

to the detriment of the other beneficiaries, and by made a Unitrust Elections at the direction of the Settlers and without proper notice or informed consent.

56. The Kaplans knowingly induced Natbony to breach his fiduciary duty towards plaintiff and the Trusts and aided and abetted such breaches. The Kaplans knew that Natbony owed a fiduciary duty to the beneficiaries, including plaintiff Aguiar, yet they nevertheless used their improper influence over Natbony to control the activities of the Trusts.

57. The Kaplans made an irrevocable gift of the Schedule A property to the Trusts and thereafter, relinquished any legal interest in or right to control the Trust assets; yet, in violation of the terms of the Trusts and the Internal Revenue Code, and New York law the Kaplans induced Natbony to abuse his discretion, act in bad faith, and breach his fiduciary duties to plaintiff by allowing the Kaplans to continue to control the Trusts for their personal benefit.

58. Plaintiff Aguiar suffered damages as a result of the Kaplans' aiding and abetting Natbony to abuse his discretion, act in bad faith, and breach his fiduciary duty in that plaintiff Aguiar was wrongfully removed as a beneficiary of the Trusts and the principal of the Trusts have been significantly dissipated as a result of the Kaplans' wrongful acts.

59. As a result of the Kaplans' aiding and abetting, they should be directed to pay the Trusts for the losses to the Trusts with statutory interest, and the January 7, 2009 Amendments should be deemed invalid and/or null and void and/or rescinded.

**Count V**  
**(Declaratory Relief)**

60. Plaintiff incorporates by reference the allegations contained in paragraphs 1 - 59 and counts I - IV.

61. Plaintiff Aguiar seeks a judicial declaration, pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, and Federal Rule of Civil Procedure 57, that the January 7, 2009

Amendments to the Trusts removing plaintiff Aguiar and her issue as beneficiaries are invalid and void.

62. Nathony as the trustee of the Trusts, violated, and continues to violate, his fiduciary duties and acted (and continues to act) with a conflict of interest under the influence of the Settlers Thomas and Dafna Kaplan. Nathony's removal of plaintiff Aguiar and her issue was an improper abuse of his discretion and was done in bad faith.

63. An actual controversy exists between plaintiff Aguiar, who contends that her status as a beneficiary has been wrongfully and improperly terminated, that she should be reinstated as a beneficiary of the Trusts and that the January 7, 2009 Amendments should be deemed invalid, and/or null and void and/or rescinded, and the defendants, whose interests are adverse as to the January 7, 2009 Amendments to the Trusts.

64. Plaintiff Aguiar has no adequate remedy at law.

65. There is a bona fide, actual, present and practical need for a declaration with respect to the validity of the January 7, 2009 Amendments to the Trusts and whether it should be deemed void and/or rescinded by this Court.

66. The Court is authorized to grant declaratory relief requested herein pursuant to the Declaratory Judgment Act 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57.

67. Pursuant to the Declaratory Judgment Act 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57, plaintiff Aguiar is entitled to a judicial declaration that the January 7, 2009 Amendments to the Trusts are invalid and/or null and void and/or rescinded.

**Count VI**  
**(Appointment of an Interim Independent Co-Trustee)**

68. Plaintiff incorporates by reference the allegations contained in paragraphs 1 - 67 and counts I - V.

69. Natbony has violated the terms of the Trusts and has repeatedly violated his duties to plaintiff Aguiar and her issue as beneficiaries of the Trusts, including by improperly removing them from that capacity. He has also abused his discretion and acted in bad faith by taking actions in contravention of the terms of the Trusts. Natbony has not been a disinterested trustee and has acted with a clear conflict of interest as a result of his dependence on Kaplan. In fact, Natbony is a “subordinate” unable to make discretionary determinations as trustee within the terms of the Trusts.

70. Natbony’s breaches are on-going in that he continues to act as trustee under the influence of the Kaplans and in reckless disregard of the interests of plaintiff Aguiar and her issue and of the other beneficiaries (except the Kaplans). The harm to the wrongfully removed beneficiaries is ongoing and Natbony continues to abuse his discretion and act in bad faith. Natbony is unsuitable and unfit to execute the Trusts.

71. Natbony’s personal interests conflict with his duties as trustee, and he has repeatedly acted under the influence of the Kaplans and in total disregard of the plaintiff’s interests when the Kaplans’ directions conflict with those of the beneficiaries of the Trusts.

72. There is good cause to remove Natbony as the trustee and to appoint a non-conflicted trustee unaffiliated with the Kaplan family (including their counsel at Katten Muchin). In the interim, while this litigation is pending, the Court should appoint a non-conflicted interim co-trustee to ensure that Natbony does not further abuse his discretion and act in bad faith during the course of this litigation.

73. The appointment of a co-trustee will be conducive to facilitating proper administration of the Trusts during the course of this litigation.

74. Alternatively, this Court should issue a preliminary injunction freezing the activity of the Trusts during the course of this litigation to prevent further depletion of the Trusts' assets and/or requiring that the trustee seek the permission of the Court before making any further investments or changes in the trust assets. Natbony has repeatedly breached his fiduciary duties as set forth herein and has a conflict between his duties as an independent trustee and his financial reliance on the Kaplans. Accordingly, plaintiff is likely to succeed on the merits of her claim.

75. A preliminary injunction is required to preserve the assets of the Trust and to prevent waste during the pendency of this action. Plaintiffs are likely to prevail on the merits, and this case presents serious questions going to the merits to make them a fair ground for litigation issues on the merits.

76. Plaintiff will be irreparably harmed if the court denies the preliminary injunction or alternative relief of the appointment of a co-trustee because the trustee and the Kaplans continue to dissipate Trust assets, and the trustee is not in a financial position to return the substantial amounts that the Trusts are losing. The balance of hardships is in plaintiff's favor.

**Count VII**  
**(Removal of Trustee, Successor Trustee**  
**and Any Kaplan Family Member As Trustee)**

77. Plaintiff incorporates by reference the allegations contained in paragraphs 1 - 76 and counts I - VI.

78. The Dafna Trust provides that Natbony will be the trustee and if he ceases to act as trustee, then Robert E. Friedman of Katten Muchin is the successor trustee along with an individual among Thomas Kaplan's issue.

79. Not only is Natbony unsuitable to be a trustee based on his various breaches of fiduciary duty, and his conflicts of interest, but the successor trustee Robert Friedman is also