



In the alternative, during the marriage Ed provided work and services to the trusts and subsidiary entities for no or inadequate compensation. That is, he provided community property to the trusts and subsidiary entities. To the extent that property in the trusts and subsidiary entities might be considered to be Ed's separate property, community property was commingled with it and the property is presumptively community.

In the further alternative, Ed has breached fiduciary duties to Marie and defrauded her and the community. He has caused trusts to transfer their assets to successor trusts, caused successor trust instruments to have provisions which restrict or eliminate Marie's beneficial rights, and caused trusts to change their situs, all to the detriment of Marie. He has done all of this without notice to Marie. His purpose was to cut Marie out of her rightful share of the community estate. The Third-Party Defendants independently breached duties to Marie and also knowingly participated in Ed's misconduct.

## II.

### Discovery Level

1. Discovery in this case is intended to be conducted under level 3 of rule 190 of the Texas Rules of Civil Procedure.

## III.

### Objection to Assignment of Case to Associate Judge

2. Counterpetitioner objects to the assignment of this matter to an associate judge for trial on the merits or presiding at a jury trial.

## IV.

### Parties

3. This suit is brought by MARY TAYLOR BOSARGE ("Marie"), Counterpetitioner. The last three numbers of MARY TAYLOR BOSARGE's driver's license

number are 696. The last three numbers of MARY TAYLOR BOSARGE's Social Security number are 205.

4. WILBUR EDWIN BOSARGE, JR. ("Ed") is Counterrespondent.
5. ERIC S. SCHAEFFER ("Schaeffer") is a Third Party Co-Defendant.
6. ROY N. ENTER ("Enter") is a Third Party Co-Defendant.
7. DAVID J. HOUSTON ("Houston") is a Third Party Co-Defendant.
8. ANDREW M. BOSARGE ("A. Bosarge") is a Third Party Co-Defendant.
9. SOUTH DAKOTA TRUST CO., LLC ("South Dakota Trust Co.") is a Third Party Co-Defendant.
10. TRIDENT TRUST CO. (SOUTH DAKOTA) INC. ("Trident Trust Co.") is a Third Party Co-Defendant.

## V.

### Domicile

11. Counterpetitioner has been a domiciliary of Texas for the preceding six-month period and a resident of this county for the preceding ninety-day period.

## VI.

### Service of Process

12. Process should be served on Counterrespondent, WILBUR EDWIN BOSARGE, JR., in accordance with Rule 21a, Texas Rules of Civil Procedure, by serving Counterrespondent's attorneys of record, Robert C. Kuehm, 8441 Gulf Freeway, Suite 600, Houston, Texas 77017, email: [rkuehm@kuehmlaw.com](mailto:rkuehm@kuehmlaw.com) and John C. Pavlas, 3040 Post Oak Blvd., Suite 1020, Houston, Texas 77056, email: [service@pavlaslaw.com](mailto:service@pavlaslaw.com).

13. Third Party Co-Defendant, ERIC S. SCHAEFFER may be served with process at 2368 Timber Lane, Houston, Texas 77027; 4203 Yoakum Boulevard, Suite #200, Houston,

Texas 77006; 3 Greenway Plaza, Suite 1000 Houston, Texas 77046; or wherever he may be found.

14. Third Party Co-Defendant, ROY N. ENTER, may be served with process pursuant to Tex. Civ. Prac. & Rem. Code § 17.044, by serving the Texas Secretary of State. The Secretary of State's address for this purpose is: Statutory Documents Section-Citations Unit, P.O. Box 12079, Austin, Texas 78711-2079. The Secretary of State shall then forward the process to Roy N. Enter, by registered or certified mail, return receipt requested, at his most recent home address, which appears to be 1385 S Willow Street, Denver, Colorado 80247. Roy N. Enter conducted business in the State of Texas, and therefore, pursuant to Texas's long-arm statute, Tex. Civ. Prac. & Rem. Code § 17.042, Texas courts may exercise personal jurisdiction over him.

15. Third Party Co-Defendant, DAVID J. HOUSTON may be served with process at 4615 Locust Street, Bellaire, Texas 77401; 4203 Yoakum Boulevard, Suite #200, Houston, Texas 77006; or wherever he may be found.

16. Third Party Co-Defendant, ANDREW M. BOSARGE, may be served with process at 4528 Oleander Street, Bellaire, Texas 77401; 4203 Yoakum Boulevard, Suite #200, Houston, Texas 77006; or wherever he may be found.

17. Third Party Co-Defendant, SOUTH DAKOTA TRUST CO., LLC may be served with process, pursuant to Tex. Civ. Prac. & Rem. Code § 17.044, by serving the Texas Secretary of State. The Secretary of State's address for this purpose is: Statutory Documents Section-Citations Unit, P.O. Box 12079, Austin, Texas 78711-2079. The Secretary of State shall then forward the process to South Dakota Trust Co., by registered or certified mail, return receipt requested, at its most recent address, which appears to be c/o Pierce H. McDowell, III, at

201 South Phillips Avenue, Suite 200, Sioux Falls, South Dakota 57104-6449. South Dakota Trust Co. has conducted business in the State of Texas, and therefore, pursuant to Tex. Civ. Prac. & Rem. Code § 17.042, Texas courts may exercise personal jurisdiction over it.

18. Third Party Co-Defendant, TRIDENT TRUST CO. (SOUTH DAKOTA) INC. may be served with process, pursuant to Tex. Civ. Prac. & Rem. Code § 17.044, by serving the Texas Secretary of State. The Secretary of State's address for this purpose is: Statutory Documents Section-Citations Unit, P.O. Box 12079, Austin, Texas 78711-2079. The Secretary of State shall then forward the process to Trident Trust Co., by registered or certified mail, return receipt requested, at its most recent address, which appears to be c/o Alice L. Rokahr, at 3513 West 90th Street, Sioux Falls, South Dakota 57108. Trident Trust Co. has conducted business in the State of Texas, and therefore, pursuant to Texas's long-arm statute, Tex. Civ. Prac. & Rem. Code § 17.042, Texas courts may exercise personal jurisdiction over it.

## VII.

### Protective Order Statement

19. No protective order under title 4 of the Texas Family Code is in effect, and no application for a protective order is pending with regard to the parties to this suit.

## VIII.

### Dates of Marriage and Separation

20. The parties were married on or about July 29, 1989. They have ceased to live together as husband and wife.

**IX.**

**Grounds for Divorce**

21. The marriage has become insupportable because of discord or conflict of personalities between Marie and Ed that destroys the legitimate ends of the marriage relationship and prevents any reasonable expectation of reconciliation.

22. Ed is guilty of cruel treatment toward Marie of a nature that renders further living together insupportable.

23. Ed has committed adultery.

**X.**

**Child of the Marriage**

24. There is no child born or adopted of this marriage, and none is expected.

**XI.**

**Division of Community Property**

25. Marie believes Marie and Ed will enter into an agreement for the division of their estate. If such an agreement is made, Marie requests the Court to approve the agreement and divide their estate in a manner consistent with the agreement. If such an agreement is not made, Marie requests the Court to divide their estate in a manner that the Court deems just and right, as provided by law.

**XII.**

**Separate Property**

26. Marie owns certain separate property that is not part of the community estate of the parties, and Marie requests the Court to confirm that separate property as Marie's separate property and estate.

**XIII.**

**Jurisdictional Claim for Relief**

The actions described in this pleading entitle Marie to damages within the jurisdictional limits of this court. Marie seeks damages in excess of \$1 million.

**XIV.**

**Alternative Allegations**

27. Allegations in this pleading are made in the alternative as necessary.

**XV.**

**Facts**

**The African Tudor Trust**

28. In the early 1980s, the Securities and Exchange Commission charged Ed with securities fraud and market manipulation. A case was filed against him in federal court in New York. The case was settled in early 1983.

