

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X  
CITIBANK, N.A.,

Plaintiff,

No. 14 CV 5841

v.

**ANSWER**

SUPER SAYIN' PUBLISHING, LLC,  
COMPOUND TOURING, INC., 2424, LLC,  
SHAFFER C. SMITH, KEVIN R. FOSTER, II,  
FOSTER & FIRM, INC., and  
PROJECT TWENTY ONE, LLC.

Defendants.  
-----X

Defendants Shaffer C. Smith ("Smith"), Super Sayin' Publishing, LLC ("Super Sayin'"), Compound Touring, Inc. ("Compound Touring"), and 2424, LLC ("2424") (collectively, "Defendants") by and through their attorneys, The Roth Law Firm, PLLC, hereby answer the Complaint and submits, as follows:

1. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Complaint.
2. Defendants deny the allegations contained in paragraph 2 of the Complaint.
3. Smith admits the allegations contained in the first sentence of paragraph 3 of the Complaint to the extent that he claims he never executed the underlying loan documents, but denies knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 3 of the Complaint. Defendants Super Sayin', Compound Touring, and 2424 deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Complaint.

4. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Complaint.

**PARTIES**

5. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the Complaint.

6. Super Sayin' denies the truth of the allegations contained in paragraph 6 of the Complaint but admits that Super Sayin' is a limited liability company organized under the laws of the State of California and that none of its members are citizens of South Dakota. The other Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the Complaint

7. 2424 denies the truth of the allegations contained in paragraph 7 of the Complaint but admits that 2424 is a limited liability company organized under the laws of the State of California, that none of its members are citizens of South Dakota, and that it has an office at 11255 Huston Street, Apt. 106, North Hollywood, California 91601. The other Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the Complaint.

8. Compound Touring admits the allegations contained in paragraph 8 of the Complaint to the extent that that it is a corporation organized under the laws of the State of California. Compound Touring denies all other allegations contained in paragraph 8 of the Complaint. The other Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Complaint

9. Smith admits the allegations contained in paragraph 9 of the Complaint to the extent that he is a resident of the State of Georgia and that he is the president of Compound

Touring and managing member of both Super Sayin' and 2424. Smith denies the remainder of the allegations, except he admits he closed his Citibank account due to fraudulent activity. The other Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the Complaint

10. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the Complaint.

11. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the Complaint.

12. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Complaint.

#### **JURISDICTION AND VENUE**

##### **A. Super Sayin'/2424 Loan**

13. Paragraph 13 of the Complaint calls for a legal conclusion to which no response is required. Otherwise, Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the Complaint.

14. Paragraph 14 of the Complaint calls for a legal conclusion to which no response is required. Otherwise, Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the Complaint.

15. Defendants deny the allegations contained in paragraph 15 of the Complaint.

16. Defendants deny the allegations contained in paragraph 16 of the Complaint.

Defendants affirmatively state that the signature referenced in paragraph 16 of the Complaint is a forgery.

17. Defendants deny the allegations contained in paragraph 17 of the Complaint. Defendants affirmatively state that the signature referenced in paragraph 17 of the Complaint is a forgery.

18. Defendants deny the allegations contained in paragraph 18 of the Complaint. Defendants affirmatively state that the signature referenced in paragraph 18 of the Complaint is a forgery.

19. Defendants deny the allegations contained in paragraph 19 of the Complaint.

20. Defendants deny the allegations contained in paragraph 20 of the Complaint.

21. Defendants admit the allegations contained in paragraph 21 of the Complaint, but assert there is no legal obligation to provide an affidavit or police report.

22. Defendants deny the allegations contained in paragraph 22 of the Complaint.

23. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23 of the Complaint.

24. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24 of the Complaint.

25. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25 of the Complaint.

26. Defendants deny the allegations contained in paragraph 26 of the Complaint.

27. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27 of the Complaint.

28. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28 of the Complaint.

**B. Compound Touring Loan**

29. Defendants deny the allegations contained in paragraph 29 of the Complaint.
30. Defendants deny the allegations contained in paragraph 30 of the Complaint.
31. Defendants deny the allegations contained in paragraph 31 of the Complaint.
32. Defendants deny the allegations contained in paragraph 32 of the Complaint.
33. Defendants deny the allegations contained in paragraph 33 of the Complaint.
34. Defendants deny the allegations contained in paragraph 34 of the Complaint.
35. Defendants admit the allegations contained in paragraph 35 of the Complaint, but assert there is no legal obligation to provide an affidavit or police report.
36. Defendants deny the allegations contained in paragraph 36 of the Complaint.
37. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 37 of the Complaint.
38. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38 of the Complaint.
39. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25 of the Complaint.

