

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT  
IN AND FOR ORANGE COUNTY, FLORIDA  
CIRCUIT DIVISION**

**CASE NO.:**

**DOUGLAS FINK, as a qualified beneficiary of the Norman Fink 2001 Irrevocable Trust, and as a qualified beneficiary of the Norman Fink 1999 Revocable Trust; ASHLEY FINK LIEBOWITZ, n/k/a ASHLEY LIEBOWITZ as a qualified beneficiary of the Norman Fink 2001 Irrevocable Trust, and as a qualified beneficiary of the Norman Fink 1999 Revocable Trust; and ERIKA FINK, n/k/a ERIKA BEYERSDORF as a qualified beneficiary of the Norman Fink 2001 Irrevocable Trust, and as a qualified beneficiary of the Norman Fink 1999 Revocable Trust,**  
**Plaintiffs,**

**v.**

**STEVEN A. MEYER, as co-trustee of the Norman Fink 2001 Irrevocable Trust and as co-trustee of the Norman Fink 1999 Revocable Trust; STEVEN MICHAEL LABRET, as co-trustee of the Norman Fink 2001 Irrevocable Trust; MICHAEL FINK, as co-trustee of the Norman Fink 1999 Revocable Trust; and POSTERNAK BLANKSTEIN & LUND, LLP,**  
**Defendants.**

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**VERIFIED COMPLAINT**

DOUGLAS FINK, ASHLEY FINK LIEBOWITZ and ERIKA FINK as the only qualified beneficiaries under both the the Norman Fink 2001 Irrevocable Trust and the Norman Fink 1999 Revocable Trust (collectively “Plaintiffs”) sue STEVEN A. MEYER, as co-trustee of the Norman Fink 2001 Irrevocable Trust and as co-trustee of the Norman Fink 1999 Revocable Trust (“Meyer”); STEVEN MICHAEL LABRET, as co-trustee of the Norman Fink 2001 Irrevocable Trust (“Labret”); MICHAEL FINK, as co-trustee of the 1999 Revocable Trust (“Michael Fink”); and POSTERNAK BLANKSTEIN & LUND, LLP, and alleges:

**Introduction**

1. Plaintiffs’ father, Norman Fink, created the Norman Fink 1999 Revocable Trust (“the 1999 Trust”) and the Norman Fink 2001 Irrevocable Trust (“the 2001 Trust”) on December 6,

2001 and June 25, 2001, respectively. These trusts, and Norman Fink's entire estate plan was drafted by trustee and defendant Steven Meyer. True and correct copies of the 1999 Trust and the 2001 Trust are attached as Exhibits "A" and "B". The 1999 Trust was later amended on November 3, 2006 pursuant to a First Amendment to the 1999 Trust. A true and correct copy of the First Amendment to the 1999 Trust is attached as Exhibit "C".

2. The three primary beneficiaries of both trusts are Norman Fink's three children, Ashley Fink (now known as Ashley Liebowitz); Erika Fink (now known as Erika Beyersdorf); and Douglas Fink. A fourth beneficiary, Maria D. Baker, was entitled to a \$325,000.00 distribution from the 1999 Trust to be paid in the form of a separate trust known as the M.D.B. Trust. Therefore, as of the date of this petition, the named plaintiffs are the only remaining qualified beneficiaries under the trusts

3. Norman Fink died on December 25, 2006. An estate was opened in Volusia County, Florida in 2007 and ultimately discharged on June 4, 2010. (The Estate of Norman Fink, 2007-10355-PRDL) Douglas Fink received no Formal Notice of the Estate and received no Consent to Discharge and Final Accounting.

4. The primary assets of the 2001 Trust were two life insurance policies totaling approximately \$2 million. The primary assets of the 1999 Trust were any pour over estate proceeds.

5. At the time the trusts were created and until Norman Fink's death, trustee Stephen Meyer was an attorney and a trusted advisor of Norman Fink and his family. According to the attorney profile listed on the law firm website for Posternak, Blankstein & Lund, LLP, Meyer is an attorney licensed to practice in Massachusetts who received his LLM from Boston University in 1978 and his Juris Doctor from Suffolk University Law School in 1972. The profile further

asserts that Meyer has vast experience in a broad range of estate and asset planning matters. Accordingly, Meyer's conduct with respect to the allegations in this case must be considered relative to the elevated standard of skills and experience articulated in F.S. §736.0806, to wit:

**736.0806 Trustee's skills.**—A trustee who has special skills or expertise, or is named trustee in reliance on the trustee's representation that the trustee has special skills or expertise, shall use those special skills or expertise.

6. The trusts also named Norman Fink's two brothers, Michael Fink and Stephen B. Fink ("Stephen Fink") as trustees. Meyer was co-trustee of both trusts, while Michael Fink was the co-trustee of the 1999 Trust and Stephen Fink was the co-trustee of the 2001 Trust. Stephen Fink was removed as trustee and replaced by Labret, a Florida attorney, on May 22, 2006 pursuant to an Appointment of Trustee created by Meyer. A true and correct copy of Labret's appointment is attached as Exhibit "D".

7. As will be described in great detail below, Plaintiffs seek relief from this court including removal of trustees, accounting and disgorgement because:

- The trustees have never provided either the initial accounting or the annual accounting for either trust as required by § 736.0813, Fla. Stat.;
- Because the trustees have disabling conflicts of interest;
- Because the trustees individually and collectively have contributed to waste or mismanagement of trust assets;
- The trustees and attorney have paid to themselves hundreds of thousands of dollars for fees and expenses without ever disclosing or seeking consent from the beneficiaries for any of the vast collection of fees and unnecessary expenses.

8. Based on the facts and allegations pled herein, the Court should remove all trustees and appoint successor trustees; order a formal trust administration; and disgorge all fees paid to Meyer through his firm Posternak, Blankstein & Lund, LLP and provide such other relief as further facts warrant including an award of attorneys fees and costs against the defendants.

**Nature of Claim, Jurisdiction, Venue, and Parties**

9. This is an action for breach of fiduciary duty; removal of co-trustees and appointment of successor trustees of two express trust; to disgorge attorney's fees wrongfully paid to Meyer; and for a formal accounting of both the 1999 Trust and the 2001 Trust, and Norman Fink's estate.

10. This Court has subject-matter jurisdiction over this action pursuant to §§ 26.012 and 736.0203, Fla. Stat., and personal jurisdiction over the trustees and beneficiaries pursuant to § 736.0202, Fla. Stat.

11. Additionally, this Court has jurisdiction because Douglas Fink, Ashley Fink, and Erika Fink lived in this jurisdiction; because Norman Fink died in Florida; and because the transactions alleged in this complaint occurred primarily in Florida.

12. And critically, both trusts specify that they are to be governed by Florida law:

12.1 This instrument is to be governed by and construed and administered according to the laws of the State of Florida and shall continue to be so governed, construed and administered even though conducted or administered elsewhere within the United States or abroad.

**The 2001 Trust**

17.1 This instrument is to be governed by and construed and administered according to the laws of the State of Florida and shall continue to be so governed, construed and administered even though conducted or administered elsewhere within the United States or abroad.

**The 1999 Trust**

13. Venue is proper because one of or more of the qualified beneficiaries, Ashley Fink, of both the 1999 Revocable and the 2001 Irrevocable Trust resides in Orange County, Florida pursuant.

14. Meyer is an individual and resident of Middlesex, Massachusetts.

15. Michael Fink is an individual and resident of Florida who claims his homestead in Palm Beach County, Florida.

16. Labret is a member of the Florida bar and an individual and resident of Orange County, Florida.

17. Posternak, Blankstein & Lund, LLP is a payee and, pursuant to Simmons v. Estate of Baranowitz, 189 So. 3d 819 (Fla. 4th DCA 2015), is named as a noticed party.

### **General Allegations**

#### **I. The trustees never complied with § 736.0813, Fla. Stat. and the “accountings” that have been provided do not comply with § 736.08135, Fla. Stat.**

18. Florida law is clear that trustees have the absolute obligation to keep qualified beneficiaries such as Plaintiffs reasonably informed about their trusts and provide them with details about trust administration. A core component of this obligation is the requirement that trustees provide an initial accounting of trust assets and, at a minimum, an annual accounting described by statute as follows:

**736.0813 Duty to inform and account.**—The trustee shall keep the qualified beneficiaries of the trust reasonably informed of the trust and its administration.