29. Less than four months after settling the charges for securities fraud and market manipulation, on May 9, 1983 Ed created the African Tudor Trust.

30. Ed controlled the African Tudor Trust.

31. The African Tudor Trust was a foreign trust. Its nominal situs was Bermuda. According to the trust instrument, Barbara Rattay and Irmgard Zwar were the nominal settlors of the trust. Ms. Rattay was a resident of Namibia. She was also Ed's sister-in-law; she was the sister of Ed's first wife Brigitte. The Grosvenor Trust Company, located in Bermuda, was the nominal trustee of the trust. Ms. Rattay, Brigitte, and Ed's family were the named beneficiaries of the trust. Ed controlled Ms. Rattay, and she acted as his intermediary or conduit.

32. The African Tudor Trust was a scheme by Ed to hide income and property from U.S. authorities and escape taxes. Under U.S. "grantor trust" tax rules at the time, income of a

trust where the settlor and beneficiary were the same person would have been taxed to the settlor. If Ed was considered to be the settlor, the trust income would have been taxed to him. However, by having Ms. Rattay as the nominal settlor, Ed sought to escape having the income taxed to him. And, the income would not be taxed to Ms. Rattay, because she was a resident of Namibia and not a U.S. citizen or resident. Also, trust distributions could nominally be made to Ms. Rattay, and she could in turn gift the distributions to Ed. She would not owe gift tax, because she was a resident of Namibia and not a U.S. citizen or resident. Ed, as the donee of the gift, would not owe gift tax. Finally, assuming the form of the transaction was respected, property held by the trust would not be includable in Ed's estate and not be subject to estate taxes.

33. Ed and Marie were married on July 29, 1989.

34. During the marriage Ed conducted his business affairs through and reinvested personal service income in the African Tudor Trust and subsidiary business entities which the trust owned. Although he provided services to the trust and subsidiary entities, he did not take a salary from them, and to the extent he was entitled to personal service income it was reinvested in the trusts and subsidiary entities. His contributions of time, toil and effort to the trusts and subsidiary entities led to their financial success. Ed has publicly acknowledged creating and owning many of these entities during the marriage and has continued to appoint himself as the founder, chairman, and chief executive officer of these entities.

35. By the late 1990s, the assets of the African Tudor Trust consisted of: (i) an undivided interest in a state court judgment worth \$30 million; (ii) 100% of the stock of Capital Technologies, Inc. ("CapTech Stock"); (iii) 80% of the stock of Quantlab Technologies, Ltd., a

company incorporated in the British Virgin Islands (“Quantlab Stock”); and, (iv) other cash and marketable securities.

36. The assets of the African Tudor Trust were later transferred to the North Boulevard Trust and to the MAS Trust.

**The North Boulevard Trust  
and the MAS Trust**

37. In the late 1990s, tax laws changed so that income of a foreign trust having U.S. beneficiaries would be taxed to the U.S. beneficiary. Without changes to the African Tudor Trust, income of the trust would be taxed to Ed.

38. In reaction, Ed decided that the African Tudor Trust would be converted to two new trusts. The new trusts were the North Boulevard Trust, a domestic U.S. trust, and the MAS Trust, a foreign trust.

39. Ed orchestrated the conversion. He provided instructions to Ms. Rattay, as the nominal settlor, about what she should do to accomplish the conversion. She complied.

40. Ed’s instructions to Ms. Rattay detailed the specific actions she needed to take as the nominal settlor in order to create the North Boulevard Trust and the MAS Trust from the assets of the African Tudor Trust. Ed outlined which assets were to be included in each new trust, the situs of the new trusts, who was to be appointed as trustee of the new trusts, who was to be appointed as trust protector of the trusts, the exact beneficiaries of the trusts, the steps Ms. Rattay needed to take in order to create these new trusts, and the dates by which all of these arrangements were to occur. Further, Ed had a personal bank account opened in Bermuda in Ms. Rattay’s name for the purpose of facilitating Ms. Rattay’s contribution of trust asset distributions to Ed and the other U.S. beneficiaries in such a way as to escape U.S. tax and reporting requirements. Pursuant to Ed’s specific written and oral instructions, on or around

October 2, 2001, all of the assets of the African Tudor Trust had been distributed to Ms. Rattay and transferred by her into the North Boulevard Trust and the MAS Trust.

41. By 2001, Marie had substantial community property interests and claims to the assets of the African Tudor Trust and its subsidiary entities. The assets which were used to settle the North Boulevard Trust and the MAS Trust included Marie's community property.

42. The purpose of the North Boulevard Trust and the MAS Trust was the same as the purpose of the African Tudor Trust. It was to hide income and property and to escape taxes. The plan was: The North Boulevard Trust would not be a "grantor trust" because Ms. Rattay, the nominal settlor, would not also be a beneficiary. Although Ed would be a beneficiary, in form he would not also be a settlor. Ed intended to enjoy the use of trust assets and income generated therefrom in a purportedly tax efficient manner while maintaining complete control over the trusts and assets. Ed intended for the trusts to retain all manner of family assets, including antiques and art collections which were held in subsidiary entities. There would be no gift tax consequences to Ms. Rattay, as the nominal settlor, because she was a resident of Namibia and not a U.S. citizen or resident. Assuming the form of the transaction was respected, the trust assets would not be includable in Ed's estate upon his death and not be subject to estate taxes.

43. It was also contemplated that the income of the MAS Trust could escape taxes. The trust instrument stated that during Ms. Rattay's life, distributions from the trust could only be made to her. The form of the transaction provided that during Ms. Rattay's life Ed would not have a right to distributions and the trust income would not be taxed to him under the foreign grantor trust tax rules. Distributions would not be taxed to Ms. Rattay because she was a resident of Namibia and not a U.S. citizen or resident. However, as outlined in Ed's trust

formation instructions to Ms. Rattay, the trust could make distributions to Ms. Rattay, and she could gift those distributions to Ed with no gift tax consequences. She would be a conduit for Ed. Also, assuming the form of the transaction was respected, the trust's assets would not be includable in Ed's estate and not be subject to estate taxes.

**Ed's control of the North Boulevard Trust and the MAS Trust**

44. Ed controlled the North Boulevard Trust and the MAS Trust.

45. Ed was the de facto settlor and de facto trustee of the North Boulevard Trust and the MAS Trust. He directed Ms. Rattay in creating the trusts. He effectively provided all of the assets used to fund the trusts. He appointed the trustees as well as the trust protectors of the trusts. He named the beneficiaries of the trusts. Ed appointed himself as the trust protector of the MAS Trust. He named himself as a beneficiary of both trusts.

**The North Boulevard Trust**

46. Ms. Rattay acted under Ed's control and discretion at all relevant times. She received a distribution from the African Tudor Trust. On October 2, 2001 she used it to settle the North Boulevard Trust.

47. Bruce Eames, a citizen and resident of Houston, Texas, was the nominal trustee of the North Boulevard Trust. Eames was Ed's business partner.

48. The named beneficiaries were Marie, Ed, A. Bosarge (Ed's son), Suzanna Bosarge (Ed's daughter), and all their descendants.

49. The trust instrument provided for a trust protector. The trust protector had the power to remove and replace the trustee for any reason. A. Bosarge was appointed as the nominal trust protector.

50. The situs of the trust was Texas, and the trust instrument provided that Texas law governed the administration of the trust, described below.

51. The assets of the North Boulevard Trust were later transferred to the Southport Trust and to the CapTech Trust.

### **The MAS Trust**

52. Pursuant to the instructions from Ed, Ms. Rattay received a distribution from the African Tudor Trust. On October 10, 2001 she used it as the nominal settlor to settle the MAS Trust.

