

33. As trustee of the Trusts, Natbony has a fiduciary obligation to the plaintiff who was (and still should be) a beneficiary of the Trusts. His duty was to serve as a neutral and disinterested trustee.

34. Natbony abused his discretion as a trustee, he did not exercise reasonable care, diligence or prudence, and he acted in bad faith by allowing the Kaplans, to effectively manage the Trusts.

35. To the extent that the Trusts provide discretion to the trustee to make determinations, the trustee is required to make an independent decision in good faith, to recuse himself or seek instructions from the court, where as here, he has a conflict of interest, and with full regard to the fiduciary duty that he owes all the beneficiaries of the Trusts.

36. Natbony did not exercise his discretion independently and in good faith. Instead, as a result of the Kaplans' influence and control over him, he improperly removed plaintiff and her issue as a contingent beneficiary of the Trusts. Plaintiff Aguiar was damaged by Natbony's abuses of discretion, breach of fiduciary duty and bad faith stemming from her removal as a beneficiary of the Trusts. As a result of Natbony's failure to exercise independent judgment and his abuse of discretion, bad faith, conflicts, and failure to exercise reasonable care, diligence and prudence, the January 7, 2009 Amendments to the Thomas and Dafna Kaplan Trusts should be deemed invalid and/or null and void and/or rescinded.

Count II
(Breach of Fiduciary Duty – Bad Faith Use of Trust Assets)

37. Plaintiff incorporates by reference the allegations contained in paragraphs 1 - 36 and count I.

38. As trustee of the Trusts, Natbony has a fiduciary obligation to the plaintiff who was (and still should be) a beneficiary of the Trusts.

39. As trustee, Natbony was required to exercise his fiduciary duties in managing the Trusts' assets. Natbony owed the Trusts beneficiaries a duty of reasonable care, diligence and prudence in the administration of the Trusts. Natbony failed to exercise reasonable care, diligence or prudence and abused his discretion and acted in bad faith in connection with protecting the Trusts' assets.

40. Natbony abused his discretion and his fiduciary duty of reasonable care, good faith, diligence and prudence by allowing the Kaplans to determine the investments and otherwise manage the Trusts and by making investments that were not in the best financial interests of the Trusts. Natbony further breached his fiduciary duty and dissipated trust assets by allowing the Kaplans to use the assets of the Trusts for their own personal benefit, to the detriment of the other beneficiaries of the Trusts. He breached his fiduciary duties and abused his discretion by, among other things, purchasing millions of dollars in art at the direction of Thomas Kaplan for his personal use. The art purchases were for an improper purpose and were unproductive investments that damaged the Trusts and the beneficiaries. In addition, Natbony abused his discretion and acted in bad faith by taking direction from Thomas Kaplan to purchase real estate, including unproductive land in the Pantanal for use in Thomas Kaplan's charitable Panthera Project.

41. As a result of Natbony's abuses of discretion and bad faith in handling the Trusts' assets, plaintiff Aguiar was damaged because, upon information and belief, the Trusts' assets have been significantly dissipated or put at risk. Therefore, the trustee should be surcharged for the losses to the Trusts with statutory interest as a result of his mismanagement and the trustee should be directed to provide a full and complete accounting of the financial condition and management of the Trusts.

Count III
(Breach of Fiduciary Duty – Unitrust Election)

42. Plaintiff incorporates by reference the allegations contained in paragraphs 1 - 41 and Counts I and II.

43. As trustee of the Trusts, Natbony has a fiduciary obligation to the plaintiff who was (and still should be) a beneficiary of the Trusts.

44. Natbony breached his duty of loyalty, good faith and reasonable care, diligence and prudence by misleading plaintiff Aguiar as to the effect of the Unitrust Elections and/or failing to fully inform plaintiff Aguiar of the details of the Unitrust Elections including failing to disclose the enormous magnitude of the increase in the amount that Natbony was entitled to distribute from the Trusts to Thomas and Dafna Kaplan and consequent decrease in the amount available for distribution to the beneficiaries after the Annuity Term.

45. Natbony failed to fully inform the beneficiaries of their rights related to the Unitrust Election which affected both Trusts and indeed, intentionally concealed from the beneficiaries the facts necessary for plaintiff Aguiar to make an informed decision.

46. With respect to the Thomas Trust, Natbony failed to seek the Unitrust Election within the two year period allowed by law. Therefore, Natbony was required to obtain the consent of all beneficiaries and the consent had to be informed.

47. Natbony failed to make any effort to provide a complete explanation of the Unitrust Elections to plaintiff Aguiar and instead simply mailed a scant one-page letter that made no mention of the significant financial impact of the Unitrust Elections and directed plaintiff Aguiar to sign and return the Consent included with the letter.

48. Had plaintiff Aguiar been fully informed of her legal rights with respect to the Unitrust Elections she never would have executed the Consent. The Trusts, and plaintiff, have

been damaged by Natbony's failure to properly exercise his fiduciary duties with respect to plaintiff in connection with the Unitrust Elections.

49. Natbony also failed to ask the court to appoint guardians for the minor children among plaintiff Aguiar and her issue when making the Unitrust Elections.

50. Natbony abused his discretion intentionally, in bad faith and with reckless disregard made the Unitrust Elections. Although he had (and still has) a conflict, Natbony took such action at the direction of Thomas and Dafna Kaplan, the Settlers of the Trusts.

51. The Trusts, and plaintiff, were damaged by these fiduciary breaches in that the principal of the Trusts has been dramatically reduced by the increased payments to the Kaplans.

52. As a result of Natbony's numerous breaches, the court should render the Unitrust Elections invalid and/or null and void and/or rescinded and the trustee should be surcharged with statutory interest for any additional payments Natbony made to the Settlers on account of the Unitrust Elections.

Count IV
(Aiding and Abetting Breach of Fiduciary Duty Against the Kaplan Defendants)

53. Plaintiff incorporates by reference the allegations contained in paragraphs 1 - 52 and Counts I - III.

54. As trustee of the Trusts, Natbony has a fiduciary obligation to the plaintiff who was (and still should be) a beneficiary of the Trusts.

55. Natbony abused his discretion, breached his duties to plaintiff Aguiar and her issue, including his fiduciary duty of undivided loyalty, good faith, reasonable care, diligence and prudence and acted in bad faith by allowing the Kaplans to influence the trustee's actions and effectively manage the Trusts. Specifically, Natbony wrongfully removed plaintiff Aguiar and her issue as beneficiaries of the Trusts, acquired property for the benefit of the Kaplans and