(1) The trustee’s duty to inform and account includes, but is not limited to, the following:

(a) Within 60 days after acceptance of the trust, the trustee shall give notice to the qualified beneficiaries of the acceptance of the trust, the full name and address of the trustee, and that the fiduciary lawyer-client privilege in s. 90.5021 applies with respect to the trustee and any attorney employed by the trustee.

(d) A trustee of an irrevocable trust shall provide a trust accounting, as set forth in s. 736.08135, from the date of the last accounting or, if none, from the date on which

the trustee became accountable, to each qualified beneficiary at least annually and on termination of the trust or on change of the trustee.

19. Neither Meyer, Michael Fink, nor Labret have ever provided Plaintiffs an initial accounting of either the 1999 Trust or the 2001 Trust, nor an annual accounting of either the 1999 Trust or the 2001 Trust during the years 2007-2015 which complied with Florida law.

20. The very first time Plaintiffs received documentation that begins to fulfill the statutory requirement of accounting and disclosure occurred in October 2016 when trustee Meyer provided the three “accountings” which are attached in their entirety to this Complaint and which are designated as follows:

- a. The Estate of Norman Fink “Accounting” for Period 12/25/2006-12/31/2008; (Exhibit E)
- b. The 1999 Trust “Accounting” for Period 1/1/2009-12/31/2016; (Exhibit F) and
- c. The 2001 Trust “Accounting” for Period 4/5/2007-8/31/2016. (Exhibit G)

21. Months later in January 2017 Meyer provided additional “yearly” “accountings” for the following time periods:

- a. Yearly “Accountings” for the Estate of Norman Fink for the periods 12/25/2006-12/31/2007 and 1/1/2008-12/31/2008, but then no accountings for any subsequent years (Composite Exhibit H);
- b. Yearly “Accountings” for the 1999 Trust beginning on 1/1/2009 and spanning until 12/31/2016...although no accountings for the 1999 Trust were provided for the years 2006 and 2007 (Composite Exhibit I); and
- c. Yearly “Accountings” for the 2001 beginning on 4/5/2007 and spanning until 12/31/2016 (Composite Exhibit J).

22. And while these accountings begin to provide some level of information about the assets and liabilities of the trusts, the documents provided are incomplete and cannot be considered a trust “accounting” as defined by F.S. § 736.08135 because they do not adequately inform the beneficiaries about the value of the trust assets and otherwise fail to meet the express terms of Florida Statute as follows:

**736.08135 Trust accountings.—**

(1) A trust accounting must be a reasonably understandable report from the date of the last accounting or, if none, from the date on which the trustee became accountable, that adequately discloses the information required in subsection (2).

(2)(a) The accounting must begin with a statement identifying the trust, the trustee furnishing the accounting, and the time period covered by the accounting.

(b) The accounting must show all cash and property transactions and all significant transactions affecting administration during the accounting period, including compensation paid to the trustee and the trustee's agents. Gains and losses realized during the accounting period and all receipts and disbursements must be shown.

(c) To the extent feasible, the accounting must identify and value trust assets on hand at the close of the accounting period. For each asset or class of assets reasonably capable of valuation, the accounting shall contain two values, the asset acquisition value or carrying value and the estimated current value. The accounting must identify each known noncontingent liability with an estimated current amount of the liability if known.

(d) To the extent feasible, the accounting must show significant transactions that do not affect the amount for which the trustee is accountable, including name changes in investment holdings, adjustments to carrying value, a change of custodial institutions, and stock splits.

(e) The accounting must reflect the allocation of receipts, disbursements, accruals, or allowances between income and principal when the allocation affects the interest of any beneficiary of the trust.

**A. The Failure of Trustees to Account or Explain The Value And Liabilities of "NOMIST" and "MISTNO" Render Any Accounting Provided Thus Far Incomplete and Insufficient Pursuant to FS §736.08135**

23. Key assets held by Norman Fink at his death were his interest in at least two closely-held family corporations, "Nomist Realty & Construction, LLC" and "SX Industries. As detailed below, several widely different values have been associated with the beneficiaries' interest in the NOMIST entity but they have never been provided any accounting or explanation of the MISTNO entity. The failure of the trustees to provide the statutorily-required accounting has prevented the beneficiaries from ever knowing the true extent of their interest or holdings in the trusts.

24. According to the inventory filed in the Estate of Norman Fink, Norman Fink held a 33.33% interest in NOMIST with the remainder of the company owned equally by his brothers

Stephen Fink and Michael Fink. As detailed in the Norman Fink Estate Inventory, the value of Norman Fink's interest in NOMIST in or around 2007 was \$4.2 million:

<u>Partnership Interest</u>		
28	33.33% Interest in Nomist Realty & Construction, LLC	4,200,000.00

25. This valuation conflicts with the IRS Form 706 which listed the value of Norman Fink's interest in NOMIST at \$2.406 million as of June 25, 2007:

1	33.33% interest in Nomist Realty & Construction, LLC - Valuation attached. Not disposed of within 6 months following death	CUSIP number or EIN, where applicable	06/25/2007	2,406,000.00	2,406,000.00

26. In addition to the valuations being unclear and conflicting, the accounting provided by Meyer in 2016 reveals a series of wildly differing distributions from NOMIST and MISTNO into the 1999 Trust as recently as 2015 with no explanation provided for the valuation of the asset or the basis for the calculation of the distribution amount:

9	08/10/2012 2012 MISTNO Distribution	1,595.04
10	03/23/2012 2012 NOMIST Distributions	375,000.00
11	01/25/2012 2012 transfer from 2001 Insurance Trust	90,000.00
12	03/05/2014 2014 MISTNO distributions	15,000.00
13	04/07/2014 2014 NOMIST Distributions	50,000.00
14	05/14/2015 2015 NOMIST distributions	82,500.00

(1999 Trust Accounting)

27. Because Plaintiffs have not been provided the annual accountings they are entitled to receive, they do not know now, nor have they ever known, what the value of their interest in the NOMIST or MISTNO assets which continue to make distributions into the trusts for which Plaintiffs are the only remaining qualified beneficiaries.



***The trustees sue the closely held corporation that is the 1999 Trust's major asset.***

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28. As detailed above a primary asset of the Estate of Norman Fink and his 1999 Trust was and remains his 33.33% interest in a closely held Corporation Nomist Realty and Construction, LLC, the remaining interests in NOMIST was shared between Norman's brothers Steven Fink and Michael Fink.

29. On or about 2008, litigation was commenced in a case styled, Michael Fink individually and as Personal Representative of the Estate of Norman Fink v. Stephen Fink, Commonwealth of Massachusetts Civil Action 09-00602. Although the trustees have refused requests by undersigned counsel to provide any pleadings or documents filed in the case, on information and belief, this litigation related to a challenge corporate governance and interpretation and application of the terms of the NOMIST Operating Agreement as well as a formal demand of accounting of the assets, liabilities and distributions of NOMIST.

30. Trustee and attorney Stephen Meyer drafted the Operating Agreement of NOMIST and he served as attorney individually and collectively for the three brothers who are parties to this Operating Agreement. Meyer's role in creating the corporation that was the subject of litigation that has ultimately cost the beneficiaries millions of dollars in loss including attorneys fees presented then and continues to present a disabling conflict of interest that should have precluded Meyer's continued representation of the qualified beneficiaries' interests.