53. The Grosvenor Trust Company Limited, located in Bermuda, was the nominal trustee of the MAS Trust.

54. The named beneficiaries were Ms. Rattay, Marie, Ed, A. Bosarge, Suzanna, Brigitte, and all their descendants. Although the trust instrument provided that during Ms. Rattay's lifetime distributions could be made only to her, in substance Ms. Rattay was merely a conduit who would redirect distributions she received to Ed or other named beneficiaries.

55. The trust instrument provided for a trust protector. The trust protector had the power to remove and replace the trustee for any reason. Ed appointed himself as the trust protector.

56. The nominal situs of the trust was Bermuda.

57. The assets of the MAS Trust were later transferred directly or indirectly to the Etosha Trust, the Excalibur Trust, the ESD Trust, and the Exxon Trust, described below.

## **Ed's control of subsequent trusts and their assets**

### **Subsequent trusts formed from the North Boulevard Trust**

58. Ed later caused other trusts to be created out of the North Boulevard Trust and the North Boulevard Trust to be terminated.

### **The Southport Trust**

59. On November 1, 2008, the Southport Trust was created. Assets were transferred from the North Boulevard Trust to fund the Southport Trust. This meant that the assets ultimately originated from the African Tudor Trust and Ed and included Marie's community property. Houston, an employee of a subsidiary entity of one of the trusts, was appointed as the nominal trustee of the Southport Trust.

60. Ed controlled the Southport Trust.

61. Ed controlled the trustee. As evidence of this, Ed later created a trust named the Eagleeye Trust for the benefit of Houston.

62. Ed was the de facto trustee and de facto settlor.

63. Ed appointed himself as the trust protector, and as the trust protector he had the power to remove and replace the trustee for any reason.

64. The trust instrument provided for an Investment Committee and required the trustee to invest and manage the trust fund as directed by the Investment Committee. Ed appointed himself as the sole member of the Investment Committee.

65. The named beneficiaries were Marie, Ed, A. Bosarge, Suzanna, and all their descendants.

66. The situs of the Southport Trust was Texas, and the trust instrument provided that Texas law governed the administration of the trust.

67. On August 6, 2012, Houston was replaced as the nominal trustee. South Dakota Trust Co. was appointed the nominal successor trustee of the Southport Trust.

68. The assets of the Southport Trust were later transferred to the Mid-Coast Trust, described below.

69. Marie did not receive notice of trustee of Houston's replacement as trustee of the Southport Trust, the appointment of South Dakota Trust Co. as the trustee, or the transfer of the trust's assets to the Mid-Coast Trust.

**Ed's Russian mistress and plan to cut Marie out**

70. In 2012, Ed began a secret extramarital affair, now admitted, with a Russian mistress, Anna Kostenkova. Ed travels extensively with Anna Kostenkova, pays her expenses and provides her with money. It is believed that Ed has set up a trust for her benefit.

71. Ed also hatched a plan in 2012 or before to substantially reduce, if not eliminate, Marie's interests in the trusts and subsidiary entities. That is, he planned to cut her out of her rights in the marital estate.

72. By 2012, Marie had substantial community property interests and claims in the assets of the trusts and subsidiary entities. To accomplish his plan to cut Marie out of her interests and claims, Ed decided to transfer the situs of trusts to different jurisdictions, primarily South Dakota, to create new trusts, again primarily in South Dakota, and to transfer the assets from the existing trusts to new trusts. By doing so he hoped to take advantage of laws and practices which would make it even easier for him to control the trusts, to restrict or eliminate Marie's interests and claims, and to do all of this without notice to Marie. That is, he would settle new trusts with assets which were traceable to the African Tudor Trust and himself and

which included Marie's community property, but he would insulate himself and these assets from Marie's interests and claims.

### The CapTech Trust

73. On March 1, 2012, the CapTech Trust was created. It was settled with assets transferred to it from the North Boulevard Trust. Again, the assets ultimately originated from the African Tudor Trust and Ed and included Marie's community property. Houston was appointed as the nominal trustee of the CapTech Trust.

74. Ed controlled the trust.

75. Ed was the de facto trustee and de facto settlor.

76. Ed appointed himself as the trust protector, and as the trust protector he had the power to remove and replace the trustee for any reason.

77. The trust instrument provided for an Investment Committee and required the trustee to invest and manage the trust fund as directed by the Investment Committee. Ed appointed himself as the sole member of the Investment Committee.

78. Ed named himself as the sole beneficiary of the trust during his lifetime. After his death, Marie was to become the sole beneficiary.

79. The CapTech Trust instrument contained a provision that no benefit under it would be considered to be community property, even though the trust assets clearly included community property. Ed included the provision in the instrument to further his plan to cut Marie out of her interests.

80. The situs of the trust was Texas, and the trust instrument provided that Texas law governed the administration of the trust.

81. Marie was not given notice of the termination of the North Boulevard Trust or the creation of the CapTech Trust.

82. On January 14, 2014, but purportedly effective December 2, 2013, Ed resigned as trust protector of the CapTech Trust and appointed long-time friend, employee, and attorney Schaeffer as the nominal trust protector.

83. On June 6, 2014, but purportedly effective December 4, 2013, Schaeffer replaced Houston and appointed Joseph R. Valentino as the nominal trustee of the CapTech Trust.

84. On January 21, 2015, Schaeffer replaced Joseph R. Valentino as the trustee. The new nominal trustee was the South Dakota Trust Co.

85. On January 28, 2015, the situs and governing law of the trust was changed from Texas to South Dakota. Schaeffer, as the trust protector, directed the South Dakota Trust Co. not to notify or send statements to the beneficiaries of the trust, including Marie.

86. On January 23, 2017, Schaeffer as the trust protector removed the South Dakota Trust Co. as the trustee of the CapTech Trust. He appointed Trident Trust Co. as the nominal successor trustee.

87. The above actions concerning the CapTech Trust were done without notice to Marie.

### **The Mid-Coast Trust**

88. On September 6, 2012, the Mid-Coast Trust was created. It was settled with assets transferred to it from the Southport Trust. That meant that the assets originated from the North Boulevard Trust, and in turn had ultimately originated from the African Tudor Trust and Ed and included Marie's community property.

89. The South Dakota Trust Co. was appointed as the nominal trustee of the Mid-Coast Trust.

90. Ed controlled the trust.

91. Ed was the de facto trustee and de facto settlor.

92. Ed appointed himself as the trust protector, and as the trust protector he had the power to remove and replace the trustee for any reason.

93. The named beneficiaries were Marie, Ed, A. Bosarge, Suzanna and all their descendants and spouses. The trust provided that the trustee, in making distributions, could consider Marie's needs as more important than the needs of any other beneficiary.

94. The trust contained a provision, like the CapTech Trust, that no benefit under the trust would be considered to be community property, even though the trust assets clearly included community property. Ed included this provision to further his plan to cut Marie out of her interest.

95. In connection with creating the Mid-Coast Trust, Ed agreed to indemnify the trustee against all claims which any beneficiary might bring.

96. On October 1, 2013 Ed resigned as the trust protector. He appointed A. Bosarge as the nominal trust protector. On September 18, 2015, A. Bosarge resigned and appointed Enter as the nominal trust protector.

97. On February 1, 2017, Enter as the trust protector removed the South Dakota Trust Co. as the trustee of the Mid-Coast Trust. He appointed Trident Trust Co. as the nominal successor trustee.