**C. The Certificate of Deposit**

40. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 40 of the Complaint.

**COUNT I**  
**(Unjust Enrichment)**

41. Defendants incorporate the above paragraphs herein in response to paragraph 41 of the Complaint.

42. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 42 of the Complaint.

43. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 43 of the Complaint.

44. Defendants admit the allegations contained in paragraph 44 of the Complaint.

45. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 45 of the Complaint.

46. Defendants deny the allegations contained in paragraph 46 of the Complaint.

47. Paragraph 47 of the Complaint is a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations contained in paragraph 47 of the Complaint.

48. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 48 of the Complaint.

49. Defendants deny the allegations contained in paragraph 49 of the Complaint.

## COUNT II

### **(Fraudulent Conveyance – New York Debtor and Creditor Law §§ 275, 278)**

50. Defendants incorporate the above paragraphs herein in response to paragraph 50 of the Complaint.

51. Defendants deny the allegations contained in paragraph 51 of the Complaint.

52. Paragraph 52 of the Complaint is a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations contained in paragraph 52 of the Complaint.

53. Defendants deny the allegations contained in paragraph 53 of the Complaint.

**COUNT III**

**(Fraudulent Conveyance – New York Debtor and Creditor Law §§ 273, 278)**

54. Defendants incorporate the above paragraphs herein in response to paragraph 54 of the Complaint.

55. Defendants deny the allegations contained in paragraph 55 of the Complaint.

56. Defendants deny the allegations contained in paragraph 56 of the Complaint.

57. Defendants deny the allegations contained in paragraph 57 of the Complaint.

58. Paragraph 58 of the Complaint is a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations contained in paragraph 58 of the Complaint.

59. Defendants deny the allegations contained in paragraph 59 of the Complaint.

**COUNT IV**

**(Fraudulent Conveyance – New York Debtor and Creditor Law §§ 276, 276-a, 278)**

60. Defendants incorporate the above paragraphs herein in response to paragraph 60 of the Complaint.

61. Defendants deny the allegations contained in paragraph 61 of the Complaint.

62. Paragraph 62 of the Complaint is a legal conclusion to which no response is required. To the extent a response is required, Defendants deny the allegations contained in paragraph 62 of the Complaint.

63. Defendants deny the allegations contained in paragraph 63 of the Complaint.

64. Defendants deny the allegations contained in paragraph 64 of the Complaint.

**COUNT V**  
**(Alternative Count)**

**(Foreclosure of Security Interests Granted by Super Sayin' and 2424/Breach of Contract)**

65. Defendants incorporate the above paragraphs herein in response to paragraph 65 of the Complaint.

66. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 66 of the Complaint.

67. Defendants deny the allegations contained in paragraph 67 of the Complaint.

68. Defendants deny the allegations contained in paragraph 68 of the Complaint.

69. Defendants deny the characterization of the excerpt as "pertinent," but admit that the NY UCC states what is contained in paragraph 69 of the Complaint.

70. Defendants deny the allegations contained in paragraph 70 of the Complaint.

**COUNT VI**  
**(Alternative Count)**

**(Foreclosure of Security Interests Granted by Compound Touring/Breach of Contract)**

71. Defendants incorporate the above paragraphs herein in response to paragraph 71 of the Complaint.

72. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 72 of the Complaint.

73. Defendants deny the allegations contained in paragraph 73 of the Complaint.

74. Defendants deny the allegations contained in paragraph 74 of the Complaint.

75. Defendants deny the characterization of the excerpt as "pertinent," but admit that the NY UCC states what is contained in paragraph 75 of the Complaint.

76. Defendants deny the allegations contained in paragraph 76 of the Complaint.



77. Defendants deny that Plaintiff is entitled to judgment as stated in the “Wherefore” clause of the Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

The Complaint fails to state a claim upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

Plaintiff is barred from recovery by one or more of the following doctrines: ratification, estoppel, waiver and/or laches.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

Plaintiff is barred from recovery by the doctrine of unclean hands.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

Plaintiff is precluded from recovery because the losses Plaintiff allegedly incurred were a direct and proximate result of his own conduct and/or negligence or that of its own employees.