31. The detailed attorney fee invoices reveal that before, during and after the Fink v. NOMIST Litigation continued, Meyer was actively involved in matters related to NOMIST as shown by the below fee demands:

11/20/2013	Telephone call with Mike Fink re: Nomist matters. Steven A. Meyer	0.30 hrs
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11/20/2013	Telephone call with Mike Fink re: Nomist matters. Steven A. Meyer	0.30 hrs
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06/17/2008	Office conference with S. Meyer re affect of death on Nomist Realty & Construction; review operating agreement provisions re same. Frank Aronson	0.30 hrs
06/17/2008	Two telephone calls with Mike Fink; review of LLC agreement. Steven A. Meyer	1.00 hrs

06/25/2009	Telephone call with S. Fink re: valuation of NOMIST. Steven A. Meyer	0.30 hrs
06/26/2009	Telephone call with S. Fink re: NOMIST valuation. Steven A. Meyer	0.40 hrs

32. Because Plaintiffs have never received any accounting or explanation regarding the substance of this litigation in a manner that would fulfill the requirements of F.S. § 736.08135, they never had any idea how this litigation was depleting the assets of their trusts. In fact, in October 2016, and for the very first time, the trustees produce an accounting which reveal that their trustees have spent nearly \$500,000 on this litigation:

Administrative Expenses			
142	4/4/2013	\$	25,000.00
143	6/25/2013		40,000.00
144	12/20/2013		50,000.00
Total Davis Malm & D'Agostine			<u>\$ 498,842.71</u>

33. The complete failure of the trustees to inform and account as defined by F.S. § 736.0813 and specifically the failure to provide any annual accounting precluded Plaintiff from understanding the risks associated with engaging in years long and bitterly contested litigation against the entity that remains one of the key assets of their own trust. Trustee Meyer had an obligation to advise his fiduciaries of the serious conflict of interest his status as both trustee for them and attorney for the corporation that was being sued.

**B. The accountings that have been provided are contradictory and cannot be reconciled.**

34. In October 2016, some form of accounting was provided but not formally served on undersigned counsel. Moreover, what was provided are incomplete, contradictory and cannot be reconciled. In particular, the three accountings provided to Plaintiffs' counsel by Meyer in October 2016 (Exhibits E, F and G) contain totals that differ significantly from other accountings that have previously been produced.

***The Estate Accounting***

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35. Meyer's accounting for the "Estate of Norman Fink" produced in 2016 shows assets on hand of \$3.227 million as of December 31, 2008:

ESTATE OF NORMAN FINK DATE OF DEATH: DECEMBER 25, 2006 Accounting for period 12/25/06 - 12/31/2008	
Value per Inventory	\$6,836,474.11
Schedule A - Additions and Receipts	\$4,334,608.27
Schedule B - Payments and Distributions	\$7,943,258.12
Schedule C - Assets on Hand	\$3,227,824.26

**Meyer Accounting**

36. However, another document obtained in October 2016 show Assets on Hand of \$2.641 million as of December 31, 2013:

Estate of Norman Fink  <u>12/25/2006 - 12/31/2013</u>	
Additions and Receipts	13,085,045.19
Payments and Distributions	10,443,144.99
Assets on Hand	\$2,641,242.16

**Prior Accounting**

37. In addition to these two accountings, the IRS Form 706 issued for Norman Fink's estate lists the entire taxable estate at \$8.9 million while the value of the estate listed in the estate inventory as \$8.115 million:

10 If Schedule H-1 is attached, check here <input type="checkbox"/>			
1	Total gross estate less exclusion (from Part 5—Recapitulation, page 3, item 12)	1	8,997,727 37
2	Tentative total allowable deductions (from Part 5—Recapitulation, page 3, item 22)	2	670,930 95
3a	Tentative taxable estate (before state death tax deduction) (subtract line 2 from line 1)	3a	8,326,796 42
3b		3b	

### IRS Form 706

Estate of Norman Fink

**TOTAL OF ALL PERSONAL PROPERTY AND FLORIDA REAL ESTATE**  
(Except exempt (protected) homestead) \$ 8,115,277.95

### Value Listed on Estate Inventory

### The 2001 Trust Accounting

38. The accounting for the 2001 Trust Meyer delivered to Plaintiffs' counsel provided that for the period between April 5, 2007 and August 31, 2016, "Additions and Receipts" into the 2001 Trust totaled \$2,474,574.13:

Norman Fink 2001 Irrevocable Insurance Trust			
Accounting for period 4/5/2007-8/31/16			
Additions and Receipts			2,474,574.13
Payments and Distributions			(1,793,315.59)
Assets on Hand			
	Fidelity Account #Y97-116220	\$	964,725.11
	Fidelity Account #Z71-034673	\$	25.01
	Client Funds Account	\$	753.40
		\$	965,503.52

### Meyer Accounting

39. However, another accounting obtained by Fink in October 2016 provided that for the period between April 5, 2007 and December 31, 2012, “Additions and Receipts” into the 2001 Trust totaled \$4,001,025.18:

Norman Fink 2001 Insurance Trust	
Accounting for period 4/5/2007-12/31/2012	
Additions and Receipts	4,001,025.18
Payments and Distributions	(3,101,102.38)
Assets on Hand	
Fidelity Account #Y97-116220	\$ 1,068,520.53
Fidelity Account #Z71-034673	\$ 6,846.73
Client Funds Account	\$ 2,745.70
	<u>\$ 1,078,112.96</u>

**Prior Accounting**

40. In other words, the prior accounting shows over \$1.5 million more in additions and receipts than the Meyer accounting, despite the fact that it is an “accounting” for a time period that is three and a half years less than the Meyer accounting.

41. Furthermore, Plaintiffs’ counsel has been able to obtain a third “accounting” of the 2001 Trust presumably prepared by Meyer which provides that for the period between April 5, 2007 and December 31, 2013, total “additions and receipts” into the 2001 trust were \$2,348,364.06:

Norman Fink 2001 Insurance Trust	
Accounting for period 4/5/2007-12/31/13	
Additions and Receipts	2,348,364.06
Payments and Distributions	(1,460,701.17)
Assets on Hand	
Fidelity Account #Y97-116220	\$ 1,117,839.08
Fidelity Account #Z71-034673	\$ 2,131.82
Client Funds Account	\$ 4,127.30
	<u>\$ 1,124,098.20</u>

**Third Accounting**

### *The 1999 Trust Accounting*

42. The 1999 Trust accounting provided by Meyer to Plaintiffs' counsel shows various "principal" balances between January 1, 2009 and December 31, 2015 without any clear definition of the value of the trust:

NORMAN FINK 1999 REVOCABLE TRUST	
Accounting for period 1/1/2009 - 12/31/2015	
Principal Balance of prior account	\$ 3,220,244.21
Schedule A - Principal Amounts Received	\$ 2,200,296.16
Schedule B - Principal Payments and Charges	\$ 3,003,156.99
Schedule C - Principal Balance Invested	\$ 2,417,383.38
Schedule D - Income Received	\$ 56,026.34
Schedule E - Payments from Income	\$ 56,150.29
Schedule F - Income Balance	0.00

**Meyer Accounting**

43. This accounting must be contrasted against the IRS Form 706 for the 1999 Trust showing total taxable trust assets of \$7.1 million:

Name of individual, trust, or estate receiving \$5,000 or more	Identifying number	Relationship to decedent	Value of assets
1. Norman Fink 1999 Revocable Trust	04-6930318	Trust	7,182,922.00

**IRS Form 706**

### *The deficiencies in the January 2017 "accountings"*

44. As alleged *supra*, Meyer subsequently provided additional "yearly" "accountings" to Plaintiffs' attorney in January 2017 (Composite Exhibits H, I, and J). However, like the "accountings" provided in October 2016, these woefully insufficient.

45. To begin, there is no accounting for the Estate after 12/31/2008 nor is there any accounting for the 1999 Trust before 1/1/2009. And it also cannot be said that these accountings

“reconcile” each other because the ending balance of the Estate’s accounting on 12/31/2008 was \$3,227,824.26 but the balance of the 1999 Trust on 1/1/2009 was \$3,220,244.21. In other words, if the Estate’s assets simply poured over into the 1999 Trust’s assets over on January 1, 2009, \$7,000.00 went unaccounted for overnight.

46. Worse still are the transactions which are reflected in the accountings. According to Year 2007 accounting for the Estate, the 2001 Trust “loaned” the Estate \$1.4 million on September 24, 2007 and Michael Fink “loaned” the Estate \$1.6 million on September 24, 2007 presumably for the payment of estate taxes. However, on October 18, 2007, the Estate paid back Michael Fink the entire \$1.6 million and then on October 23, 2007 paid him \$10,958.90 in interest on this “loan.” This means that in a period of less than 30 days the Estate was able to produce not only the \$1.6 million it apparently did not have the month before, but also an additional \$11,000.00 in interest...paid directly to the trustee of the trust which the Estate’s assets were apparently poured into.