98. The above actions concerning the Mid-Coast Trust were done without notice to Marie.

99. Both the Mid-Coast Trust and the CapTech Trust were settled with assets from trusts situated in Texas and governed by Texas law. Both the Mid-Coast Trust and the CapTech Trust are now purportedly situated in South Dakota. Ed, as de facto settlor, de facto trustee, and de facto trust protector, ensured that Marie was not given notice, despite Texas law requiring notice of the transfers of assets and the change of situs of these trusts be given to her as a beneficiary.

### **The Spotted Leopard Trust**

100. On June 6, 2012, the Spotted Leopard Trust was created.

101. The South Dakota Trust Co. was appointed as the nominal trustee of the Spotted Leopard Trust.

102. Ed controlled the trust.

103. Ed was the de facto trustee and de facto settlor.

104. Ed appointed himself as the trust protector, and as the trust protector he had the power to remove and replace the trustee for any reason.

105. The named beneficiaries were Ed, Marie, Andrew, Suzanna and all their descendants and spouses.

106. The trust owned a 99% limited partnership interest in Black Rhino, LP, a Delaware limited partnership, and 100% of the membership interests in Concept Solar Management, LLC, a Delaware limited liability company.

107. In 2013, Ed decided to transfer most the assets of the trust to a new trust in South Dakota. He left \$40 million in cash in the trust and caused all other assets to be transferred to the new trust.

108. On March 21, 2013, Ed as the trust protector removed the South Dakota Trust Co. as the trustee of the Spotted Leopard Trust. He appointed the Winchester Global Trust Company Limited as the nominal successor trustee.

109. The assets of the Spotted Leopard Trust were later transferred to the Leopardson Trust.

110. The above actions concerning the Spotted Leopard Trust were done without notice to Marie.

### **The Leopardson Trust**

111. Also on March 21, 2013, the Leopardson Trust was created. It was settled with assets from the Spotted Leopard Trust. All of the interests in Black Rhino and Concept Solar Management were transferred to the trust.

112. The South Dakota Trust Co. was appointed as the nominal trustee of the Leopardson Trust.

113. Ed controlled the trust.

114. Ed was the de facto trustee and de facto settlor.

115. Ed appointed himself as the trust protector, and as the trust protector he had the power to remove and replace the trustee for any reason.

116. The named beneficiaries were Marie, Ed, A. Bosarge, Suzanna, and all their descendants and spouses.

117. The trust instrument provided for an Investment Committee, and required the trustee to invest and manage the trust fund as directed by the Investment Committee. Ed appointed a company, Capital Technologies, Inc., as the sole member of the Investment Committee. Capital Technologies, Inc. was owned by the CapTech Trust. Ed controlled the

CapTech Trust and Capital Technologies, Inc., and thus controlled the Investment Committee and trustee of the Leopardson Trust.

118. The trust contained a provision that no benefit under the trust would be considered community property, even though the trust assets clearly included community property. Ed included this provision to further his plan to cut Marie out of her interest.

119. The nominal situs of the trust was South Dakota.

120. The trust contained a provision that the trustee was not required to provide notice concerning the trust to beneficiaries, including Marie.

121. In connection with creating the Leopardson Trust, Ed agreed to indemnify the trustee against all claims which any beneficiary might bring.

122. On September 23, 2013, Ed resigned as the trust protector. He appointed A. Bosarge as the nominal trust protector. On September 18, 2015, A. Bosarge resigned as the trust protector and appointed Enter as the nominal trust protector.

123. On January 16, 2017, Enter as the trust protector removed the South Dakota Trust Co. as the trustee of the Leopardson Trust. He appointed Trident Trust Co. as the nominal successor trustee.

124. The above actions concerning the Leopardson Trust were done without notice to Marie.

### **Subsequent trusts formed from the MAS Trust**

#### **The Etosha Trust**

125. At an unknown time, the Etosha Trust was created. Ms. Rattay was the nominal settlor. She settled the trust with distributions which she received directly or indirectly from the

MAS Trust. The trust was thus settled with assets that ultimately originated from the African Tudor Trust and Ed and included Marie's community property.

126. The Winchester Global Trust Company, Ltd., located in Bermuda, was appointed as the nominal trustee of the Etosha Trust.

127. Ed controlled the trust.

128. Ed was the de facto trustee and de facto settlor.

129. The trust was nominally situated in Bermuda.

130. The named beneficiaries were Ms. Rattay, Marie, Ed, A. Bosarge, Suzanna, Brigitte, and all descendants and spouses.

131. The nominal trust protector was Gordon Howard, then Ed, then A. Bosarge, then Allen Dempster. Dempster was Ed's lawyer.

132. The purpose of the trust was to escape taxes. Although the trust was considered to be a grantor trust with Ms. Rattay as both a settlor and a beneficiary, she would not owe income taxes because she was a resident of Namibia and not a U.S. citizen or resident. If the form of the transaction was respected, then trust assets which otherwise would have been includable in her estate and subject to the estate tax would not be includable.

### **The Excalibur Trust**

133. At an unknown time, the Excalibur Trust was created. Angelika San, a foreigner, was the nominal settlor. She settled the trust with distributions which she received directly or indirectly from the MAS Trust. The trust was thus settled with assets that ultimately originated from the African Tudor Trust and Ed and included Marie's community property.

134. The Winchester Global Trust Company, Ltd., located in Bermuda, was appointed as the nominal trustee of the Excalibur Trust.

135. Ed controlled the trust.

136. Ed was the de facto trustee and de facto settlor.

137. The trust was nominally situated in Bermuda.

138. The named beneficiaries were Ms. San, Marie, Ed, A. Bosarge, Suzanna, Brigitte, and all descendants and spouses.

139. The nominal trust protector was Gordon Howard, then Ed, then A. Bosarge, then Allen Dempster.

140. The purpose of the trust was to escape taxes. Although the trust was considered to be a grantor trust with Ms. San as both a settlor and a beneficiary, she would not owe income taxes because she was a resident of Namibia and not a U.S. citizen or resident. If the form of the transaction was respected, then trust assets which otherwise would have been includable in her estate and subject to the estate tax would not be includable.

#### **The ESD Trust**

141. On December 14, 2007, the ESD Trust was created. Ms. Rattay was the nominal settlor. She settled the trust with distributions received directly or indirectly from the MAS Trust. The trust was thus settled with assets that ultimately originated from the African Tudor Trust and Ed and included Marie's community property.

142. The South Dakota Trust Co. was appointed as the nominal trustee of the ESD Trust.

143. Ed controlled the trust.

144. Ed was the de facto trustee and de facto settlor.

145. The assets of the ESD Trust were later transferred to the South Ocean Trust.

### **The South Ocean Trust**

146. On July 22, 2008, the South Ocean Trust was created. It was settled with assets from the ESD Trust. The trust was thus settled with assets that ultimately originated from the African Tudor Trust and Ed and included Marie's community property.

147. The South Dakota Trust Co. was appointed as the nominal trustee of the South Ocean Trust.

148. Ed controlled the trust.

149. Ed was the de facto trustee and de facto settlor.

150. Ed appointed himself as the trust protector, and as the trust protector he had the power to remove and replace the trustee for any reason.

151. The named beneficiaries were Ed, Marie, A. Bosarge, Suzanna and all their spouses and descendants.

152. South Dakota was the nominal situs of the trust.

153. The assets of the South Ocean Trust were later transferred to the South Pacific Trust.

### **The South Pacific Trust**

154. On September 6, 2012, the South Pacific Trust was created. It was settled with assets from the South Ocean Trust. The trust was thus settled with assets that ultimately originated from the African Tudor Trust and Ed and included Marie's community property.

155. The South Dakota Trust Co. was appointed as the nominal trustee of the South Pacific Trust.

156. Ed controlled the trust.

157. Ed was the de facto trustee and de facto settlor.

158. Ed appointed himself as the trust protector, and as the trust protector he had the power to remove and replace the trustee for any reason.