**RELIEF SOUGHT AND REQUEST FOR TRIAL BY JURY**

WHEREFORE, for all of the reasons stated herein, Defendants respectfully request that Plaintiff's claims be dismissed in their entirety, and that the relief sought herein be granted, together with attorneys' fees and costs and any further relief that the Court deems just and equitable.

WHEREFORE, Defendants request a trial by jury.

DATED: New York, New York  
October 6, 2014

THE ROTH LAW FIRM, PLLC

By: 

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*Attorneys for Defendants*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CITIBANK, N.A.,

Plaintiff,

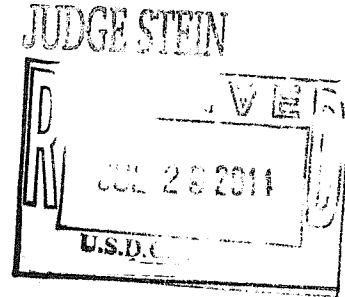
- Against -

SUPER SAYIN' PUBLISHING, LLC, COMPOUND  
TOURING, INC., 2424, LLC, SHAFFER C. SMITH,  
KEVIN R. FOSTER, II, FOSTER & FIRM, INC.,  
and PROJECT TWENTY ONE, LLC,

Defendants.  
----- x

14 CV 5841  
Civil Action No.

COMPLAINT



Plaintiff Citibank, N.A. ("Citibank"), by its undersigned counsel, Thompson & Knight  
LLP, as and for its complaint, alleges as follows:

INTRODUCTION

1. This action relates to business loans that Citibank made on or about February 21,  
2013, to defendant Compound Touring, Inc. ("Compound Touring") in the amount of \$400,000  
and to defendants Super Sayin' Publishing, LLC ("Super Sayin'") and 2424, LLC ("2424") in  
the amount of \$1,000,000.

2. Super Sayin' and 2424 guarantied the loan to Compound Touring and Compound  
Touring guarantied the loan to Super Sayin' and 2424. Defendant Shaffer C. Smith ("Smith")  
purportedly guarantied both loans.

3. Smith, through representatives, has claimed that he never executed the underlying  
loan documents, but has declined to provide a signed affidavit or filed police report to that effect.  
The defendant borrowers' bank accounts, however, reflect that Smith appears to have benefitted  
from the use of some of the loan proceeds and that defendant Kevin R. Foster, II ("Foster")

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coordinated transfers of some of the other loan proceeds to bank accounts that Smith managed and/or otherwise controlled.

4. Citibank brings this action primarily to recover the monies loaned through unjust enrichment and fraudulent transfer claims. Alternatively, Citibank seeks to foreclose on its security interests against the borrower entities, and for related relief, to the extent that it is shown that Smith did, in fact, execute or authorize the execution of the underlying loan documents.

#### PARTIES

5. Citibank is a nationally chartered bank, with its principal place of business located at 701 East 60<sup>th</sup> Street North, Sioux Falls, South Dakota 57104 and with offices at 750 Washington Blvd., 8<sup>th</sup> Floor, Stamford, Connecticut 06901.

6. Super Sayin' is a limited liability company organized under the laws of the State of California, which maintained an office during the relevant period reflected herein at 888 Seventh Avenue, Suite 500, New York, New York 10106, and engaged in banking activity with a Citibank branch located in Manhattan, New York. Upon information and belief, Super Sayin' presently has an office at 1880 Century Park East, Suite 1600, Los Angeles, California 90067 and none of its members are citizens of South Dakota.

7. 2424 is a limited liability company organized under the laws of the State of California, which maintained an office during the relevant period reflected herein at 888 Seventh Avenue, Suite 500, New York, New York 10106, and engaged in banking activity with a Citibank branch located in Manhattan, New York. Upon information and belief, 2424 presently has an office at 11255 Huston Street, Apt. 106, North Hollywood, California 91601 and none of its members are citizens of South Dakota.

8. Compound Touring is a corporation organized under the laws of the State of California, which maintained an office during the relevant period reflected herein at 888 Seventh Avenue, Suite 500, New York, New York 10106, and engaged in banking activity with a Citibank branch located in Manhattan, New York. Upon information and belief, Compound Touring presently has an office at 10960 Wilshire Blvd., Floor 5, Los Angeles, California 90024.