\* \* \*

47. As a result, the trustees have not complied with §§ 736.0813 and 736.08135, Fla. Stat.

**II. The trustees breached their fiduciary duties to the trusts and the trusts’ beneficiaries.**

**A. The trustees never set up independent trusts as required by both trust documents.**

48. The First Amendment to the 1999 Trust explicitly provided that upon Norman Fink’s death, the trustees were required to establish separate trusts for each of Norman Fink’s children:

- 6.1 Upon the death of the Donor, the balance of the Trust estate shall be administered and distributed as follows:
- 6.2 The Trustees shall establish separate trusts so that there shall be:
  - 6.2.1 One such separate trust estate established with respect to each child then living of the Donor; and
  - 6.2.2 If any child of the Donor is then deceased and there are issue then living of such deceased child, one such separate trust estate established with respect to the issue of each such deceased child.

49. A nearly identical provision exists in the 2001 Trust agreement:

- 4.6 Upon the last to occur of the death of the Donor, and the day when no living child of the Donor is under the age of 21 years, the principal and undistributed income of the Trust Fund shall be divided into separate and equal trust estates so that there shall be:
  - 4.6.1 One such separate trust estate established with respect to each child then living of the Donor; and

50. However, the accountings provided reveal that separate trusts were never created and therefore the trustees have neglected and mismanaged the trusts.

**B. Repetitive distributions of small amounts constitute waste and trust mismanagement, and are in direct contradiction with the express terms of both trusts.**

51. The trustees never provided to Douglas Fink any fixed or predictable payments of the income he was entitled to receive from both trusts. He was never informed of the initial principal included within his trust and as detailed above there is no indication that any separate trust was in fact established for him, as directed by the trusts. He was never informed of his expected predicted income or given a fixed or average monthly or yearly allowance as any prudent trustee would do. Rather, and as detailed in the accountings, the trustee directed Douglas Fink to call on a nearly daily basis to demand transfer of the income he was entitled to, which he would do on a nearly daily basis stretching for years:



5/12/2011	\$ (700.00)
5/13/2011	\$ (300.00)
5/16/2011	\$ (200.00)
5/17/2011	\$ (300.00)
5/19/2011	\$ (125.00)
5/20/2011	\$ (300.00)
5/25/2011	\$ (200.00)
5/27/2011	\$ (100.00)
5/31/2011	\$ (300.00)
6/2/2011	\$ (400.00)
6/3/2011	\$ (200.00)
6/6/2011	\$ (300.00)
6/8/2011	\$ (250.00)
6/9/2011	\$ (600.00)
6/13/2011	\$ (200.00)
6/14/2011	\$ (700.00)
6/17/2011	\$ (300.00)
6/20/2011	\$ (300.00)
6/23/2011	\$ (400.00)

5/22/2013 Doug	\$ (50.00)
5/24/2013 Doug	\$ (50.00)
6/6/2013 Doug	\$ (50.00)
6/12/2013 Doug	\$ (50.00)
6/20/2013 Doug	\$ (50.00)
6/27/2013 Doug	\$ (50.00)
7/3/2013 Doug	\$ (50.00)
7/8/2013 Doug	\$ (50.00)
7/11/2013 Doug	\$ (50.00)
7/15/2013 Doug	\$ (50.00)
7/18/2013 Doug	\$ (50.00)
7/23/2013 Doug	\$ (50.00)
7/25/2013 Doug	\$ (50.00)
7/26/2013 Doug	\$ (50.00)

**Meyer Accounting for  
the 2001 Trust**

Norman Fink 2001 Irrevocable Insurance Trust Transactions for 2014		
<b>FIDELITY</b>		
1/3/2014 Doug	\$	300.00
1/6/2014 Doug	\$	800.00
1/7/2014 Doug	\$	350.00
1/8/2014 Doug	\$	350.00
1/9/2014 Doug	\$	500.00
1/15/2014 Doug	\$	200.00
1/17/2014 Doug	\$	350.00
1/21/2014 Doug	\$	200.00
1/22/2014 Doug	\$	500.00
1/23/2014 Doug	\$	160.00
1/24/2014 Doug	\$	450.00
1/27/2014 Doug	\$	100.00
1/29/2014 Doug	\$	400.00

52. These small and repetitive payments constitute mismanagement of the trusts' assets because the attorney fee bills recently provided by trustee Meyer reflect that he was billing the trusts up to \$435 per hour both for the perfunctory and wasteful function of making such

distributions. Repetitively making these small payments then billing hourly for making them constitute mismanagement of the trusts' assets because no reasonable trustee would disburse daily hundred-dollar payments out of a several-million dollar trust fund – especially a trustee with the special skills that Meyer has as a sophisticated and experienced attorney. As will be detailed below these small payments constitute mismanagement of the trusts' assets that provide no benefit to the beneficiaries, but serve to provide justification for excessive hourly fee billing.

53. In addition to these small and repetitive near-daily transfers of money into an account maintained on Fink's behalf by Meyer, the accounting reveals years' worth of dizzyingly small transactions paid to others on ostensibly on Fink's behalf by Meyer:

2/15/2011 Laura Dale	(1,000.00)
11/29/2011 Maureen Gibbons - cash for Doug	(250.00)
11/17/2011 Maureen Gibbons - child care	(389.78)
1/5/2011 meds	(409.39)
1/5/2011 meds	(186.53)
3/1/2011 meds	(293.88)
1/14/2011 meds.	(44.33)
1/20/2011 meds.	(171.47)
1/31/2011 meds.	(41.65)
2/4/2011 meds.	(79.80)
2/4/2011 meds.	(83.86)
10/14/2011 Michael Fink - Western Union	(816.00)
1/5/2011 motorcycle repairs	(2,034.27)

8/27/2012 All Aboard Storage	(134.19)
9/21/2012 All Aboard Storage	(134.19)
10/22/2012 All Aboard Storage	(134.19)
11/27/2012 All Aboard Storage	(134.19)
12/19/2012 All Aboard Storage	(134.19)
5/25/2012 auto insurance and water bill	(441.16)
9/26/2012 auto repairs	(946.43)

54. In addition to the obvious inefficiencies of this trustee engaging in these transactions and remaining inappropriately enmeshed in this income beneficiaries life, Plaintiffs assert that their trustee completed these transactions using various credit cards held by Meyer for the purpose of accumulating credit card “points.” These points, earned with trust funds, were and are assets which should be accounted to the trust and beneficiaries, but which points are not detailed as assets on any accounting.

55. These small and repetitive disbursements further conflict with the trust terms which specify that beginning when the beneficiaries turn 40 they should receive an escalating portion of their balance of trust assets:

6. I hereby delete Paragraph 7.1.2 of ARTICLE 7 and substitute the following new Paragraph 7.1.2 therefor:

“7.1.2 The Trustee shall distribute to such child of the Donor, free of trust, the following proportions of the then remaining principal and undistributed income of such sub-trust estate, when such child reaches the ages hereinafter specified:

7.1.2.1. One-third (1/3) of the balance thereof when such child reaches the age of 40 years;

7.1.2.2. One-half (1/2) of the balance thereof when such child reaches the age of 45 years; and

7.1.2.3. The balance thereof when such child reaches the age of 50 years;

provided, however, that any distribution specified to be made to such child upon reaching a given age shall be made at the time of the division into separate trust estates if such child shall have reached such age prior to the time of such division into separate trust estates.”

### **First Amendment to the 1999 Trust**

5.1.2 The Trustees shall distribute to such child, free of trust, the following proportions of the then remaining principal and undistributed income of such trust estate, when such child reaches the ages hereinafter specified:

5.1.2.1 One-half (1/2) of the balance thereof when such child reaches the age of 40 years; and

5.1.2.2 The balance thereof when such child reaches the age of 45 years;

provided, however, that any distribution specified to be made to such child upon reaching a given age shall be made at the time of the division into separate trust estates if such child shall have reached such age prior to the time of such division into separate trust estates.

