FILED
2013 JUL 24 AM 11:12
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

5:13 CV 1600

UNITED STATES OF AMERICA, Plaintiff, v. REAL PROPERTY LOCATED AT: 4862 DREMINA ROCK DRIVE (aka 4862 TRAVERTINE WAY), BATH, OHIO, PERMANENT PARCEL NUMBER: 04-07339, ESTATES OF BATH LOT 24, ROUTING NUMBER: BA-00001A6025000 - INCLUDING ALL FIXTURES, IMPROVEMENTS AND APPURTENANCES, Defendant.	CIVIL ACTION NO. JUDGE JUDGE ADAMS MAG. JUDGE LIMBERT **COMPLAINT IN FORFEITURE**

NOW COMES plaintiff, the United States of America, by Steven M. Dettelbach, United States Attorney for the Northern District of Ohio, and James L. Morford, Assistant U.S. Attorney, and files this Complaint in Forfeiture, respectfully alleging on information and belief the following:

JURISDICTION AND INTRODUCTION

1. This Court has subject matter jurisdiction over an action commenced by the United States under 28 U.S.C. § 1345, and over an action for forfeiture under 28 U.S.C. § 1355(a).

This Court also has jurisdiction over this particular action under 18 U.S.C. § 981(a)(1)(C).

2. This Court has *in rem* jurisdiction over the defendant property pursuant to: (i) 28 U.S.C. § 1355(b)(1)(A) because acts giving rise to the forfeiture occurred in this district; and, (ii) 28 U.S.C. § 1355(b)(1)(B), incorporating 28 U.S.C. § 1395, because the action accrued in this district and the defendant property is found in this district.

3. Venue is proper in this district pursuant to: (i) 28 U.S.C. § 1355(b)(1)(A) because acts giving rise to the forfeiture occurred in this district; and, (ii) 28 U.S.C. § 1395 because the action accrued in this district and the defendant property is found in this district.

4. The defendant property is subject to forfeiture to the United States under 18 U.S.C. § 981(a)(1)(C) in that it constitutes, or is derived from, proceeds traceable to a violation(s) of 18 U.S.C. § 1343 (to wit: wire fraud).

5. As provided by 18 U.S.C. § 985(c)(1), the United States will post a notice of the action and a copy of this Complaint in Forfeiture on the defendant property.

DESCRIPTION OF THE DEFENDANT PROPERTY

6. The defendant property is land in Bath, Ohio, on which "a high end house" is under construction. The legal description of the property is as follows:

Situated in the Township of Bath, County of Summit and State of Ohio:

And known as being all of Lot 24 in the Estates of Bath as recorded in Plat Reception Number 55395453 of Summit County Records, be the same more or less, but subject to all legal highways.

Property Address: 4862 Dremina Rock, Bath, Ohio 44333.

Permanent Parcel Number: 04-07339.

Routing Number: BA-00001A6025000.

7. The record owners of the defendant property are ANTHONY DAVIAN and Danielle Davian, husband and wife.

FORFEITURE

8. Davian Capital Advisors, LLC, is a small investment firm located on West Streetsboro Road in Richfield, Ohio. According to the company website, Davian Capital Advisors, LLC, provides investment opportunities in the form of a hedge fund to high net worth individuals and institutional clients.

9. Davian Capital Advisors, LLC, became a registered company in the state of Ohio on December 19, 2007. The registered agent for Davian Capital Advisors, LLC, is ANTHONY DAVIAN.

10. ANTHONY DAVIAN is the founder and Chief Executive Officer/Hedge Fund Manager at Davian Capital Advisors, LLC. DAVIAN majored in accounting at the University of Akron, but did not complete his degree.

11. ANTHONY DAVIAN has sole control of all Davian Capital Advisors, LLC, bank accounts and bank statements without any second and third party auditing/oversight. New clients are given an account number to wire funds to Davian Capital Advisors' PNC bank accounts. DAVIAN then transfers the funds from the PNC bank accounts to the brokerage accounts where he conducts all of the trading. DAVIAN maintains all client files offsite in a PNC bank safe deposit box, to which he has sole access.

12. Over the last few years, DAVIAN's lifestyle has changed significantly, to include the purchase of luxury items and expensive vacations. Recently, DAVIAN made expensive renovations to Davian Capital Advisors' office in Richfield, Ohio, and started construction of a high end home on land in Bath Township, Ohio - namely, the defendant property.

13. The hedge fund has not had sufficient significant gains for DAVIAN to afford his lifestyle.

14. In June 2011, an individual (hereinafter, individual 1) decided to invest in a DAVIAN fund. Individual 1 transferred $100,000.00 of his IRA funds via wire to DAVIAN.

15. Individual 1 was informed by DAVIAN that there was a two year lock-up period and redemptions of his investment could be made around July 2013.

16. In approximately January 2013, individual 1 requested an application to redeem his investment from DAVIAN. DAVIAN told individual 1 he could not redeem at that time because it would not be conducive to the investment strategy. July 5, 2013, was the earliest individual 1 could redeem. Individual 1 informed DAVIAN to stop trading his funds so he could redeem.

17. Individual 1 traveled to Ohio from Florida in approximately June, 2013, and made several attempts to meet with DAVIAN regarding his redemption and DAVIAN avoided meeting with him. All scheduled meetings with DAVIAN were rescheduled and subsequently canceled.

18. On July 5, 2013, individual 1 was due a redemption of $102,000.00. To date, no redemption of individual 1's funds has been made.

19. Individual 2 currently lives in Manhattan Beach, California, and is an entrepreneur with his two brothers.

20. On or about June 24, 2013, the three brothers had a telephone conversation with DAVIAN and let him know they would invest approximately $75,000.00 each into a DAVIAN fund, but that they would not have the money until early July 2013. DAVIAN advised he would provide them with special reduced fees for six months and that he would reduce his normal redemption lock-up window from one year down to six months so they could redeem their money early if they were not satisfied.