9. Upon information and belief, Smith is a resident of the State of Georgia with an address at 40 Club Court, Alpharetta, Georgia 30005, is the president of Compound Touring, and the managing member of both Super Sayin' and 2424, and engaged in banking activity with a Citibank branch located in Manhattan, New York.

10. Defendant Foster & Firm, Inc. ("F&F") is a corporation organized under the laws of the State of New York, which maintains an office at 140 West 57<sup>th</sup> Street, New York, New York 10106.

11. Foster does business at 140 West 57<sup>th</sup> Street, New York, New York 10106, and, upon information and belief, resides at 10 Christopher Court, Montclair, New Jersey 07042.

12. Defendant Project Twenty One, LLC ("Project 21") is a limited liability company organized under the laws of the State of New York, with Foster as its registered agent and with an address at c/o Kevin R. Foster, II, 200 West 57<sup>th</sup> Street, Suite 1300, New York, New York 10019. Upon information and belief, none of Project 21's members are citizens of South Dakota.

#### **JURISDICTION AND VENUE**

13. This Court has jurisdiction under 28 U.S.C. § 1332 because the matter in controversy exceeds the sum of \$75,000, excluding interest and costs, and there is complete diversity of citizenship between plaintiff and defendants.

14. Venue is proper pursuant to 28 U.S.C. § 1391(a)(1).

**BACKGROUND**

**A. Super Sayin'/2424 Loan**

15. On or about February 21, 2013, Citibank made a \$1,000,000 loan jointly to Super Sayin' and 2424 (the "SS/2424 Loan") pursuant to that certain Business Loan Agreement dated February 21, 2013, and entered into by Citibank, Super Sayin' and 2424 (the "SS/2424 BLA"), a true copy of which is attached hereto as Exhibit A.

16. The SS/2424 BLA bears what purports to be the signature of Smith on behalf of Super Sayin' and 2424 in his capacity as manager of each.

17. The indebtedness owing under the SS/2424 BLA was memorialized in a promissory note to Citibank executed on February 21, 2013, bearing what purports to be the signature of Smith as manager of Super Sayin' and 2424, a true copy of which is attached hereto as Exhibit B (the "SS/2424 Note").

18. Among other things, payment of the SS/2424 Loan was guaranteed pursuant to written guaranties, dated February 21, 2013, which bear what purports to be the signature of Smith, individually, and as president of Compound Touring (the "SS/2424 Guaranties"), true copies of which are collectively attached hereto as Exhibit C.

19. The obligations under the SS/2424 BLA and SS/2424 Note are also secured by a security agreement, dated February 21, 2013, executed by Super Sayin' and 2424 (the "SS/2424 SA"), a true copy of which is attached as Exhibit D.

20. Under the SS/2424 SA, Super Sayin' and 2424 granted Citibank a security interest in all of their personal property (the "SS/2424 Collateral") to secure the obligations under the SS/2424 BLA and SS/2424 Note, which security interest was perfected as against Super Sayin' and 2424 upon the filing of a UCC financing statement with the California

Secretary of State on March 26, 2013, filing number 20130326532589 (the “SS/2424 Financing Statement,” and together with the SS/2424 SA, SS/2424 Loan, SS/2424 BLA, SS/2424 Note, and SS/2424 Guaranties, the “SS/2424 Loan Documents”), a true copy of which is attached as Exhibit E.

21. Smith, through representatives, has asserted that he did not sign the SS/2424 Loan Documents, but has declined to provide a signed affidavit or filed police report to that effect.

22. On or about February 28, 2013, Citibank, pursuant to certain written instructions (a true copy of which is attached as Exhibit F), funded \$750,000 from the SS/2424 Loan to Super Sayin’s business checking account at Citibank (the “SS Account”), the signers on which account include Smith and Foster.

23. Also on February 28, 2013, \$300,000 was withdrawn from the SS account as follows (the “2/28 Transfer”):

- (a) \$10,000 in cash;
- (b) \$40,000 transferred into a V. Brown & Company, Inc. business checking account at Citibank (the “Brown Account”); and
- (c) \$250,000 by bank check made payable to Project 21.

24. On March 4, 2013, Citibank, pursuant to certain written instructions (a true copy of which is attached as Exhibit G), funded \$200,000 from the SS/2424 Loan to the SS Account.