### **The 2001 Trust**

56. Douglas Fink, Ashley Fink and Erika Fink have each turned 40 but there is no indication that the beneficiaries received the 1/3 or 1/2 lump sum distributions they are specifically entitled to under the trust agreements. And because Plaintiffs never received any accounting contemplated by F.S. § 736.0813, they would have no idea or estimate of the amount such distribution should have been. Further, because Plaintiffs have never received any accurate or comprehensible accounting, they have no estimate nor can they plan for the distributions they are entitled to receive when they reach 45 years of age.

**C. Meyer has abused trust assets by unilaterally paying hundreds of thousands of dollars in unauthorized attorney and trustee fees which were never seen much less approved by any beneficiary.**

57. In addition to never receiving any accounting that complies with Florida law, Plaintiffs have never received any itemized billing for a vast amounts of attorneys' that have been billed against Norman Fink's Estate and both the 1999 and the 2001 trusts which began before Norman Fink's death and continue until the date of filing this petition. Pursuant to the accounting for the 1999 Trust, Meyer through his firm Posternak billed \$297,046.77:

59	9/18/2015	452.45
60	10/9/2015	44.37
61	11/17/2015	137.15
62	12/9/2015	749.14
Total Posternak Blankstein & Lund LLP		<u>\$ 297,046.77</u>

58. And \$125,987.48 for the 2001 Trust:

7/20/2015 Attorney Fees - PBL #275473	(540.00)
1/22/2016 Attorney Fees - PBL #281687	(270.00)
2/12/2016 Attorney Fees - PBL #282385	(810.00)
4/20/2016 Attorney Fees - PBL #284846	(1,452.00)
5/6/2016 Attorney Fees - PBL #285387	(94.48)
	<u>(125,987.48)</u>

59. In addition to a \$283,171.80 total that appears on the accounting for the Estate of Norman Fink:

Attorney Fees		
36	9/22/2008	\$ 7,215.22
37	10/3/2008	9,568.21
38	10/27/2008	5,399.55
Total Posternak Blankstein & Lund LLP		<u>\$ 283,171.80</u>

60. But it is entirely unclear whether all these fees are inclusive of or in addition to the statement of fees that appears on the accounting titled, "Estate of Norman Fink, 12/25/2006-12/31/2013" which includes the following entry:

77	10/18/2013	8,712.80
78	10/21/2013	917.66
79	12/10/2013	7,360.40
Total Posternak Blankstein & Lund LLP		<u>\$ 556,613.74</u>

61. And as will be detailed below, the aggregate amount of attorneys fees attributed to Meyer and Posternak, Blankstein & Lund, LLP in the trust accountings appear to be different from and in addition to significant additional attorneys fees that appear to have been attributed and taken directly from beneficiaries Douglas Fink and Maria Baker as detailed below.

62. For the first time in October 2016 after request from undersigned counsel, trustee Meyer provided hundreds of pages of itemized billing statements which show hundreds of thousands of dollars in attorney fee billings. These invoices that were only recently provided appear to detail that the qualified beneficiaries were being billed and Meyer presumably being paid for at least five separate matters by Meyer and his law firm, Posternak, Blankstein & Lund, LLP to wit:

- a. The Estate of Norman Fink (Matter No. 3);
- b. The 1999 Trust (Matter No. 2)
- c. The 2001 Trust Administration (Matter No. 4);
- d. Maria Baker (Matter No. 5); and
- e. Doug Fink (Matter No. 6)

63. On each of these invoices, for a period spanning nearly a decade, the only mailing address provided and therefore presumably the only place where these invoices were ever sent is to the former address of Norman Fink who had been dead for nearly seven years from the time this representative invoice was sent out:

		December 9, 2015
	Bill	#: 280324
	Client	#: 14139
	Matter	#: 3
In Account		
With	Norman Fink 645 Marina Point Daytona Beach Florida 32114	
In the		
Matter of	Estate of Norman Fink	

64. As detailed in the hundreds of pages of invoices attributed to Plaintiff Douglas Fink, just a few of which are attached below, attorney Stephen Meyer knew precisely how to remain in daily contact with Plaintiff, but Douglas Fink was never provided these invoices, he never retained Stephen Meyer to serve as his attorney and never authorized payment for these invoices from his trust proceeds:

In Account		
With	Norman Fink 645 Marina Point Daytona Beach Florida 32114	
In the		
Matter of	Doug Fink	

---

For Attorneys' Fees and Disbursements Incurred Through January 31, 2014

01/06/2014	Three telephone calls with Doug. Steven A. Meyer	0.70 hrs
01/07/2014	Telephone call with Doug; telephone call with A. Delgado. Steven A. Meyer	0.50 hrs
01/15/2014	Telephone call from Social Security office in Florida regarding Babette's application; discuss citizenship issues with S. Meyer. Constance Sable	0.50 hrs
01/17/2014	Telephone conference with Doug. Steven A. Meyer	0.40 hrs
01/19/2014	Telephone call with Doug; telephone call with Fidelity. Steven A. Meyer	0.40 hrs

February 14, 2014	Matter #:	6		
	Page #:	2		
	Fees for Legal Services..... \$	1,801.50		
Costs Advanced:				
Photocopies	\$	3.30		
Long Distance Phone Expenses		1.05		
Postage Meter		0.46		
	Subtotal Costs	\$ 4.81		
	Bill Total	\$ <u>1,806.31</u>		
Timekeeper	Attorney	Hours	Rate	Amount
0194	Steven A. Meyer	3.90	\$ 435.00	\$ 1,696.50
0657	Constance Sable	0.50	210.00	105.00

Norman Fink		Bill #:	261785
Doug Fink		Client #:	14139
March 21, 2014		Matter #:	6
		Page #:	2
02/24/2014	Two telephone calls with Doug. Steven A. Meyer	0.50 hrs	
02/25/2014	Two telephone calls with Doug. Steven A. Meyer	0.40 hrs	
02/26/2014	Two telephone calls with Doug. Steven A. Meyer	0.60 hrs	
02/27/2014	Two telephone calls with Doug. Steven A. Meyer	0.30 hrs	
		Fees for Legal Services..... \$	2,992.00

### ***Billing for the Tina Riffle "Matter"***

65. The invoices show repetitive and excessive billing not just for telephone calls that are alleged to have occurred between Meyer and Douglas Fink, but also tens of thousands of dollars in phone calls alleged to have occurred between Douglas Fink's trustee and his ex-wife, Tina Riffle:

07/16/2009	Telephone call to Tina Riffle. Steven A. Meyer	0.40 hrs
07/17/2009	Telephone call with Tina Riffle. Constance Sable	0.10 hrs
07/25/2009	Telephone call with Tina Riffle. Steven A. Meyer	0.30 hrs
07/27/2009	Telephone call with Tina; telephone call with Kim; telephone call with Mike Fink. Steven A. Meyer	1.20 hrs
07/29/2009	Telephone call with Tina Riffle. Steven A. Meyer	0.30 hrs
07/30/2009	Telephone call with Tina Riffle; telephone call with Kim and Tina Riffle; telephone call with Kim; review; telephone call with Mike Fink; telephone call with Tina Riffle. Steven A. Meyer	3.90 hrs
07/31/2009	Telephone call with Kim; telephone call with Tina.	

