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SUMMIT COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

DAVIAN CAPITAL ADVISORS, LLC 4650 W. Streetsboro Rd. Richfield, OH 44286 Plaintiff, vs. SEAN-MICHAEL KVACEK 60 E. Cottage Street Chagrin Falls, OH 44022 Defendant.	) CASE NO.)) JUDGE)))))))))	2013 06 2729 LYNNE S. CALLAHAN **COMPLAINT** **(Misappropriation of Trade Secrets, Breach of Fiduciary Duties, Breach of Contract, Tortious Interference with Business Relationships, Conversion and Injunctive Relief)**

Plaintiff Davian Capital Advisors, LLC for its Complaint states:

COUNT I
(Misappropriation of Trade Secrets)

1. Plaintiff Davian Capital Advisors, LLC ("Company") is a global alternative investment firm.

2. The Company hired Defendant Sean-Michael Kvacek ("Kvacek") as Director of Investors Relations and Marketing in early January of this year.

3. At the time of his hiring, the Company and Kvacek entered the attached Employee Nondisclosure Agreement ("Agreement") which set forth the Company's trade secrets and other confidential information which Kvacek promised to keep in the strictest confidence and not disclose to any third party without the Company's prior written consent.

4. The Agreement provided that upon termination of his employment, Kvacek would promptly return all Company equipment, files, software programs and personal property, as well

as all Company documents, records, software programs, media and other materials containing any trade secrets or other confidential information.

5. The Company terminated Kvacek's employment on Wednesday, May 29, 2013 upon discovering that he had been secretly, willfully and maliciously copying and transmitting Company documents and electronic data containing trade secrets and other confidential information to third parties for use in gaining an unfair competitive advantage over the Company.

6. Kvacek has willfully and maliciously continued to retain Company documents, data and other personal property and divulge and use Company trade secrets and other confidential information since his termination.

7. The Company has suffered a loss of profits, goodwill and competitive advantage as well as other incidental and consequential damages as a direct and proximate result of Kvacek's willful and malicious misappropriation of Company trade secrets in violation of the Uniform Trade Secret Act, R.C. 1333.61 *et seq.*

8. The Company is entitled to punitive damages under R.C. 1333.63(D) and attorney fees under R.C. 1333.64 by reason of Kvacek's willful and malicious misappropriation of the Company trade secrets.

COUNT II
(Breach of Fiduciary Duties/Faithless Servant)

9. The Company incorporates its prior allegations.

10. Kvacek owed a fiduciary duty of care, loyalty, confidentiality, full disclosure, good faith and fidelity to the Company as an employee.

11. Kvacek violated his fiduciary duties by misappropriating confidential information and trade secrets for the benefit of himself and other unauthorized third parties.

12. The Company has suffered a loss of profits, goodwill and competitive advantage as well as other incidental and consequential damages as a direct and proximate result of Kvacek's tortious breach of his fiduciary duties.

COUNT III
(Breach of Contract)

13. The Company incorporates its prior allegations.

14. Kvacek breached the Agreement by misappropriating the Company's trade secrets and other confidential information and by failing to return Company documents and other personal property upon termination of his employment.

15. The Company has suffered a loss of profits, goodwill and competitive advantage as well as other incidental and consequential damages as a direct result of Kvacek's breach of the Agreement.

16. The Company is entitled to attorney fees under Section 6(g) of the Agreement which Kvacek breached.

COUNT IV
(Tortious Inference with Business Relationships)

17. The Company incorporates its prior allegations.

18. Kvacek had access to Company trade secrets and other confidential information and had regular contact with the Company's actual and prospective clients during the course of his employment.

19. Kvacek willfully and maliciously misappropriated and divulged Company trade secrets and other confidential information to third parties to gain an unfair competitive advantage with respect to the solicitation of the Company's actual and prospective clients.