159. The named beneficiaries were Marie, Ed, A. Bosarge, Suzanna, and all their descendants and spouses.

160. The trust instrument provided for an Investment Committee, and required the trustee to invest and manage the trust fund as directed by the Investment Committee. Ed appointed a company, Capital Technologies, Inc., as the sole member of the Investment Committee. Capital Technologies, Inc. was owned by the CapTech Trust. Ed controlled the CapTech Trust and Capital Technologies, Inc., and thus controlled the Investment Committee and trustee.

161. The trust contained a provision that no benefit under the trust would be considered community property, even though the trust assets clearly included community property. Ed included this provision to further his plan to cut Marie out of her interest.

162. The trust contained a provision that the trustee was not required to provide notice concerning the trust to beneficiaries, including Marie.

163. In connection with creating the South Pacific Trust, Ed agreed to indemnify the trustee against all claims which any beneficiary might bring.

164. South Dakota was the nominal situs of the trust.

165. On September 23, 2013, Ed resigned as the trust protector. He appointed A. Bosarge as the nominal trust protector. On September 18, 2015, A. Bosarge resigned as the trust protector and appointed Enter as the nominal trust protector.

166. On February 1, 2017, Enter removed the South Dakota Trust Co. as the trustee of the South Pacific Trust. He appointed Trident Trust Co. as the nominal successor trustee.

167. The above actions concerning the South Pacific Trust were done without notice to Marie.

#### **Exson Trust**

168. On January 17, 2008, the Exson Trust was created. Angelika San was the nominal settlor. She settled the trust with distributions which she received directly or indirectly from the MAS Trust. The trust was thus settled with assets that ultimately originated from the African Tudor Trust and Ed and included Marie's community property.

169. The Goldman Sachs Trust Company of Delaware was appointed as the nominal trustee of the Exson Trust.

170. Ed controlled the trust.

171. Ed was the de facto trustee and de facto settlor.

172. The named beneficiaries were Marie, Ed, A. Bosarge, Suzanna and all their spouses and descendants.

173. At an unknown time, the Goldman Sachs Trust Company of Delaware was removed as trustee and the South Dakota Trust Co. was appointed as the nominal successor trustee.

174. The assets of the Exson Trust were later transferred to the Exsontoo Trust.

#### **Exsontoo Trust**

175. On May 9, 2012, the Exsontoo Trust was created. It was settled with assets from the Exson Trust. The trust was then settled with assets that ultimately originated from the African Tudor Trust and Ed and included Marie's community property.

176. The South Dakota Trust Co. was appointed as the nominal trustee of the Exsontoo Trust.

177. Ed controlled the trust.

178. Ed was the de facto trustee and de facto settlor.

179. The named beneficiaries were Ed, Marie, A. Bosarge, Suzanna and all of their spouses and descendants.

180. The trust instrument provided for an Investment Committee, and required the trustee to invest and manage the trust fund as directed by the Investment Committee. Ed appointed a company, Capital Technologies, Inc., as the sole member of the Investment Committee. Capital Technologies, Inc. was owned by the CapTech Trust. Ed controlled the CapTech Trust and Capital Technologies, Inc., and thus controlled the Investment Committee and trustee.

181. The above actions concerning the Exsontoo Trust were done without notice to Marie.

#### **The Belbuck26 Trust**

182. On July 2, 2012, the Belbuck26 Trust was created. The trust was settled with assets that ultimately originated from the African Tudor Trust and Ed and included Marie's community property.

183. The South Dakota Trust Co. was appointed as the nominal trustee of the South Pacific Trust.

184. Ed controlled the trust.

185. Ed was the de facto trustee and de facto settlor.

186. Ed appointed himself as the trust protector, and as the trust protector he had the power to remove and replace the trustee for any reason.

187. The named beneficiaries were Marie, Ed, A. Bosarge, Suzanna, and all their descendants and spouses.

188. The trust instrument provided for an Investment Committee, and required the trustee to invest and manage the trust fund as directed by the Investment Committee. Ed appointed a company, Capital Technologies, Inc., as the sole member of the Investment Committee. Capital Technologies, Inc. was owned by the CapTech Trust. Ed controlled the CapTech Trust and Capital Technologies, Inc., and thus controlled the Investment Committee and trustee.

189. The trust contained a provision that no benefit under the trust would be considered community property, even though the trust assets clearly included community property. Ed included this provision to further his plan to cut Marie out of her interest.

190. The trust contained a provision that the trustee was not required to provide notice concerning the trust to beneficiaries, including Marie.

191. South Dakota was the nominal situs of the trust.

192. On September 23, 2013, Ed resigned as the trust protector. He appointed A. Bosarge as the nominal trust protector. On September 18, 2015, A. Bosarge resigned as the trust protector and appointed Enter as the nominal trust protector.

193. On February 1, 2017, Enter removed the South Dakota Trust Co. as the trustee of the Belbuck26 Trust. He appointed Trident Trust Co. as the nominal successor trustee.

194. The above actions concerning the Belbuck26 Trust were done without notice to Marie.

### Other Trusts

195. At various times, Ed created other trusts. The trusts were settled directly or indirectly with property from him and included Marie's community property. He has controlled the trusts. He was the de facto trustee and de facto settlor. The beneficiaries include Ed and Marie.

### Trusts used to own and conceal marital income and property

196. Ed created the African Tudor Trust and then transferred its assets into a multitude of successor trusts.

197. Essentially all of the property that constitutes the Bosarges' marital estate is owned by and concealed in the trusts. Ed controls the trusts. He is the de facto settlor, de facto trustee, de facto trust protector, and de facto Investment Committee of the trusts.

198. Beginning in 2012, Ed has transferred the nominal situs of trusts to South Dakota or other jurisdictions, created new trusts, and had the assets of trusts transferred to new trusts. The reason for these actions was to restrict or eliminate Marie's beneficial rights, to conceal marital income and property from her, to take advantage of laws which would make it even easier for him to control the trusts, to insulate himself, the trusts and the subsidiary entities from Marie's claims that the income and property belonged to the community and from any claims Marie would have for money damages, and to do all of this without providing notice to Marie.

199. Ed and Marie lived in a luxurious home at 100 Carnarvon Drive, Houston, Texas, which was originally listed for sale at \$43 million (the "Carnarvon Home"). The home was owned by 100 Carnarvon, LLC, which in turn was owned directly or indirectly by one of the trusts.

200. The trusts or subsidiary entities, as owners of property, have been considered interchangeable with Ed. The trusts or subsidiary entities bought and owned their personal property. For example, the trusts or subsidiary entities bought a private airplane for personal use, purchased multiple yachts, procured a remote island, financed the decorating of the Carnarvon home to resemble various palaces from around the globe, funded various business ventures of both Ed and Marie, and donated to political campaigns. Throughout the marriage, Ed controlled the couple's money, almost all of which was kept in the trusts and their subsidiary entities. Marie was not aware that these trusts were ever-changing, and further that Ed was constantly restructuring the trusts that were in possession of her marital estate.

201. Ed has used the trusts and their subsidiary entities as shams or conduits to own property which would ordinarily be personally owned by a couple in a marriage. For example, the Leopardson Trust, other trusts, and their subsidiary entities nominally own the following property but have made the property freely available for Ed's and Marie's use:

Their home at 100 Carnarvon Drive, Houston, Texas 77024;

The contents and antiquities at the home;

The contents and antiquities at 220 West Buttermilk Rd., Aspen, CO;

The contents and antiquities at 10 Moores Point Rd., Southport, ME;

The contents and antiquities on the S/Y Tenacious (a yacht);

The contents and antiquities on the S/Y Marie (another yacht);

The contents and antiquities on Over Yonder Cay, Exuma Bahamas (Ed's and Marie's island).