66. Even though Tina Riffle is not a beneficiary and these fees apparently charged to Douglas Fink are excessive, wasteful and never before seen much less approved by Fink the accounting suggests these heretofore unseen invoices have already been paid from his trust proceeds:

2/23/2012 PBL Invoice: 240455	(61.50)
3/23/2012 PBL Invoice: 241368	(15,775.62)
6/7/2012 PBL Invoice: 243607	(1,217.70)
9/28/2012 PBL Invoice: 246448	(3,275.89)
10/31/2012 PBL Invoice: 247261	(3,239.30)
12/28/2012 PBL Invoice: 247764	(5,342.35)

1/8/2014 PBL - Attorney fees	(2,179.45)
1/8/2014 PBL - Attorney fees	(154.11)
3/26/2014 PBL - Attorney fees	(4,809.74)
6/16/2014 PBL - Attorney fees	(8,034.51)

(From 2001 Trust Accounting)

### *Billing for the Maria Baker "Matter"*

67. The 1999 Trust accounting shows a similar pattern of excessive and unapproved attorney fee billing appears to exist related to Maria Baker who is identified as a beneficiary in the First Amendment to the 1999 Revocable Trust and who was specified to receive a \$325,000.00 distribution from the 1999 Trust to be paid in the form of a separate trust known as the M.D.B. Trust:

"5.1 Upon the death of the Donor, if MARIA D. BAKER, of Ormond Beach, Florida, survives the Donor, the Trustees shall set aside as a separate trust, to be known as the M.D.B. Trust, the amount of Three Hundred Twenty-Five Thousand Dollars (\$325,000.00)."



68. The 1999 accounting includes the following statement which appears to suggest that \$325,000 distribution to Baker was made:

165	9/14/2012	Cash Distribution to Trust f/b/o Maria Baker	50,000.00
166	4/11/2013	Cash Distribution to Trust f/b/o Maria Baker	25,000.00
167	4/12/2013	Cash 2013 Distributions	16,787.00
168	8/6/2014	Cash	34,471.39
Total To Or For Beneficiary			<u>\$ 323,793.90</u>

69. The detailed attorneys fee statements first provided to the beneficiaries in 2016 reveal repetitive significant billing by Meyer for a variety of questionable tasks. For instance, an invoice for the period ending July 31, 2009 suggests billing totaling \$10,844.09 related to the "Maria Baker" matter:

<b>Costs Advanced:</b>					
Photocopies			\$		0.70
Long Distance Phone Expenses					2.07
Postage Meter					1.32
Subtotal Costs			\$		4.09
<b>Bill Total</b>			<b>\$</b>		<b><u>10,844.09</u></b>
Timekeeper	Attorney	Hours	Rate	Amount	
194	Steven A. Meyer	21.00	\$ 400.00	\$ 8,400.00	
657	Constance Sable	12.20	200.00	2,440.00	

70. The invoices detail phone calls to hospitals, insurance agents, social workers, fire inspectors, and to "Tim" the "landscaper":

07/10/2009	Telephone call to insurance agent and fire department regarding house fire; review fire report; send report to insurance agent; fax drivers license to Ormond Beach Hospital. Constance Sable	1.40 hrs
------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------

07/10/2009	Telephone call with Maria Baker; three telephone calls with Ormond Hospital (Nicky); telephone call with nurse; telephone call with social worker in hospital; telephone call with insurance company; telephone call with contractor referred by insurance company; two telephone calls with Nancy P.; review fire report; telephone call with fire inspector; telephone call with Dave Hartzell. Steven A. Meyer	5.20 hrs
07/31/2009	Telephone call with Tim (landscaper); two telephone calls with Nancy; telephone call with Dave Hartzell; telephone call with Wayne Cooper re: estimate for construction. Steven A. Meyer	1.70 hrs
10/30/2009	Review draft escrow agreement; review M. Hurley draft escrow letter; review fully signed documents; proofread purchase and sale amendment, escrow agreement, affidavits, etc.; telephone calls and memos from and to L. Waldren, D. Copp; office conference with S. Meyer re mortgage payoff issues, closing issues etc. Frank Aronson	3.80 hrs
10/30/2009	Two telephone calls with Nancy; two telephone calls with Dexter Copp. Steven A. Meyer	0.40 hrs
Subtotal Fees .....		\$ 14,905.00

71. Because the trustees never provided an accounting and because Meyer never previously provided any detailed attorney/trustee fee statements to any of the beneficiaries, Plaintiffs had no idea the extent to which attorney and trustee fees were being paid from trust assets. Furthermore, because the accounting that has been provided is insufficient it is unclear whether the disbursements designated as "To or For Beneficiary" Maria Baker include payments for attorney and trustee fees as indicated in the attorney fee billing.

**72. During all relevant periods, Maria Baker was a resident of Florida and the invoices evidence the significant, ongoing and repetitive contacts this trustee had with Florida in administering the trust.**

#### ***Out of State Billing For Estate of Norman Fink Administration***

73. It should be noted that even though Norman Fink died in Volusia County and The Estate of Norman Fink was discharged by Volusia County Circuit Court Judge C. McFerrin Smith, III

on June 4, 2010, billing statements addressed to Norman Fink and specifically designated as, "In The Matter of Estate of Norman Fink" have been produced as late as December 9, 2015:

		December 9, 2015
	Bill	#: 280324
	Client	#: 14139
	Matter	#: 3
In Account With Norman Fink 645 Marina Point Daytona Beach Florida 32114		
In the Matter of Estate of Norman Fink		
<hr/>		
For Attorneys' Fees and Disbursements Incurred Through November 30, 2015		
11/03/2015	Telephone call with Doug Fink. Steven A. Meyer	0.40 hrs
11/04/2015	Review; responses to Doug re: trusts. Steven A. Meyer	0.40 hrs
11/13/2015	Review DOR notice; telephone call with Mike Fink; telephone call with DOR; draft affidavit and letter to DOR and Form CA-6. Steven A. Meyer	0.50 hrs
11/16/2015	Abatement request for MA penalty. Steven A. Meyer	0.20 hrs
11/17/2015	Discuss estate matters with S. Meyer. Constance Sable	0.30 hrs
Fees for Legal Services..... \$		738.00

74. Because Plaintiffs have never received any annual accountings they have no idea whether these estate invoices are paid from estate or trust fund assets.

75. The IRS Form 706 for the Estate of Norman Fink reveals an entry of \$190,000.00 for Meyer's law firm, Posternak, Blankstein & Lund for "legal services in connection with estate administration":

2	Posternak Blankstein & Lund LLP - legal services in connection with estate administration	190,000.00
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**IRS Form 706**

76. Neither Meyer nor Posternak, Blankstein & Lund appear as the attorneys of record in the Estate of Norman Fink and neither Meyer nor his firm are members of the Florida Bar it is therefore unclear the exact basis for the \$190,000 "estate administration" fee and because no

annual or other detailed trust accounting has been provided, it is unclear to what extent these fees deplete trust assets.

**77. The invoices which are specific to "The Estate of Norman Fink" evidence significant, ongoing and repetitive contacts by the trustee during the period 2006-2015 with the jurisdiction.**

78. And while it is also unclear whether the \$190,000 disclosed on the 706 is included in the accounting of the 1999 Trust provided by Meyer to Plaintiffs' counsel the accounting suggests that Posternak, Blankstein & Lund was paid in excess of a half of a million dollars from the 1999 Trust:

77	10/18/2013	8,712.80
78	10/21/2013	917.66
79	12/10/2013	7,360.40
		<hr/>
Total Posternak Blankstein & Lund LLP		\$ 556,613.74
Total Attorney Fees		\$ 589,945.33

