

Accordingly, it was improper for the Kaplans to direct or influence Natbony's administration of the Trusts and treatment of plaintiff Aguiar and her issue and Natbony acted in bad faith by allowing them to do so.

21. Irrespective of the powers granted to Natbony under the Trusts, he still was subject to an unwavering duty of undivided loyalty to the trust beneficiaries and was thus required to exercise reasonable care, diligence and prudence with respect to plaintiff Aguiar. Natbony abused his discretion and acted in bad faith in violating his fiduciary duties to plaintiff Aguiar. Plaintiff is entitled to a court order removing Natbony as trustee and a decree invalidating the January 7, 2009 Amendments which removed plaintiff as a beneficiary.

**D. Natbony's Subservience to Kaplan and Conflict of Interest.**

22. Despite his obligation to be a disinterested trustee, Natbony was anything but a truly disinterested trustee. Indeed, Natbony depends on Kaplan for his livelihood, a conflict of interest that caused him to abuse his discretion, to breach his fiduciary duties, and to act in bad faith.

23. Not only was Natbony not a disinterested trustee, he also was a "subordinate" of Kaplan within the meaning Internal Revenue Code Section 672. Consequently, Natbony is presumed to be subservient to Kaplan in the exercise (or non-exercise) of his duties as trustee.

24. Natbony's financial dependence on Kaplan is clear. In May 2007, Natbony stepped down as partner at Katten Muchin and began working exclusively for Kaplan and his companies. Kaplan appointed defendant Natbony the CEO of his company Tigris. In addition to a salary as CEO of Tigris and as trustee of the Trusts, Natbony received payments from Pardus LLC, a minority owner of Leor, including a payment of 2.75 million dollars. In 2008, Natbony received a payment of 3.5 million dollars from Jaguar-Portland Holdings, another Kaplan related

entity. Natbony's positions and holdings in the various companies owned and/or controlled by Kaplan created an irreconcilable conflict of interest for Natbony, and caused him to abuse his discretion and act in bad faith and otherwise interfered with his proper administration of the Trusts.

**E. The Kaplans' Wrongful Conduct.**

25. Kaplan and his wife knowingly and improperly caused Natbony's conflict of interest and used this power to induce and participate in Natbony's wrongful conduct, including his breaches of fiduciary duty. The Kaplans knew that they controlled Natbony's actions as trustee due to Natbony's dependence on them for his livelihood. The Kaplans also knew that whenever they directed him to act in breach of his fiduciary duty, Natbony's conflict would cause him to comply. The Kaplans, with Natbony's consent and participation, essentially managed the Trusts, investing and using the assets of the Trusts for their own benefit.

26. For example, at the direction of the Kaplans, and in order to favor them to the detriment of the other beneficiaries, in 2006 and 2007 Natbony made elections pursuant to Estate Powers and Trust Laws of the State of New York Section 11-2.4 (the "Unitrust Election"). These elections allowed Natbony to make larger distributions to the Kaplans, as Settlers of the Trusts, than were provided for when the Trusts were created. Essentially the Unitrust Election defined the annual income of each Trust as four percent (4%) of such Trust's value (calculated annually) without regard to the traditional definition of income. Thus, for example, because the initial value of Danfa's Trust was \$5,000,000.00, prior to the election, the amount of income available for Natbony to distribute to Dafna annually after the payment of the annuity amount

would be minimal compared to the over \$30,000,000 of income available to Natbony to distribute to Dafna after the election.<sup>5</sup>

27. In order to mislead plaintiff Aguiar about the implications of the Unitrust Election, Natbony sent her (and her issue) a one-page letter and a separate Consent and requested that she execute the Consent to the Unitrust Elections. The letter failed to fully advise plaintiff Aguiar about the consequences of the Election. In an effort by Natbony to avoid seeking the Court's appointment of guardians to protect the interests of the minor and unborn children who were beneficiaries of the Trusts, the letter and the Consent further requested that plaintiff Aguiar sign on behalf of her minor children.

28. Natbony abused his discretion and acted in bad faith by making the Unitrust Elections, by failing to provide plaintiff Aguiar with full and appropriate information concerning the election, by failing to advise plaintiff Aguiar to seek independent counsel and by failing to ask the Court to appoint guardians for plaintiff Aguiar's minor issue. If plaintiff Aguiar had known the consequences of the Unitrust Election (Natbony never rendered any accounting or provided any other financial information), she would not have consented to the Unitrust Elections.

29. Natbony, with the Kaplan's knowing direction and participation, further violated his duties to the beneficiaries because, rather than exercising his discretion in making investments that would be in the best interest of the Trusts and their beneficiaries, Natbony made investments that were directed by, and for the benefit of, the Kaplans while damaging the interests of the other beneficiaries, including plaintiff Aguiar.

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<sup>5</sup> Natbony as trustee represented to the New York Surrogate Court in 2006/2007 that the Dafna Trust was worth approximately \$800,000,000.00.

30. Natbony allowed the Kaplans to dictate the activities of the Trusts. For example, the Kaplans directed Natbony to purchase real property that benefited the Kaplans and their interests, and Natbony did so without regard to whether the investments were sound or productive. Natbony, at the direction of Kaplan, purchased non-income-earning land in the Brazilian Pantanal for charitable use by Kaplan's Panthera Project. In addition, at Kaplan's direction, Natbony caused the Trusts to purchase millions of dollars worth of art to be used, among other things, for Kaplan's personal use and aggrandizement. Dafna Kaplan also directed charitable donations to be made out of the Trusts to satisfy her personal charitable commitments. Natbony's actions were not based on an exercise of his independent discretion as disinterested trustee but, rather, were instead taken upon the direction of the Kaplans. These investments at the Kaplans' direction were in violation of Natbony's fiduciary duty to conserve the assets of the Trusts, and resulted in the dissipation of Trust assets.

31. In addition to his breaches of duty, abuses of discretion and bad faith toward plaintiff Aguiar, Natbony's open hostility toward them is evidenced by his use of his other positions with Kaplan and his companies to fight Kaplan's dispute against Guma. For example, as discussed above, Natbony (at Kaplan's direction) caused Leor to file a specious spite suit against plaintiff Aguiar's daughter, Angelika Aguiar (another beneficiary of the Trusts), and her husband for improper purposes of harassment and retaliation.

## **CAUSES OF ACTION**

### **Count I** **(Breach of Fiduciary Duty – Removal of Plaintiff** **Aguiar and Her Issue as Beneficiaries)**

32. Plaintiff incorporates by reference the allegations contained in paragraphs 1 - 31.