20. The Company has suffered a loss of profits, goodwill and competitive advantage as well as other incidental and consequential damages as a direct and proximate result of Kvacek's tortious interference with the Company's business relations.

COUNT V
(Conversion)

21. The Company incorporates its prior allegations.

22. Kvacek has willfully and maliciously converted documents, iPad, fob, keys, PGA tickets to the Bridgestone Invitational and cases of wine from the Company.

COUNT VI
(Injunctive Relief)

23. The Company incorporates its prior allegations.

24. Section 6(e) of the attached Agreement provides:

> Injunctive Relief: any misappropriation of any Confidential Information in violation of this Agreement may cause Company irreparable harm, the amount of which may be difficult to ascertain, and therefore Employee agrees the Company shall have the right to apply to a court of competent jurisdiction for an order enjoining any such further misappropriation or for such other relief as Company deems appropriate. This right is to be in addition to the remedies otherwise available to Company.

25. Kvacek's misappropriation of Company trade secrets and other confidential information in violation of statutory law and common law and in breach of the Agreement has and will continue to cause the Company immediate and irreparable harm for which there is no adequate remedy at law.

26. The Company is entitled to a temporary restraining order, preliminary injunction and permanent injunction prohibiting Kvacek from directly or indirectly utilizing or retaining any of the documents, data, trade secrets, confidential information or personal property of the Company.

WHEREFORE, Plaintiff Davian Capital Advisors, LLC demands judgment for a temporary restraining order and preliminary and final injunction prohibiting Defendant Sean-Michael Kvacek from directly or indirectly using, divulging or retaining any Company documents, data, trade secrets, confidential information or personal property. Plaintiff further demands judgment against Defendant for compensatory damages in excess of Twenty-five Thousand Dollars ($25,000.00), punitive damages in excess of Twenty-five Thousand Dollars ($25,000.00), attorney fees and costs.

Orville L. Reed, III (#0023522)
David P. Bertsch (#0023517)
Stark & Knoll Co., L.P.A.
3475 Ridgewood Rd.
Akron, OH 44333
Email: oreed@stark-knoll.com
Phone: (330) 572-0328
Fax: (330) 572-0329
Email: dbertsch@stark-knoll.com
Phone: (330) 572-0324
Fax: (330) 572-0325

Attorneys for Plaintiff,
Davian Capital Advisors, LLC

VERIFICATION

STATE OF OHIO)
) ss
SUMMIT COUNTY)

I, Anthony Davian, being first duly sworn, do depose and say: I am Chief Executive Officer of Davian Capital Advisors, LLC, and I have reviewed the allegations of this Verified Complaint and they are true to the best of my knowledge and belief.

Anthony Davian

Sworn to before me and subscribed in my presence this 3rd day of June, 2013.

Notary Public

BONNIE J. MILLER, Notary Public
Residence - Summit County
State Wide Jurisdiction, Ohio
My Commission Expires Dec. 20, 2015

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EMPLOYEE NONDISCLOSURE AGREEMENT

This agreement (the "Agreement") is entered into by Davian Capital Advisors, LLC ("Company") and Sean-Michael Kavacek ("Employee").

In consideration of the commencement of Employee's employment with Company and the compensation that will be paid, Employee and Company agree as follows:

1. Company's Trade Secrets

In the performance of Employee's job duties with Company, Employee will be exposed to Company's Confidential Information. "Confidential Information" means information or material that is commercially valuable to Company and not generally known or readily ascertainable in the industry. This includes, but is not limited to:

(a) technical information concerning Company's products and services, including product know-how, formulas, designs, devices, diagrams, software code, test results, processes, inventions, research projects and product development, technical memoranda and correspondence;

(b) information concerning Company's business, including cost information, profits, sales information, accounting and unpublished financial information, business plans, markets and marketing methods, customer lists and customer information, purchasing techniques, supplier lists and supplier information and advertising strategies;

(c) information concerning Company's employees, including salaries, strengths,

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weaknesses and skills;

(d) information submitted by Company's customers, suppliers, employees, consultants or co-venture partners with Company for study, evaluation or use; and

(e) any other information not generally known to the public which, if misused or disclosed, could reasonably be expected to adversely affect Company's business.