**Meyer Accounting for  
the 1999 Trust**

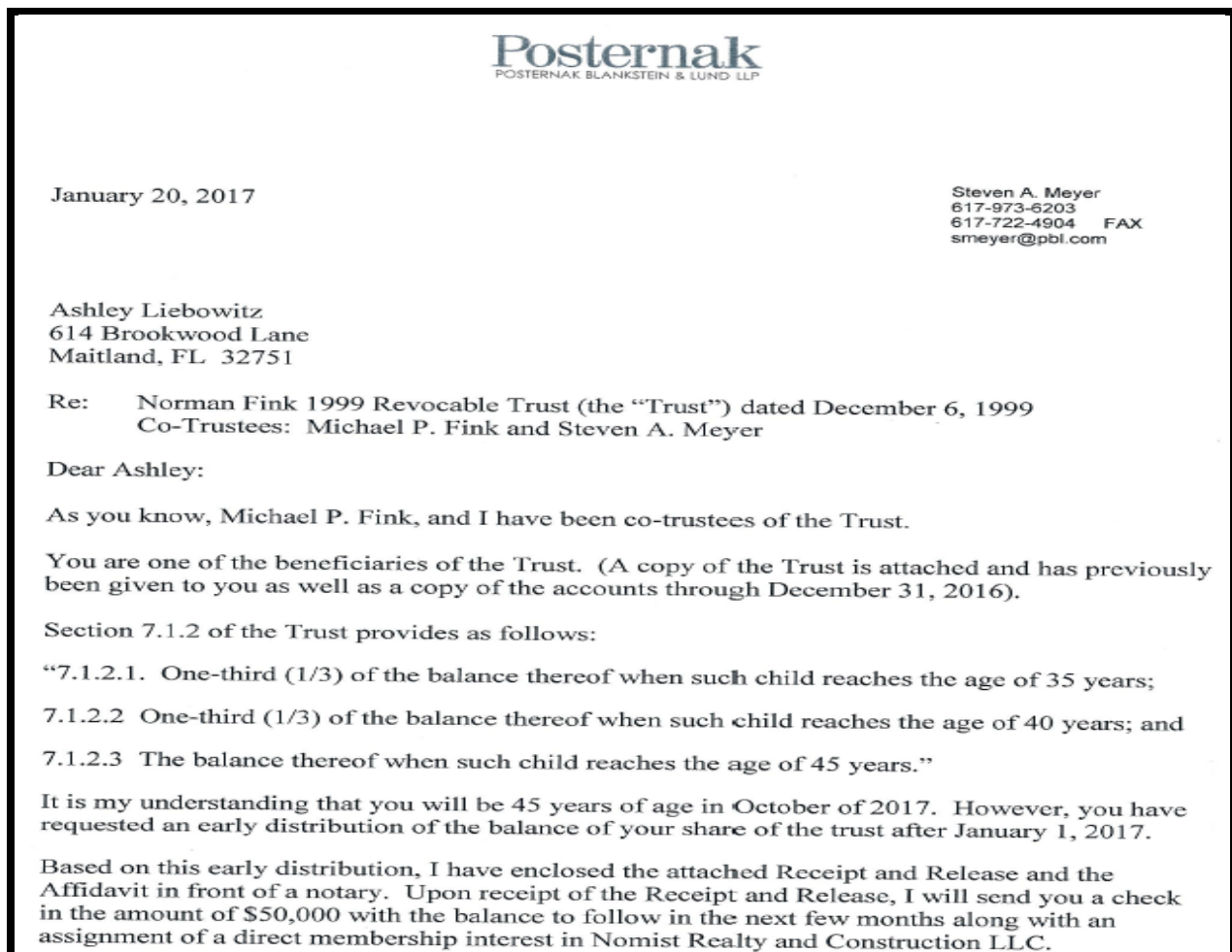
79. Worst still, because the "yearly" "accountings" Meyer provided for the Estate only contain accountings for the Years 2007 and 2008. But since there have been significant transactions through at least 2015, Plaintiffs are entitled to an accounting for those years.

**D. Meyer and Michael Fink have breached his fiduciary duty to the beneficiaries and the trusts by failing to make distributions unless a waiver is signed.**

80. The 1999 Trust provides that the remaining principal and income of the estate will be distributed to each child of Norman Fink in the following manner:

- 7.1.2.1. One-third (1/3) of the balance thereof when such child reaches the age of 35 years;
- 7.1.2.2. One-third (1/3) of the balance thereof when such child reaches the age of 40 years; and
- 7.1.2.3. The balance thereof when such child reaches the age of 45 years;

81. On or about January 2017, Plaintiff Ashley Liebowitz requested an early distribution of her portion of the remaining balance in accordance with Section 7.1.2.3. And while Meyer was ready to do this, he stated in a letter dated January 20, 2017 that he would apparently only do so if Ms. Liebowitz executed a "Receipt and Release":



82. The “Receipt and Release” Meyer included with his letter, however, would have released both himself and Michael Fink from any and all liability related to their treatment of the 1999 Trust – which presumably includes the allegations of this complaint:

<p style="text-align: center;">RECEIPT AND RELEASE</p> <p>In the matter of: <u>Norman Fink 1999 Revocable Trust</u></p> <p>In consideration of a partial distribution paid by Michael Fink and Steven A. Meyer, as Trustees of the Norman Fink 1999 Revocable Trust, and not individually, the receipt whereof is hereby acknowledged, I, ASHLEY LEIBOWITZ, do hereby release and forever discharge the said Michael Fink and Steven A. Meyer from all rights, actions and demands whatsoever which I now have or ever had, or which I or my issue, heirs, executors, administrators and assigns now or hereafter may have, for or on account of the Norman Fink 1999 Revocable Trust for the period ending December 31, 2016.</p> <p>In further consideration, I assent to the allowance of any and all accounts the personal representative may file and waive notice thereof.</p> <p style="text-align: right;">_____ Ashley Leibowitz</p> <p style="text-align: right;">Dated: _____, 2017</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

83. Michael Fink had actual knowledge that Meyer sent the letter and the “Receipt and Release.” Therefore, the only purpose of the letter and the release was so that both Michael Fink and Meyer could head off any potential claims Ms. Liebowitz may have against them – and in particular, the claims made in this complaint.

## **Causes of Action**

### **Count I – Breach of Fiduciary Duty**

(as against Meyer, Michael Fink, and Labret)

84. Plaintiffs re-allege Paragraphs 1-83 as if fully stated herein.

85. A fiduciary relationship exists between Plaintiffs and Meyer, Michael Fink, and Labret because Meyer, Michael Fink, and Labret act as co-trustees of trusts of which Plaintiffs are the only remaining qualified beneficiaries and because Michael Fink acted as the personal representative of Norman Fink's Estate of which Plaintiffs are the heirs.

86. Meyer, Michael Fink, and Labret breached the fiduciary duties they owed to Plaintiff.

87. But for Meyer's, Michael Fink's, and Labret's breaches, Plaintiff has been damaged.

**WHEREFORE**, based upon the foregoing, Plaintiffs request that the Court enter judgment in their favor finding:

- A. That a fiduciary relationship existed;
- B. That Meyer, Michael Fink, and Labret breached the fiduciary relationship;
- C. That Plaintiffs has been damaged by the breach of the breach of the fiduciary relationship in an amount to be determined by the Court; and
- D. That Plaintiffs are entitled to an award of those damages along with an award of attorney's fees and costs.

Count II – Removal of Trustee and Appointment of Successor Trustee

(as against Meyer, Michael Fink, and Labret)

88. Plaintiffs re-allege Paragraphs 1-83 as if fully stated herein.

89. This is an action to remove Meyer, Michael Fink, and Labret as trustees of the 1999 Trust and the 2001 Trust pursuant to § 736.0706, Fla. Stat. and to appoint a successor trustee or trustees pursuant to § 736.0704, Fla. Stat.

90. Plaintiffs are the only remaining qualified beneficiaries under the trusts.

91. Meyer, Michael Fink, and Labret, individually and collectively have committed serious breaches of trust based on the allegations in this complaint including, but not limited to

- a. Their failure to provide Plaintiff an initial and annual accounting of trust assets pursuant to § 736.0813, Fla. Stat;
- b. Providing “accountings” to Plaintiff’s counsel which do not meet the requirements of Florida law pursuant to § 736.08135, Fla. Stat.;
- c. The failure to set up individual trusts for each of Norman Fink’s children pursuant to Article 6.2 of the First Amendment to the 1999 Trust;
- d. The failure to set up individual trusts for each of Norman Fink’s children pursuant to Article 4.6 of the 2001 Trust;
- e. Payment of inconsequential small and nearly daily payments to Plaintiff amounting nothing more than a few hundred dollars out of trust assets; and
- f. Payment of an inordinate amount of attorney’s fees to Meyer, Meyer’s law firm, and other law firms for attorney “work” which never should have been done in the first place.

92. There is also a lack of cooperation between the co-trustees.



93. Due to Meyer's, Michael Fink's, and Labret's unfitness, unwillingness, or persistent failure to administer the 1999 Trust and the 2001 Trust, removal of all three of them best serves the interests of all beneficiaries.