The property is provided free-of-charge. The trusts or entities pay all costs of holding and upkeep, including without limitation taxes, insurance, maintenance and ordinary repairs.

202. Even though the trusts or subsidiary entities nominally own Ed's and Marie's marital property, Ed has boasted publicly that he, individually, is the owner of the property. For example, Ed has boasted that the Carnarvon Home belongs to him and Marie despite its nominal owner being an entity owned by one of the trusts. Further, Ed has talked about "his" companies, referring to the subsidiary entities nominally owned by various trusts. Ed has also discussed "his" individual contributions to political campaigns, "his" multiple yachts, "his" private island Over Yonder Cay in the Bahamas, and "his" personal plane. However, all of these assets are community property held by the trusts.

## XVI.

### Causes of Action

#### Community Property

203. The trusts' income and assets, including all the income and assets of the subsidiary entities nominally owned by the trusts, are part of the marital estate. The income and assets are community property.

204. Even if some of the property at the start of the marriage was Ed's separate property, during the marriage the income from the separate property was community property.

205. During the marriage, Ed performed work or services for the trusts and subsidiary entities nominally owned by the trusts. Ed was not paid for the work or services, or was paid an amount less than the value of the work or services he performed. It can be considered that Ed contributed the value of the work or services to the trusts and subsidiary entities. That is, Ed contributed community property to the trusts and subsidiary entities. The community property was commingled with the business income and property of and reinvested in the trusts and subsidiary entities. The business income and property is thus presumed to be community property.

206. To the extent the trusts or subsidiary entities acquired property during the marriage in exchange for presumptively community property, the acquired property is presumptively community property.

207. The community property accumulated during the marriage was commingled with separate property. As a result, all of the property is presumed to be community property.

208. If property in the trusts and subsidiary entities is considered to be Ed's separate property at the inception of the marriage, the income of the trusts and subsidiary entities during the marriage is community property. The income from that separate property during marriage is community property.

209. To the extent the value of assets in the trusts and subsidiary entities increased in value during the marriage, and the increase resulted from the reinvestment of community property in the trusts or subsidiary entities or resulted from community property not having been withdrawn from the trusts and subsidiary entities, the increase in value is community property.

210. Marie is entitled to her fair and equitable share of the community property. Alternatively, because the trusts and subsidiary entities were shams, because they were self-settled, and because their form should be disregarded, Marie is entitled to recover from the trusts and subsidiary entities the income and property which is rightfully her share of community property in the marital estate.

#### **Sham Trusts and Subsidiary Entities**

211. The trusts and subsidiary entities were shams.

212. The trusts and the subsidiary entities which the trusts nominally owned were all part of a comprehensive estate and tax plan. The structuring of the trusts and subsidiary entities

should be construed and given meaning in accord with the tax facts and circumstances. Under these facts and circumstances, the form of the trusts and the subsidiary entities should be disregarded and the income and property in them should be considered to be community property.

213. The trusts were “grantor trusts” with all of their income attributable to Ed. The trusts were self-settled trusts. A self-settled trust is a trust settled by the grantor for his own benefit or his spouse’s benefit.

214. Pursuant to the grantor trust provisions at 26 U.S.C. § 671-679, if the grantor or his spouse is a beneficiary then the grantor is considered to have the use and enjoyment of his own property which he contributed to the trust. The income of the trust is attributed to the grantor and taxed to him. Under the rules for grantor trusts, the income and property of the trusts would be considered to be Ed’s.

215. The income would have been earned and the property would have been accumulated during Ed’s and Marie’s marriage. Therefore, the income and property are community income and property.

216. At minimum, the income and property should be presumed to be community income and property. Even if the trust assets could be considered to be Ed’s separate property at the start of the marriage, the income during marriage from separate property is community income. Under the self-settled grantor trust rules, income during the marriage is attributable to Ed. It is community income and property.

217. With respect to the foreign trusts, under the grantor trust rules, the U.S. grantor of a foreign trust with a U.S. beneficiary is considered to be the owner of the trust assets. The rules are stated in 26 U.S.C. § 679. The rules apply if a U.S. person directly or indirectly

transfers property to a foreign trust. An indirect transfer is a transfer through an intermediary if the intermediary merely serves as a conduit or if the U.S. person has sufficient control over the intermediary to direct the transfer. A transfer by an intermediary is treated as an indirect transfer if it is pursuant to a plan which has as one of its principal purposes the avoidance of U.S. tax. A foreign trust is presumed to have a U.S. beneficiary unless the transferor can establish that (a) under the terms of the trust none of the income or corpus may be paid or accumulated to or for the benefit of a U.S. person and (b) if the trust terminated none of the income or corpus could be paid to or for the benefit of a U.S. person. The rules apply if a trust has an indirect U.S. beneficiary. An indirect beneficiary is a foreign entity controlled by a U.S. beneficiary, or an agent or nominee of a U.S. beneficiary, such that any payment or accumulation may confer an actual or constructive benefit on the U.S. person. Under these rules, the income and property of the foreign trusts accumulated during the marriage is attributable to Ed and should be considered to be community property.

218. A grantor trust is created when a person contributes cash or property to a trust but retains certain interests such that he is treated as the owner of the trust. In determining the settlor of a trust, it is proper to look beyond the named grantor to the economic realities to determine the true grantor. Assets held in a grantor trust are considered the property of the grantor, thus making the trust assets taxable to the grantor until the assets are distributed to a beneficiary. In substance, Ed is the grantor of the trusts. The income and property of the trusts accumulated during the marriage is attributable to Ed and is community property.

219. Furthermore, under 26 U.S.C. § 2036(a), property transferred inter vivos by a taxpayer is considered to be the taxpayer's property and is included in the taxpayer's estate if the transfer is not a bona fide sale for adequate consideration or the taxpayer retains the

possession or enjoyment of, or the right to the income from, the property. Possession or enjoyment of the property, or the right to the income from it, exists if there was an implied agreement that the taxpayer will have the possession, enjoyment, or income of the property. There was an implied agreement that Ed had unfettered possession, enjoyment or income of trust property and property owned by subsidiary entities. The property would be included in Ed's estate and is considered to be Ed's and Marie's community property. The income would have been earned and the property would have been accumulated during Ed's and Marie's marriage. Therefore, the income and property should be considered to be community income and property.

220. The trusts and subsidiary entities were shams. Because Ed controlled the trusts and entities, he had unfettered use and enjoyment of their income and property. The form of the trusts and the business entities should be disregarded and the income and property in them should be considered to be community property.

221. Under Tex. Prop. Code § 112.035(d), if the settlor of a trust is also a beneficiary then the claims of the settlor's creditors may be satisfied from the settlor's interest in the trust. Thus the form of the trusts and subsidiary entities should be disregarded, Ed and Marie should be deemed to own the trusts' income and property, and the income and property should be considered available to satisfy Marie's claims that the income and property are the community's and to satisfy Marie's claims for money damages.

222. The trusts were self-settled trusts. A self-settled trust is a trust settled by the settlor for his own benefit. The settlor is considered to have the use and enjoyment of his own property which he contributed to the trust or which he may receive from the trust. Also, because Ed controlled the trusts and entities, he had unfettered use and enjoyment of their income and

property. Under the rules for self-settled trusts, the income and property of the trusts should be considered to be Ed's and Marie's. The income would have been earned and the property would have been accumulated during Ed's and Marie's marriage. Therefore, the income and property should be considered to be community income and property.

223. At minimum, the income and property should be presumed to be community income and property. Even if the trust assets could be considered to be Ed's separate property at the start of the marriage, the income during marriage from separate property is community income. Under the self-settled trust rules, income during the marriage is attributable to Ed. It is community income and property.

