

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

<p>SHAFFER SMITH, 2424, LLC, SUPER SAYIN' PUBLISHING, LLC, COMPOUND TOURING, INC., and COMPOUND VENTURES, LLC</p> <p>Plaintiffs,</p> <p>vs.</p> <p>KEVIN FOSTER, VERNON BROWN, FOSTER & FIRM, INC., and V. BROWN & COMPANY, INC.</p> <p>Defendants.</p>	<p>Docket No. 14-CV-5918 (SHS)</p> <p>Civil Action</p> <p>ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANTS KEVIN FOSTER AND FOSTER & FIRM, INC.</p>
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Defendants Kevin Foster and Foster & Firm, Inc. (collectively "Defendants"), by and through their undersigned attorneys, Bell, Shivas & Fasolo, P.C., by way of answer to the Second Amended Complaint (the "Complaint") of plaintiffs Shaffer Smith, 2424, LLC, Super Sayin' Publishing, LLC, Compound Touring, Inc., and Compound Ventures, LLC, (collectively "Plaintiffs") say as follows:

AS TO NATURE OF ACTION

1. Defendants deny the allegations contained in paragraph 1 of the Complaint.

AS TO PARTIES

2. Defendants admit the allegations contained in paragraph 2 of the Complaint.

3. Defendants deny knowledge and information sufficient to either admit or deny the allegations contained in paragraph 3 of the Complaint.

4. Defendants deny knowledge and information sufficient to either admit or deny the allegations contained in paragraph 4 of the Complaint.

5. Defendants deny knowledge and information sufficient to either admit or deny the allegations contained in paragraph 5 of the Complaint.

6. Defendants deny knowledge and information sufficient to either admit or deny the allegations contained in paragraph 6 of the Complaint.

7. Defendants admit the allegations contained in paragraph 7 of the Complaint.

8. Defendants admit the allegations contained in paragraph 8 of the Complaint.

9. Defendants deny knowledge and information sufficient to either admit or deny the allegations contained in paragraph 9 of the Complaint.

10. Defendants admit the allegations contained in paragraph 10 of the Complaint.

11. Defendants admit only that Foster & Firm, Inc. is a New York corporation that provides services to professionals in

various industries. Defendants deny the remainder of the allegations contained in paragraph 11 of the Complaint.

AS TO JURISDICTION AND VENUE

12. Defendants neither admit nor deny the statements contained in paragraph 12 of the Complaint, which state a legal conclusion.

13. Defendants neither admit nor deny the statements contained in paragraph 13 of the Complaint, which state a legal conclusion.

AS TO FACTUAL BACKGROUND

14. Defendants admit the allegations contained in paragraph 14 of the Complaint.

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

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

17. Defendants admit only that after several meetings Plaintiff Smith decided to become a client of Brown Company. Defendants deny the remainder of the allegations contained in paragraph 17 of the Complaint.

18. Defendants admit only that Smith retained Brown Company to represent him in 2005 with compensation in the amount of 5% of gross revenues. Defendants deny the remainder of the allegations contained in paragraph 18 of the Complaint.

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

20. Defendants admit only that Foster and V. Brown were responsible for handling some of Smith's finances and business transactions and Foster and V. Brown performed several functions on behalf of Smith, including advising Smith as to investments. Defendants deny the remainder of the allegations contained in paragraph 20 of the Complaint.

21. Defendants admit only that Foster and V. Brown had access to Smith's Citibank accounts during the time that they represented Smith. Defendants deny the remainder of the allegations contained in paragraph 21 of the Complaint.

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

23. Defendants deny the allegations contained in paragraph 23 of the Complaint.

24. Defendants deny the allegations contained in paragraph 24 of the Complaint.

25. Defendants deny the allegations contained in paragraph 25 of the Complaint.

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

27. Defendants deny the allegations contained in paragraph 27 of the Complaint.

28. Defendants deny the allegations contained in paragraph 28 of the Complaint.

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 admit only that Smith agreed to invest in Imperial. Defendants deny the remainder of the allegations contained in paragraph 31 of the Complaint.

32. Defendants deny knowledge and information sufficient to either admit or deny the allegations contained in paragraph 32 of the Complaint.

33. Defendants admit only that Imperial produced OXYwater. Defendants deny the remainder of the allegations contained in paragraph 33 of the Complaint.

34. Defendants admit only that, upon information and belief, OXYwater had deals in place. Defendants deny the remainder of the allegations contained in paragraph 34 of the Complaint.

35. Defendants deny knowledge and information sufficient to either admit or deny the allegations contained in paragraph 35 of the Complaint.

36. Defendants deny the allegations contained in paragraph 36 of the Complaint.

37. Defendants deny the allegations contained in paragraph 37 of the Complaint.

38. Defendants deny the allegations contained in paragraph 38 of the Complaint.

39. Defendants deny the allegations contained in paragraph 39 of the Complaint.

40. Defendants deny the allegations contained in paragraph 40 of the Complaint.

41. Defendants deny the allegations contained in paragraph 41 of the Complaint.

42. Defendants deny the allegations contained in paragraph 42 of the Complaint.

43. Defendants admit the allegations contained in paragraph 43 of the Complaint.

44. Defendants neither admit nor deny the allegations contained in paragraph 44 of the Complaint and leave plaintiffs to their proofs.