**WHEREFORE**, based upon the foregoing, Plaintiffs request that the Court:

- A. Remove Meyer and Michael Fink as co-trustees of the 1999 Trust;
- B. Remove Meyer and Labret as co-trustees of the 2001 Trust;
- C. Appoint a successor trustee or trustees for the 1999 Trust;
- D. Appoint a successor trustee or trustees for the 2001 Trust;
- E. Pending a final decision on the request to remove the trustees, enter an order allowing any appropriate relief under § 736.1001(2), Fla. Stat. as may be necessary to protect the trust property or the interests of the beneficiaries, including, but not limited to, an order appointing a special fiduciary to take possession of the trust property and administer the trust, pursuant to § 736.0706(3), Fla. Stat.; and
- F. Award Plaintiff his reasonably incurred attorney's fees and costs pursuant to §§ 736.1004, and 736.1005, Fla. Stat.

Count III – Disgorgement of Fees

(as against Meyer and Posternak, Blankstein & Lund)

94. Plaintiffs re-allege Paragraphs 1-83 as if fully stated herein.

95. This is an action to disgorge fees wrongfully paid to Meyer and his law firm Posternak, Blankstein & Lund pursuant to § 736.1001, 736.1002, Fla. Stat.

96. To date, Meyer, acting in his capacity as co-trustee of the 1999 Trust and the 2001 Trust, has paid himself and his firm fees in excess of \$500,000 in trust assets, although the total amount of fees is unknown at this time.

97. These fees were paid for “work” completely unrelated to Meyer’s role as co-trustee of either the 1999 Trust or the 2001 Trust.

98. As a direct and proximate cause of Meyer’s unlawful fee billing, Plaintiffs have been damaged.

**WHEREFORE**, based upon the foregoing, Plaintiffs request that the Court:

- A. Order an accounting of all fees wrongfully paid to Meyer out of the 1999 Trust;
- B. Order an accounting of all fees wrongfully paid to Meyer of the 2001 Trust;
- C. Order that Meyer and Posternak, Blankstein & Lund pay all wrongfully incurred fees back into the trust within a reasonable time; and
- D. Award Plaintiffs their reasonably incurred attorney’s fees and costs pursuant to §§ 736.1004, and 736.1005, Fla. Stat.

Count IV – Accounting

(as against Meyer, Michael Fink, and Labret)

99. Plaintiffs re-allege Paragraphs 1-83 as if fully stated herein.

100. This is an action for an accounting of the 1999 Trust, the 2001 Trust, and Norman Fink’s Estate.

101. A fiduciary relationship exists between Plaintiffs and Meyer, Michael Fink, and Labret because Meyer, Michael Fink, and Labret act as co-trustees of trusts of which Plaintiffs are the only remaining qualified beneficiaries and because Michael Fink acted as the personal representative of Norman Fink’s Estate of which Plaintiffs are the heirs.

102. Plaintiffs are entitled to an accounting of all trust assets, claims, and liabilities of both the 1999 Trust and the 2001 Trust as well as the Estate of Norman Fink but no such which comports with Florida law has been provided.

**WHEREFORE**, based upon the foregoing, Plaintiffs request that the Court:

- A. Order that Plaintiff is entitled to an accounting of the 1999 Trust;
- B. Order that Plaintiff is entitled to an accounting of the 2001 Trust;
- C. Order that Plaintiff is entitled to an accounting of the Estate of Norman Fink;
- D. Order an accounting of the 1999 Trust starting on December 25, 2006, the day Norman Fink died, and running through the present day;
- E. Order an accounting of the 2001 Trust starting with December 25, 2006, the day Norman Fink died, and running through the present day;
- F. Order an accounting of the Estate of Norman Fink starting with December 25, 2006, the day Norman Fink died, and running through the present day; and
- G. Award Plaintiff his reasonably incurred attorney's fees and costs pursuant to §§ 736.1004, and 736.1005, Fla. Stat.

#### **VERIFICATION**

Under penalties of perjury, I declare that I have read the foregoing complaint and that the facts stated in it are true and the attachments are true and correct copies of the originals.

---

**Douglas Fink**

---

**Ashley Liebowitz**

---

**Erika Beyersdorf**

**WHEREFORE**, based upon the foregoing, Plaintiffs request that the Court:

- A. Order that Plaintiff is entitled to an accounting of the 1999 Trust;
- B. Order that Plaintiff is entitled to an accounting of the 2001 Trust;
- C. Order that Plaintiff is entitled to an accounting of the Estate of Norman Fink;
- D. Order an accounting of the 1999 Trust starting on December 25, 2006, the day Norman Fink died, and running through the present day;
- E. Order an accounting of the 2001 Trust starting with December 25, 2006, the day Norman Fink died, and running through the present day;
- F. Order an accounting of the Estate of Norman Fink starting with December 25, 2006, the day Norman Fink died, and running through the present day; and
- G. Award Plaintiff his reasonably incurred attorney's fees and costs pursuant to §§ 736.1004, and 736.1005, Fla. Stat.

**VERIFICATION**

Under penalties of perjury, I declare that I have read the foregoing complaint and that the facts stated in it are true and the attachments are true and correct copies of the originals.



\_\_\_\_\_  
**Douglas Fink**

\_\_\_\_\_  
**Ashley Liebowitz**

\_\_\_\_\_  
**Erika Beyersdorf**

only remaining qualified beneficiaries and because Michael Fink acted as the personal representative of Norman Fink's Estate of which Plaintiffs are the heirs.

102. Plaintiffs are entitled to an accounting of all trust assets, claims, and liabilities of both the 1999 Trust and the 2001 Trust as well as the Estate of Norman Fink but no such which comports with Florida law has been provided.

**WHEREFORE**, based upon the foregoing, Plaintiffs request that the Court:

- A. Order that Plaintiff is entitled to an accounting of the 1999 Trust;
- B. Order that Plaintiff is entitled to an accounting of the 2001 Trust;
- C. Order that Plaintiff is entitled to an accounting of the Estate of Norman Fink;
- D. Order an accounting of the 1999 Trust starting on December 25, 2006, the day Norman Fink died, and running through the present day;
- E. Order an accounting of the 2001 Trust starting with December 25, 2006, the day Norman Fink died, and running through the present day;
- F. Order an accounting of the Estate of Norman Fink starting with December 25, 2006, the day Norman Fink died, and running through the present day; and
- G. Award Plaintiff his reasonably incurred attorney's fees and costs pursuant to §§ 736.1004, and 736.1005, Fla. Stat.

#### **VERIFICATION**

Under penalties of perjury, I declare that I have read the foregoing complaint and that the facts stated in it are true and the attachments are true and correct copies of the originals.

\_\_\_\_\_  
**Douglas Fink**

  
\_\_\_\_\_  
**Ashley Liebowitz**

\_\_\_\_\_  
**Erika Beyersdorf**



**WHEREFORE**, based upon the foregoing, Plaintiffs request that the Court:

- A. Order that Plaintiff is entitled to an accounting of the 1999 Trust;
- B. Order that Plaintiff is entitled to an accounting of the 2001 Trust;
- C. Order that Plaintiff is entitled to an accounting of the Estate of Norman Fink;
- D. Order an accounting of the 1999 Trust starting on December 25, 2006, the day Norman Fink died, and running through the present day;
- E. Order an accounting of the 2001 Trust starting with December 25, 2006, the day Norman Fink died, and running through the present day;
- F. Order an accounting of the Estate of Norman Fink starting with December 25, 2006, the day Norman Fink died, and running through the present day; and
- G. Award Plaintiff his reasonably incurred attorney's fees and costs pursuant to §§ 736.1004, and 736.1005, Fla. Stat.

**VERIFICATION**

Under penalties of perjury, I declare that I have read the foregoing complaint and that the facts stated in it are true and the attachments are true and correct copies of the originals.

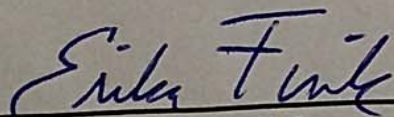
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**Douglas Fink**

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**Ashley Liebowitz**

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**Erika Beyersdorf**

Dated: March 14, 2017

**Weidner Law, P.A.**

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By: s/ Matthew D. Weidner

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