21. On or about July 5, 2013, individual 2 and his brothers each wired $75,000.00 to DAVIAN totaling $225,000.00. They wired the money from their personal bank accounts to a DAVIAN account at PNC.

22. Thereafter, individual 2 was notified of an article written about DAVIAN claiming that his hedge fund company was a complete fraud. Individual 2 contacted DAVIAN via telephone to express his concerns about the article and requested an immediate full redemption of their $225,000.00 investment. Individual 2 has not yet received a redemption payment from DAVIAN.

23. On July 5, 2013, DAVIAN wired $225,000.00 to the account of the person (builder) handling the construction work at the defendant property.

CONCLUSION

24. By reason of the foregoing, the defendant property is subject to forfeiture to the United States under 18 U.S.C. § 981(a)(1)(C) in that it constitutes, or is derived from, proceeds traceable to a violation(s) of 18 U.S.C. § 1343 (to wit: wire fraud).

WHEREFORE, plaintiff, the United States of America, respectfully requests that this Court enter judgment condemning the defendant property and forfeiting it to the United States, and providing that the defendant property be delivered into the

custody of the United States for disposition according to law, and for such other relief as this Court may deem proper.

Respectfully submitted,

Steven M. Dettelbach
United States Attorney
Northern District of Ohio

By: _____
James L. Morford
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Cleveland, Ohio 44113
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James.Morford@usdoj.gov

VERIFICATION

STATE OF OHIO)
) SS.
COUNTY OF CUYAHOGA)

I, James L. Morford, under penalty of perjury, depose and say that I am an Assistant United States Attorney for the Northern District of Ohio, and the attorney for the plaintiff in the within entitled action. The foregoing Complaint in Forfeiture is based upon information officially provided to me and, to my knowledge and belief, is true and correct.

James L. Morford
Assistant U.S. Attorney

Sworn to and subscribed in my presence this 24th day of July, 2013.

Notary Public

Anna J. Dudas
Notary Public, State of Ohio
My Commission Expires 12-5-16

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

1:13 CV 1600

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

United States of America

2013 JUL 24 AM 11:12

CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

James L. Morford, Assistant U.S. Attorney - 400 U.S. Court House, 801 West Superior Avenue, Cleveland, Ohio 44113 - 216.622.3743

DEFENDANTS

JUDGE ADAMS

4862 Dremina Rock Drive (aka 4862 Travertine Way), Bath, Ohio, Permanent Parcel Number: 04-07339

County of Residence of First Listed Defendant Summit County
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

MAG. JUDGE LIMBERT

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☒ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☒ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:

Brief description of cause:
civil forfeiture action pursuant to 18 U.S.C. Section 981(a)(1)(C)

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE
07/24/2013

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

I. Civil Categories: (Please check one category only).

1. ☑ General Civil
2. ☐ Administrative Review/Social Security
3. ☐ Habeas Corpus Death Penalty

*If under Title 28, §2255, name the SENTENCING JUDGE: _____

CASE NUMBER: _____

II. RELATED OR REFILED CASES. See LR 3.1 which provides in pertinent part: "If an action is filed or removed to this Court and assigned to a District Judge after which it is discontinued, dismissed or remanded to a State court, and subsequently refiled, it shall be assigned to the same Judge who received the initial case assignment without regardfor the place of holding court in which the case was refiled. Counsel or a party without counsel shall be responsible for bringing such cases to the attention of the Court by responding to the questions included on the Civil Cover Sheet."

This action is ☐ **RELATED** to another **PENDING** civil case. This action is ☐ **REFILED** pursuant to **LR 3.1**.

If applicable, please indicate on page 1 in section VIII, the name of the Judge and case number.

III. In accordance with Local Civil Rule 3.8, actions involving counties in the Eastern Division shall be filed at any of the divisional offices therein. Actions involving counties in the Western Division shall be filed at the Toledo office. For the purpose of determining the proper division, and for statistical reasons, the following information is requested.

ANSWER ONE PARAGRAPH ONLY. ANSWER PARAGRAPHS 1 THRU 3 IN ORDER. UPON FINDING WHICH PARAGRAPH APPLIES TO YOUR CASE, ANSWER IT AND STOP.

(1) **Resident defendant.** If the defendant resides in a county within this district, please set forth the name of such county

COUNTY: Summit County

Corporation **For the purpose of answering the above, a corporation is deemed to be a resident of that county in which it has its principal place of business in that district.**

(2) **Non-Resident defendant.** If no defendant is a resident of a county in this district, please set forth the county wherein the cause of action arose or the event complained of occurred.

COUNTY:

(3) **Other Cases.** If no defendant is a resident of this district, or if the defendant is a corporation not having a principle place of business within the district, and the cause of action arose or the event complained of occurred outside this district, please set forth the county of the plaintiff's residence.

COUNTY:

IV. The Counties in the Northern District of Ohio are divided into divisions as shown below. After the county is determined in Section III, please check the appropriate division.

EASTERN DIVISION

☑	AKRON	(Counties: Carroll, Holmes, Portage, Stark, Summit, Tuscarawas and Wayne)
☐	CLEVELAND	(Counties: Ashland, Ashtabula, Crawford, Cuyahoga, Geauga, Lake, Lorain, Medina and Richland)
☐	YOUNGSTOWN	(Counties: Columbiana, Mahoning and Trumbull)

WESTERN DIVISION

☐	TOLEDO	(Counties: Allen, Auglaize, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Lucas, Marion, Mercer, Ottawa, Paulding, Putnam, Sandusky, Seneca VanWert, Williams, Wood and Wyandot)