45. Defendants deny knowledge or information sufficient to either admit or deny the allegations contained in paragraph 45 of the Complaint.

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

47. Defendants deny the allegations contained in paragraph 47 of the Complaint.

48. Defendants admit only that Foster left Brown Company and began to provide services to Smith through Foster and Firm. Defendants deny the remainder of the allegations contained in paragraph 48 of the Complaint.

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

50. Defendants deny knowledge and information sufficient to either admit or deny the allegations contained in paragraph 50 of the Complaint.

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

AS TO THE FIRST CAUSE OF ACTION

52. Defendants repeat each and every response set forth in the preceding paragraphs of the Answer as though set forth at length herein.

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

54. Defendants deny the allegations contained in paragraph 54 of the Complaint.

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

AS TO THE SECOND CAUSE OF ACTION

56. Defendants repeat each and every response set forth in the preceding paragraphs of the Answer as though set forth at length herein.

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

58. Defendants deny the allegations contained in paragraph 58 of the Complaint.

AS TO THE THIRD CAUSE OF ACTION

59. Defendants repeat each and every response set forth in the preceding paragraphs of the Answer as though set forth at length herein.

60. Defendants neither admit nor deny the allegations contained in paragraph 60 of the Complaint which state a legal conclusion.

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

62. Defendants deny the allegations contained in paragraph 62 of the Complaint.

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

AS TO THE FOURTH CAUSE OF ACTION

64. Defendants repeat each and every response set forth in the preceding paragraphs of the Answer as though set forth at length herein.

65. Defendants admit only that there was an agreement whereby Defendants agreed to perform services on behalf of Plaintiffs. Defendants deny the remainder of the allegations contained in paragraph 65 of the Complaint.

66. Defendants deny 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 allegations contained in paragraph 69 of the Complaint.

AS TO THE FIFTH CAUSE OF ACTION

70. Defendants repeat each and every response set forth in the preceding paragraphs of the Answer as though set forth at length herein.

71. Defendants neither admit nor deny the allegations contained in paragraph 71 of the Complaint which state a legal conclusion.

72. Defendants deny 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 allegations contained in paragraph 75 of the Complaint.

AS TO THE SIXTH CAUSE OF ACTION

76. Defendants repeat each and every response set forth in the preceding paragraphs of the Answer as though set forth at length herein.

77. Defendants deny knowledge and information sufficient to either admit or deny the allegations contained in paragraph 77 of the Complaint.

78. Defendants deny the allegations contained in paragraph 78 of the Complaint.

79. Defendants deny the allegations contained in paragraph 79 of the Complaint.

AS TO THE SEVENTH CAUSE OF ACTION

80. Defendants repeat each and every response set forth in the preceding paragraphs of the Answer as though set forth at length herein.

81. Defendants deny the allegations contained in paragraph 81 of the Complaint.

82. Defendants deny the allegations contained in paragraph 82 of the Complaint.

83. Defendants deny the allegations contained in paragraph 83 of the Complaint.

84. Defendants deny the allegations contained in paragraph 84 of the Complaint.

AS TO THE EIGHTH CAUSE OF ACTION

85. Defendants repeat each and every response set forth in the preceding paragraphs of the Answer as though set forth at length herein.

86. Defendants deny the allegations contained in paragraph 86 of the Complaint.

87. Defendants deny the allegations contained in paragraph 87 of the Complaint.

88. Defendants deny the allegations contained in paragraph 88 of the Complaint.

89. Defendants deny the allegations contained in paragraph 89 of the Complaint.

90. Defendants deny the allegations contained in paragraph 90 of the Complaint.

AS TO THE NINTH CAUSE OF ACTION

91. Defendants repeat each and every response set forth in the preceding paragraphs of the Answer as though set forth at length herein.

92. Defendants deny the allegations contained in paragraph 92 of the Complaint.

93. Defendants deny the allegations contained in paragraph 93 of the Complaint.

WHEREFORE, Defendants Kevin Foster and Foster & Firm, Inc. demand judgment against Plaintiffs dismissing the Complaint in its entirety and awarding Defendants such further relief as the Court deems just and equitable.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' complaint fails to state a cause of action upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the doctrines of estoppel, laches and waiver.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by accord and satisfaction.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the lack of consideration.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the lack of subject matter jurisdiction.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by lack of personal jurisdiction.

SEVENTH AFFIRMATIVE DEFENSE

At all times referenced in the Complaint, Defendants were acting as agents of Plaintiffs, who directed their actions.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the doctrine of unclean hands.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the doctrine of assumption of risk.

TENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the doctrine of ratification.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred because of Plaintiff's prior breach of contract.

JURY DEMAND

Defendants Kevin Foster and Foster & Firm, Inc. request a trial by jury.

BELL, SHIVAS & FASOLO, P.C.

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*Attorneys for Defendants, Kevin
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Dated: February 17, 2015