25. On March 11, 2013, \$150,000 was withdrawn from the SS account as follows (the “3/11 Transfer”):

- (a) \$25,000 in cash;
- (b) \$25,000 by bank check made payable to F&F and deposited into F&F’s Citibank bank account (the “FF Account”); and

(c) \$100,000 by bank check made payable to Project 21.

26. On March 18, 2013, Citibank, pursuant to certain written instructions (a true copy of which is attached as Exhibit H), funded \$50,000 from the SS/2424 Loan to the SS Account.

27. On March 19, 2014, \$45,000 was withdrawn from the SS Account and deposited into the FF Account (the “3/19 Transfer,” and together with the 2/28 transfer and the 3/11 Transfer, the “SS/2424 Transfers”).

28. Approximately \$500,000 was transferred from the SS Account to an account in Smith’s name at Citibank (the “Smith Account”) from which there were multiple withdrawals that appear to have been for Smith’s benefit.

**B. Compound Touring Loan**

29. On February 21, 2013, Citibank made a \$400,000 loan to Compound Touring (the “CT Loan”) pursuant to that certain Business Loan Agreement entered into by Citibank and Compound Touring (the “CT BLA”), a true copy of which is attached hereto as Exhibit I.

30. The CT BLA bears what purports to be the signature of Smith, as president.

31. The indebtedness owing under the CT BLA was memorialized in a promissory note to Citibank executed on February 21, 2013, bearing what purports to be the signature of Smith, as president (the “CT Note”), a true copy of which is attached hereto as Exhibit J.

32. Among other things, payment of the CT Loan was guaranteed pursuant to written guaranties, dated February 21, 2013, that bear what purports to be the signature of Smith, individually, and as the manager of Super Sayin’ and 2424 (the “CT Guaranties”), true copies of which are collectively attached hereto as Exhibit K.



33. The obligations under the CT BLA and CT Note are also secured by a security agreement, dated February 21, 2013, executed by Compound Touring (the "CT SA,"), a true copy of which is attached as Exhibit L.

34. Under the CT SA, Compound Touring granted Citibank a security interest in all of its personal property (the "CT Collateral," together with the SS/2424 Collateral, the "Collateral") to secure the obligations under the CT BLA and CT Note, which security interest was perfected upon the filing of a UCC financing statement with the California Secretary of State on March 26, 2013, filing number 201303145271115, (the "CT Financing Statements," and together with the CT SA, CT Loan, CT BLA, CT Note, and CT Loan Guaranties, the "CT Loan Documents"), a true copy of which is attached as Exhibit M.

35. Smith, through representatives, has asserted that he did not sign the CT Loan Documents, but has declined to provide a signed affidavit or filed police report to that effect.

36. On March 11, 2013, Citibank, pursuant to certain written instructions (a true copy of which is attached as Exhibit N) funded \$400,000 from the CT Loan to Compound Touring's business account at Citibank (the "CT Account"), the signatories on which are Smith and Foster.

37. On March 25, 2013, \$400,000 was withdrawn from the CT Account and deposited into the FF Account pursuant to a withdrawal slip that Foster signed.

38. Prior to the deposit of the \$400,000 into the FF Account, that account had a negative balance, reflecting overdrafts.

39. Also on March 25, 2013, the following funds were transferred out of the FF Account (the "3/25 Transfers," together with the SS/2424 Transfers, the "Transfers"):

(a) \$7,500 cash withdrawal;

(b) \$15,000 transferred into the Brown Account;

(c) \$20,000 wired to a JPMorgan checking account in the name of Buckley King, LLP; and

(d) \$330,000 wired to F&F's Wells Fargo bank account.

**C. The Certificate of Deposit**

40. On February 14, 2013, a \$500,000 Certificate of Deposit (the "CD") was funded with money drawn from the Smith Account and pledged as security for the SS/2424 Loan and the CT Loan (the "Loans").

**COUNT I  
(Unjust Enrichment)**

41. Citibank repeats and incorporates all prior allegations as if fully set forth herein.

42. Citibank caused \$1,000,000 to be disbursed from the SS/2424 Loan to the SS Account.

43. Citibank caused \$400,000 to be disbursed from the CT Loan to the CT Account.

44. Subsequently, Smith personally closed both the SS Account and the CT Account in the fall of 2013, and withdrew any and all funds that were in such accounts.

45. Even assuming, for the sake of argument, that Smith did not execute either the SS/2424 Loan Documents or the CT Loan Documents, as he has now claims through representatives, Citibank nevertheless made and disbursed the CT Loan and the SS/2424 Loan with the expectation of reimbursement by the borrowers or the respective guarantors of such loans.

