and subsisting copyright protection under the laws of the United States and all formalities thereunder have been duly complied with.

### **Plaintiff Learns of the Unauthorized Sequel**

46. Despite Mr. Salinger's unequivocal and publicly known aversion to further exploitation of the Holden Caulfield character, defendants have taken it upon themselves to create just such an exploitation, without Salinger's permission, by publication of the Sequel.

47. The subtitle of the Sequel is a direct reference to the title "*The Catcher in the Rye*" and defendant California's pseudonym, "John David California" appears on the top of each page of the Sequel as "J D California", as a direct reference to J.D. Salinger.

48. "Mr. C" in the Sequel is clearly and admittedly Holden Caulfield from *Catcher*. In an interview with *The Guardian* on May 14, 2009, California explained of the Sequel's main character: "He's still Holden Caulfield, and has a particular view on things".

49. As soon as Salinger learned of the existence of the unauthorized Sequel through his literary agents on or about May 14, 2009, who in turn learned of it from an article in the British publication *The Guardian*, he took action to have its publication stopped.

50. Salinger's U.K. agent immediately sent a May 14 email to the agent for the Sequel's publisher, Nicotext, demanding that it desist from publishing the Sequel. On May 15, 2009, Nicotext's agent responded and would not so agree.

51. Despite due demand, defendants have failed and refused to cease publication of the Sequel.

52. The Sequel is currently available for purchase in the U.K. in book stores and is available for purchase online worldwide from, *inter alia*, Amazon.co.uk and Waterstones.com.

53. The American arm of Amazon.com lists the Sequel for sale in the United States as of September 15, 2009, and is accepting pre-orders for that book. On May 14, 2009, Salinger's U.S. agent wrote to Amazon.com requesting that Amazon not distribute the Sequel. The

