

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK

Index # 039747 CVN 2001

SEARS, ROEBUCK & CO.

Plaintiff

vs.

PHILLIP WEISS

Defendant

\_\_\_\_\_ /

**REPLY TO PLAINTIFF'S NOTICE OF MOTION AND  
PLAINTIFF'S AFFIRMATION**

1. On January 20, 2002, Defendant filed a Reply to Plaintiff's Verified Reply. (Exhibits A and B)
2. Contained in Plaintiff's Notice of Motion (Exhibit C) is notification that Plaintiff "will move ... for an order dismissing defendant's counterclaim ...."
3. Defendant submits Reply to Plaintiff's Verified Reply as grounds for opposing Plaintiff's impending motion for an order dismissing Defendant's counterclaim.
4. In Plaintiff's Affirmation (Exhibit D), Plaintiff alleges that said counterclaim is a "... reprisal in the form of a retaliatory lawsuit." Defendant's counterclaim is not "reprisal" and is not "retaliatory." Rather, said counterclaim is a valid and permissible method

for asserting a claim. Accordingly, Defendant, having valid cause of action, has filed a counterclaim. *McElrath v. U.S.*, 102 U.S. 426 (1880); *United States v. Indrelunas*, 411 U.S. 216 (1973); *Runkle v. U.S.*, 122 U.S. 543 (1887); *Bors v. Preston*, 111 U.S. 252 (1884).

5. For the foregoing reasons, Defendant respectfully requests that the Court deny Plaintiff's motion for dismissal of counterclaim; that the Court dismiss Plaintiff's claim against Defendant; and that the Court grant Defendant's counterclaim.

This Reply to Plaintiff's Notice of Motion and Affirmation is dated the \_\_\_\_\_ day of \_\_\_\_\_, 2002.

Respectfully,

Phillip Weiss  
Defendant

Defendant hereby certifies that true and correct copies of the foregoing Reply to Plaintiff's Notice of Motion and Affirmation were mailed on the \_\_\_\_ day of \_\_\_\_\_, 2002, by certified mail, return receipt requested, to:

**SEARS, ROEBUCK & CO.**  
Plaintiff  
45 Congress Street  
Salem, MA 01970-5591

**Rubin & Rothman, LLC**  
Attorneys for Plaintiff  
1787 Veterans Highway  
Islandia, NY 11749

**Phillip Weiss**  
Defendant

**PW, 1/20/02**