46. Defendants have all been unjustly enriched by the receipt and use of the loan proceeds from the SS/2424 Loan and/or CT Loan.

47. Defendants all have a legal and/or equitable obligation to account for the funds and/or other benefits they received from the Loans.

48. Citibank has not been fully repaid for the Loans, having only received five payments totaling \$14,941.10 drawn from the SS Account.

49. Citibank is entitled to a judgment against each of the defendants for the unpaid balance of the SS/2424 Loan and CT Loan, plus Citibank's legal fees and costs through and including the date of payment thereof and a set-off against the CD.

### **COUNT II**

#### **(Fraudulent Conveyance – New York Debtor And Creditor Law §§ 275, 278)**

50. Citibank repeats and incorporates all prior allegations by reference as if fully set forth herein.

51. Upon information and belief, the Transfers were made without fair consideration when 2424, Super Sayin' and/or Compound Touring, as applicable, were engaged or about to be engaged in a business transaction for which the property remaining in their respective hands after the Transfers constituted unreasonably small capital.

52. The Transfers constituted fraudulent conveyances under § 275 of the New York Debtor and Creditor Law.

53. Citibank is entitled to a judgment against each of the defendants that received one or more of the Transfers, as set forth above, pursuant to § 278 of the New York Debtor and Credit Law: (i) setting aside the Transfers; or (ii) disregarding the Transfers and attaching or levying execution on the sums transferred as against the recipients of the Transfers and the Collateral.

### **COUNT III**

#### **(Fraudulent Conveyance – New York Debtor And Creditor Law §§ 273, 278)**

54. Plaintiff repeats and incorporates all prior allegations by reference as if fully set forth herein.

55. Citibank was a creditor of Super Sayin', 2424 and Compound Touring (the "Debtors") at the time of the Transfers.

56. Upon information and belief, each of the Debtors was insolvent at the time of the Transfers, or was rendered insolvent by the Transfers.

57. Upon information and belief, the Transfers were made without fair consideration.

58. The Transfers constituted fraudulent conveyances under § 273 of the New York Debtor and Creditor Law.

59. Citibank is entitled to a judgment against each of the defendants that received one or more of the Transfers, as set forth above, pursuant to § 278 of the New York Debtor and Credit or Law: (i) setting aside the Transfers to the extent necessary to satisfy Citibank's claim; or (ii) disregarding the Transfers and attaching or levying execution on the recipients of the Transfers and the Collateral.

#### COUNT IV

#### **(Fraudulent Conveyance – New York Debtor And Creditor Law §§ 276, 276-a, 278)**

60. Citibank repeats and incorporates all prior allegations by reference as if fully set forth herein.

61. Upon information and belief, the Transfers were made with the intent to hinder, delay and defraud Citibank with respect to its ability to recover the proceeds of the Loans.

62. The Transfers of the Collateral to the transferees was an intentional fraudulent conveyance under § 276 of the New York Debtor and Creditor Law.

63. Citibank is entitled to a judgment pursuant to § 278 of the New York Debtor and Credit Law against each of the defendants that received one or more of the Transfers, as set forth above: (i) setting aside the Transfers to the extent necessary to satisfy Citibank's claims as aforesaid; or (ii) disregarding the Transfers and attaching or levying execution on the Collateral.

64. Citibank is also entitled to recover its legal fees and expenses against defendants pursuant to § 276-a of the New York Debtor and Creditor Law.

**COUNT V**  
**(Alternative Count)**  
**(Foreclosure of Security Interests Granted by Super Sayin' and 2424/Breach of Contract)**

65. Plaintiff repeats and incorporates all prior allegations as if fully set forth herein.

66. Plaintiff intends to proceed with this count to the extent that the evidence shows that Smith either signed the SS/2424 Loan Documents or authorized the SS/2424 Loan.

67. The SS/2424 Loan Documents constitute valid contracts.

68. Super Sayin', 2424, Smith and Compound Touring are in default of their obligations under the SS/2424 Loan Documents.

69. NY UCC provides in pertinent part: "a security interest . . . continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest."