224. In determining the settlor of a trust, it is proper to look beyond the named settlor to the economic realities to determine the true settlor. Assets held in a self-settled trust are considered the property of the settlor. In substance, Ed is the settlor of the trusts. The income and property of the trusts accumulated during the marriage is attributable to Ed and is community property.

225. The form of the trusts and the subsidiary entities owned by the trusts should be disregarded, and the trusts' and subsidiary entities' income and assets should be considered to be in the community estate, because:

(a) Ed used the form of ownership of property through trusts and subsidiary entities as a sham to perpetrate a fraud. The form was fraudulently used to hide income and assets and to keep income and property which would otherwise have been in the community estate out of the estate.

(b) The trusts and subsidiary entities were organized and operated as a mere tool or conduit of Ed. Ed had a financial interest, ownership, and control of the trusts and

subsidiary entities. There was a unity of Ed and the trusts and subsidiary entities such that the separateness of the trusts and subsidiary entities ceased. Injustice would result if ownership of the trusts' and subsidiary entities' income and property is not considered to be in the community estate.

(c) The form of ownership of the trusts and subsidiary entities was used to evade an existing legal obligation. Ed used the form of the trusts and subsidiary entities to evade his legal obligation to Marie to account for all community income and property

226. Marie is entitled to her fair and equitable share of the community property.

#### **Breach of Spousal Fiduciary Duty**

227. Ed, as Marie's spouse, had a fiduciary relationship with and a fiduciary duty to Marie. As a result of their fiduciary relationship, Marie reposed a special confidence in Ed, and Ed had a duty in equity and good conscience to act in good faith and with due regard for Marie's interests. Ed, in violation of his duty to Marie, has breached his duty to Marie.

228. Ed's fiduciary duty included

- (a) a duty of loyalty and utmost good faith.
- (b) a duty of candor.
- (c) a duty to refrain from self-dealing.
- (d) a duty to act with integrity of the strictest kind.
- (e) a duty of fair, honest dealing.
- (f) a duty of full disclosure.

229. Ed, as Marie's husband, breached his fiduciary duty. Ed breached his fiduciary duty by structuring the trusts and subsidiary entities to conceal income and property and to prevent income and property which otherwise would have been community income and property from being so. He breached his fiduciary duty by transferring the domicile of trusts to South Dakota or other jurisdictions, creating new trusts, and having the assets of the trusts

transferred to new trusts, thereby restricting or eliminating Marie's beneficial and marital rights. He breached his fiduciary duty by failing to disclose these matters to her. He breached his fiduciary duty by failing to disclose to her that his reasons for these actions were to restrict or eliminate her beneficial and marital rights, to conceal marital income or property from her, to take advantage of laws which would make it even easier for him to control the trusts and to insulate himself, the trusts and the subsidiary entities from her claims, and to do all of this without notice to her or her knowledge. Because the trusts and subsidiary entities were created and structured in breach of a fiduciary duty, they are invalid.

230. Ed's breach has resulted in injury to Marie or benefit to Ed equal to the value of income and property which should be in the community estate but is not in it. Marie is entitled to recover the value of the income and property. Alternatively, Ed, the trusts and subsidiary entities should be required to disgorge the income and property.

#### **Breach of Trust**

231. Because Ed controlled the trusts, and because he was the de facto trustee of the trusts, he owed Marie the same fiduciary duty that the named trustees of the trusts owed.

232. The fiduciary duty included the duty of good faith, fair dealing, loyalty, and fidelity to his beneficiaries when managing the affairs of the trusts and their corpus, and a duty of full disclosure of all material facts known to him which might affect the rights of the beneficiaries. Ed breached his fiduciary duty by using the trusts and their subsidiary entities as shams to hide income and property or to keep the income or property from being included in the community estate. He breached his fiduciary duty by transferring the domicile of trusts to South Dakota or other jurisdictions, removing and replacing trustees, creating new successor trusts with different terms than predecessor trusts, and having the assets of the trusts transferred

to new trusts, thereby restricting or eliminating Marie's beneficial and marital rights. He breached his fiduciary duty by failing to disclose these matters to her. He breached his fiduciary duty by failing to disclose to her that his reasons for these actions were to restrict or eliminate her beneficial and marital rights, to conceal marital income or property from her, to take advantage of laws which would make it even easier for him to control the trusts and to insulate himself, the trusts and the subsidiary entities from her claims, and to do all of this without notice to her.

233. Ed's breach of trust has caused injury to Marie measured by the value by which her beneficial interests in the trusts have been diminished and by the value of income and property in the trusts and subsidiary entities which would have been community property in the marital estate.

234. Marie is entitled to recover money damages for her injuries or is entitled to recover from Ed, the trusts or the subsidiary entities the income and property which is rightfully her share of community property in the marital estate.

#### **Breaches of Duties by Trustees and Trust Protectors**

235. The CapTech Trust was created as a Texas trust, with its situs in Texas. South Dakota Trust Co. was named as the nominal trustee when the CapTech Trust was situated in Texas. South Dakota Trust Co. breached its fiduciary duties to Marie when it transferred the situs of the trust to South Dakota without giving notice to Marie. Because the transfer occurred pursuant to a breach of trust, the transfer was void *ab initio*. South Dakota Trust Co. held, and its successor trustee Trident Trust Co. holds, the assets of the trust in constructive trust for Marie, including her community property interests in Texas.

236. South Dakota Trust Co. became the nominal trustee of the Southport Trust when it was situated in Texas. The Mid-Coast Trust was created by the transfer of assets from the

Southport Trust, a Texas trust. The creation of the Mid-Coast Trust and the transfer of assets to it were done without notice to Marie. The creation of the Mid-Coast Trust and the transfer of assets to it was a breach of fiduciary duties by South Dakota Trust Co. as the nominal trustee of the Southport Trust. Because it was created pursuant to a breach of trust, the Mid-Coast Trust was void *ab initio*. The South Dakota Trust Co. held, and its successor trustee Trident Trust Co. holds, the assets of the trust in constructive trust for Marie, including her community property interests in Texas. South Dakota Trust Co. and Trident Trust Co. have breached fiduciary duties of disclosure to Marie in connection with holding property in constructive trust by failing to give her notice of matters related to the trusts or assets. They have breached fiduciary duties of loyalty to her by failing to give due regard to her beneficial interests, failing to act impartially in managing and distributing trust property, and failing to account to her for her community property. A. Bosarge and Enter, as nominal trust protectors, owed or owe duties to Marie, as constructive trustees, including duties with respect to her community property interests in Texas. They have breached their duties by failing to make disclosures to Marie, failing to give due regard to her beneficial interests, failing to act impartially with respect to managing and distributing trust property, and failing to account to her for her community property.

237. All of the trusts of which Houston was trustee, South Dakota Trust Co. was trustee, Trident Trust Co. is trustee, A. Bosarge was the trust protector, and Schaeffer and Enter are trust protectors, are shams. They are void *ab initio*. Houston and the South Dakota Trust Co. held, and Trident Trust Co. holds, the assets of the trust in constructive trust for Marie, including her community property interests in Texas. Houston, South Dakota Trust Co., and Trident Trust Co. have breached fiduciary duties of disclosure to Marie in connection with holding the property in constructive trust by failing to give her notice of matters related to the

trusts or assets. They have breached fiduciary duties of loyalty to her by failing to give due regard to her beneficial interests, failing to act impartially in managing and distributing trust property, and failing to account to her for her community property. A. Bosarge, Schaeffer and Enter, as nominal trust protectors, owed or owe duties to Marie, as constructive trustees, including duties with respect to her community property interests in Texas. They have breached their duties by failing to make disclosures to Marie, failing to give due regard to her beneficial interests, failing to act impartially with respect to managing and distributing trust property, and failing to account to her for her community property.