2. Nondisclosure of Trade Secrets

Employee shall keep Company's Confidential Information, whether or not prepared or developed by Employee, in the strictest confidence. Employee will not disclose such information to anyone outside Company without Company's prior written consent. Nor will Employee make use of any Confidential Information for Employee's own purposes or the benefit of anyone other than Company.

However, Employee shall have no obligation to treat as confidential any information which:

(a) was in Employee's possession or known to Employee, without an obligation to keep it confidential, before such information was disclosed to Employee by Company;

(b) is or becomes public knowledge through a source other than Employee and through no fault of Employee; or

(c) is or becomes lawfully available to Employee from a source other than Company.

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3. Confidential Information of Others

Employee will not disclose to Company, use in Company's business, or cause Company to use, any trade secret of others.

4. Return of Materials

When Employee's employment with Company ends, for whatever reason, Employee will promptly deliver to Company all originals and copies of all documents, records, software programs, media and other materials containing any Confidential Information. Employee will also return to Company all equipment, files, software programs and other personal property belonging to Company.

5. Confidentiality Obligation Survives Employment

Employee's obligation to maintain the confidentiality and security of Confidential Information remains even after Employee's employment with Company ends and continues for so long as such Confidential Information remains a trade secret.

6. General Provisions

(a) Relationships: Nothing contained in this Agreement shall be deemed to make Employee a partner or joint venturer of Company for any purpose.

(b) Severability: If a court finds any provision of this Agreement invalid or unenforceable, the remainder of this Agreement shall be interpreted so as best to effect the intent of Company and Employee.

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(c) Integration: This Agreement expresses the complete understanding of the parties with respect to the subject matter and supersedes all prior proposals, agreements, representations and understandings. This Agreement may not be amended except in a writing signed by both Company and Employee.

(d) Waiver: The failure to exercise any right provided in this Agreement shall not be a waiver of prior or subsequent rights.

(e) Injunctive Relief: Any misappropriation of any of the Confidential Information in violation of this Agreement may cause Company irreparable harm, the amount of which may be difficult to ascertain, and therefore Employee agrees that Company shall have the right to apply to a court of competent jurisdiction for an order enjoining any such further misappropriation and for such other relief as Company deems appropriate. This right is to be in addition to the remedies otherwise available to Company.

(f) Indemnity: Employee agrees to indemnify Company against any and all losses, damages, claims or expenses incurred or suffered by Company as a result of Employee's breach of this Agreement.

(g) Attorney Fees and Expenses: In a dispute arising out of or related to this Agreement, the prevailing party shall have the right to collect from the other party its reasonable attorney fees and costs and necessary expenditures.

(h) Governing Law. This Agreement shall be governed in accordance with the laws of the State of Ohio.

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(i) Jurisdiction. Employee consents to the exclusive jurisdiction and venue of the federal and state courts located in Ohio in any action arising out of or relating to this Agreement. Employee waives any other venue to which Employee might be entitled by domicile or otherwise.

(j) Successors & Assigns. This Agreement shall bind each party's heirs, successors and assigns. Company may assign this Agreement to any party at any time. Employee shall not assign any of his or her rights or obligations under this Agreement without Company's prior written consent. Any assignment or transfer in violation of this section shall be void.

7. Signatures

Employee has carefully read all of this Agreement and agrees that all of the restrictions set forth are fair and reasonably required to protect Company's interests. Employee has received a copy of this Agreement as signed by the parties.

Employee:

Sean-Michael Kavacek (Signature)

Sean-Michael Kavacek (Typed or Printed Name)

Date: 1/7/13

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Company:

_____ (Signature)

Anthony Davian (Typed or Printed Name)

Date: 01.03.2013

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