70. As a result of the breaches of and defaults under the SS/2424 Loan Documents, Citibank is entitled to exercise all of its rights under Article 9 of the NY UCC and the SS/2424 SA, including without limitation: (i) the right to take possession of the SS/2424 Collateral; (ii) the right to require Super Sayin' and 2424 to assemble the SS/2424 Collateral; (iii) the right to sell, lease or otherwise dispose of the SS/2424 Collateral; (iv) the right to apply the proceeds from the disposition of the SS/2424 Collateral (including the CD) to pay the amounts due and owing to Citibank, including principal, interest, fees, legal fees and costs; and (v) the right to pursue any and all rights or remedies of a secured party under the NY UCC.

**COUNT VI**  
**(Alternative Count)**  
**(Foreclosure of Security Interests Granted by Compound Touring/Breach of Contract)**

71. Plaintiff repeats and incorporates all prior allegations as if fully set forth herein.

72. Plaintiff intends to proceed with this count to the extent the evidence shows that Smith either signed the CT Loan Documents or authorized the CT Loan.

73. The CT Loan Documents constitute valid contracts.

74. Super Sayin', 2424, Smith and Compound Touring are in default of their obligations under the CT Loan Documents.

75. NY UCC provides in pertinent part: "a security interest . . . continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest."

76. As a result of the breaches of the CT Loan Documents, Citibank is entitled to exercise all of its rights under Article 9 of the NY UCC and the CT SA, including without limitation: (i) the right to take possession of the CT Collateral; (ii) the right to require Compound Touring to assemble the CT Collateral; (iii) the right to sell, lease or otherwise dispose of the CT Collateral (including the CD); (iv) the right to apply the proceeds from the disposition of the CT Collateral to pay the amounts due and owing to Citibank, including principal, interest, fees, legal fees and costs; and (v) the right to pursue any and all rights or remedies of a secured party under the NY UCC.

**WHEREFORE**, Citibank demands judgment as follows:

- (i) on its first cause of action, a money judgment against defendants for the unpaid balance of the SS/2424 Loan and CT Loan, plus Citibank's legal fees and costs through and including the date of payment thereof and a set-off against the CD;
- (ii) on its second cause of action, a judgment against defendants who received any of the Transfers (a) setting aside the Transfers to the extent necessary to satisfy Citibank's claims; or (b) disregarding the Transfers and attaching or levying execution on the Collateral;
- (iii) on its third cause of action, a judgment against defendants who received any of the Transfers (a) setting aside the Transfers to the extent necessary to satisfy Citibank's claims; or (b) disregarding the Transfers and attaching or levying execution on the Collateral;

- (iv) on its fourth cause of action, a judgment against defendants who received any of the Transfers (a) setting aside the Transfers to the extent necessary to satisfy Citibank's claims; or (b) disregarding the Transfers and attaching or levying execution on the Collateral and awarding legal fees;
- (v) on its fifth cause of action, a judgment against Super Sayin', 2424, Smith and/or Compound Touring (1) for the amount due and owing under the SS/2424 Loan Documents, and (2) authorizing Citibank to exercise all of its rights under Article 9 of the NY UCC and the SS/2424 SA, including without limitation: (i) the right to take possession of the Collateral; (ii) the right to require Super Sayin' and 2424 to assemble the Collateral; (iii) the right to sell, lease or otherwise dispose of the Collateral, free and clear of any and all interests; (iv) applying the proceeds from the disposition of the Collateral to pay the amounts due and owing to Citibank under the SS/2424 Loan Documents, including principal, interest, fees, legal fees and costs; (v) pursuing any and all rights or remedies of a secured party under the NY UCC, and (3) permitting a set-off against the CD;
- (vi) on its sixth cause of action, a judgment against Super Sayin', 2424, Smith and/or Compound Touring (1) for the amount due and owing under the CT Loan Documents, and (2) authorizing Citibank to exercise all of its rights under Article 9 of the NY UCC and the CT SA, including without limitation: (i) the right to take possession of the Collateral; (ii) the right to require Compound Touring to assemble the Collateral; (iii) the right to sell, lease or otherwise dispose of the Collateral, free and clear of any and all interests; (iv) applying the proceeds from the disposition of the Collateral to pay the amounts due and owing to Citibank under the CT Loan Documents, including principal, interest, fees, legal fees and costs; (v) pursuing any and all rights or remedies of a secured party under the NY UCC, and (3) permitting a set-off against the CD; and
- (vii) awarding such other and further relief on any or all counts as is just and proper.

Dated: New York, New York  
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