238. The breaches of duties have caused injury to Marie measured by the value by which her beneficial interests in the trusts have been diminished and by the value of income and property in the trusts and subsidiary entities which is rightfully her share of community property.

239. Marie is entitled to recover money damages for her injuries or is entitled to recover from the trustees the income and property which is rightfully her share of community property in the marital estate.

#### **Knowing Participation in Breaches of Fiduciary Duties**

240. Schaeffer, Enter and A. Bosarge have served or are serving as trust protectors of various of the trusts. All are long-time friends, associates, and/or relatives of Ed.

241. As stated above, Ed owed fiduciary duties to Marie and breached those duties. Schaeffer, Enter, Houston, A. Bosarge, the South Dakota Trust Co. and Trident Trust Co. had knowledge of Ed's fiduciary duties to Marie and his breaches of the duties. They knowingly participated in those breaches of fiduciary duties. The Third Party Co-Defendants assisted Ed in committing the breaches of fiduciary duty, and intentionally provided their assistance, by causing the transfer or transferring the domicile of trusts to South Dakota, causing the creation

or creating new successor trusts with different terms than predecessor trusts, causing the transfer or transferring assets to the new trusts, and providing instructions that Marie not be given notice of these matters or failing to give her notice of these matters. Their assistance was a substantial factor in causing Ed's breach of fiduciary duties.

242. Their knowing participation in the breach of fiduciary duties has caused injury to Marie measured by the value by which her beneficial interests in the trusts has been diminished and by the value of income and property in the trusts and business entities which would have been community property in the marital estate.

243. Marie is entitled to recover money damages for her injuries. Alternatively, because the trusts were created and administered in violation of fiduciary duties, they are invalid and Marie is entitled to recover from the trusts and business entities the income and property which is rightfully her share of community property in the marital estate.

#### **Fraud by Nondisclosure**

244. Ed failed to disclose to Marie the reasons for the creation and structuring of the trusts and subsidiary entities.

245. Ed failed to disclose that the domicile of trusts were transferred to South Dakota or other jurisdictions, new trusts were created, and the assets of trusts were transferred to new trusts, thereby restricting or eliminating her beneficial and marital rights. He failed to disclose to her that his reasons for these actions were to restrict or eliminate her beneficial and marital rights, to conceal marital income or property from her, to take advantage of laws which would make it even easier for him to control the trusts and to insulate himself, the trusts and the subsidiary entities from her claims, and to do all of this without notice to her.

246. Ed had a duty to disclose to Marie. As her husband he owed her a fiduciary duty. As the person in control of the trusts, and as a de facto trustee, he owed her a fiduciary duty.

247. The facts were material.

248. Ed knew that Marie did not know the facts and that Marie did not have a good opportunity to discover the facts.

249. Ed was deliberately silent when he had a duty to speak.

250. By failing to disclose the facts, Ed intended to induce Marie to take some action or refrain from acting.

251. Marie relied on Ed's nondisclosures.

252. Marie was injured as a result of acting or refraining from acting without the knowledge of the undisclosed facts.

253. Ed's fraud by nondisclosure has caused injury to Marie measured by the value by which her beneficial interests in the trusts have been diminished and by the value of income and property in the trusts and subsidiary entities which would have been community property in the marital estate.

254. Marie is entitled to recover money damages for her injuries or is entitled to recover from Ed, the trusts or the subsidiary entities the income and property which is rightfully her share of community property in the marital estate.

### **Constructive Fraud**

255. Ed, without the knowledge, consent, or approval of Marie, unfairly conveyed community assets to various trusts for the primary purpose of defrauding Marie. The conveyances were unfair and in fraud of Marie's rights.

256. Ed has defrauded Marie by breaching a legal and/or equitable duty owed Marie as a result of their fiduciary relationship. That breach is fraudulent because, irrespective of Ed's

moral guilt, the breach had a tendency to deceive Marie and to violate Marie's confidence or to injure the public interest. Ed's actions damaged Marie.

**Exemplary Damages for Conversion**

257. Ed's conversion of the property as alleged above was done fraudulently or with malice, for which the law allows the imposition of exemplary damages. Ed's conversion of the property was intentional, willful, wanton, and without justification or excuse and was done with gross indifference to Marie's rights. In this connection, Marie will show that, as a result of Ed's conduct, Marie has suffered losses of time and other expenses, including attorney's fees incurred in the investigation and prosecution of this action. Accordingly, Marie prays for exemplary damages against Ed.

**Conditions Precedent**

258. All conditions precedent to the filing of this pleading and recovery have been met, excused, or waived.

**Tolling of Limitations**

259. Marie's injuries resulting from Ed's conduct are inherently undiscoverable and objectively verifiable. Any statute of limitations has been tolled by the discovery rule in that Marie did not know and in the exercise of reasonable diligence could not have known of the facts giving rise to Marie's claims. Alternatively, any statute of limitations has been tolled by reason of the fiduciary duties which Ed owes to Marie.

**Attorneys Fees, Expenses, Costs, and Interest**

260. It was necessary for Marie to secure the services of J.D. Bucky Allshouse and other counsel to prepare and prosecute this suit. To effect an equitable division of the estate of the parties and as a part of the division, judgment for attorney's fees, expenses, and costs through trial and appeal should be granted against Ed and in favor of Marie for the use and

benefit of Marie's attorney; or, in the alternative, Marie requests that reasonable attorney's fees, expenses, and costs through trial and appeal be taxed as costs and be ordered paid directly to Marie's attorney, who may enforce the order in the attorney's own name. Marie requests prejudgment and postjudgment interest as allowed by law.

**XVII.**

**Prayer**

THEREFORE, PREMISES CONSIDERED:

Counterpetitioner, MARY TAYLOR BOSARGE, prays that citation and notice issue as required by law and that the Court grant a divorce and all other relief requested in this counterpetition.

Counterpetitioner prays for judgment against WILBUR EDWIN BOSARGE, JR. and the Third Party Co-Defendants in a sum within the jurisdictional limits of this Court for her actual damages as alleged, for exemplary damages, for prejudgment and postjudgment interest as allowed by law, for costs of court, and for general relief.

Counterpetitioner prays that upon final hearing, this Court will render a judgment which fairly and justly divides the community estate in accordance with the foregoing information, and which awards her money damages to which she is entitled from WILBUR EDWIN BOSARGE, JR. and the Third Party Co-Defendants, awards her costs, fees and expenses, and awards her prejudgment and post judgment interest as allowed by law.

Counterpetitioner prays for attorney's fees, expenses, costs, and interest as requested above.

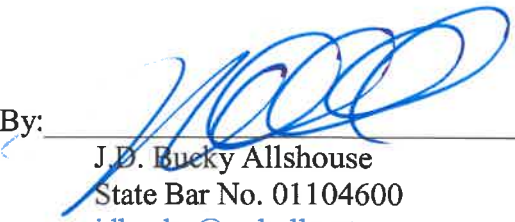
Counterpetitioner requests such additional relief, general or special, at law or in equity, to which she may show herself justly entitled.

Counterpetitioner prays for general relief.

Respectfully submitted,

J.D. BUCKY ALLSHOUSE, P.C.  
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By: \_\_\_\_\_

  
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Attorney for Counterpetitioner

### Certificate of Service

I certify that a true copy of the above was served on each attorney of record or party in accordance with the Texas Rules of Civil Procedure on 10/12/18, 2018.

  
J.D. Bucky Allshouse  
Attorney for Counterpetitioner



I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office this December 18, 2019

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Marilyn Burgess, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

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