SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,
by LETITIA JAMES,
Attorney General of the State of New York,

Plaintiff,

-against-

GPB Capital Holdings, LLC, David Gentile, Jeffry Schneider, Ascendant Capital, LLC, Ascendant Alternative Strategies, LLC, and Jeffrey Lash,

Defendants.

COMPLAINT

Index No.

1. Plaintiff, the People of the State of New York, by Letitia James, Attorney General of the State of New York ("OAG"), alleges upon information and belief the following against defendants GPB Capital Holdings, LLC, David Gentile, Jeffry Schneider, Ascendant Capital, LLC, Ascendant Alternative Strategies, LLC, and Jeffrey Lash (together, "Defendants").

NATURE OF THE ACTION

2. Beginning in 2013, Defendants defrauded investors in New York and around the nation through a series of investment funds managed by a New York–based investment advisor named GPB Capital Holdings, LLC ("GPB Capital"). Defendants made repeated false representations that the funds would pay generous monthly distributions funded entirely from the funds' operating profits. This was a lie. In reality, Defendants used more than $100 million from new investors to pay the monthly distributions to existing investors, sacrificing long-term returns in order to cover up how poorly the funds were doing. Defendants also defrauded investors by causing the funds to assume personal liabilities, diverting fund income to themselves through shell companies, and paying themselves undisclosed and excessive compensation.

3. The two leaders of the scheme were David Gentile ("Gentile") and Jeffry Schneider ("Schneider"). Gentile, a former accountant, started GPB Capital in 2013 and has been its sole managing member. Schneider, a friend and former accounting client of Gentile's, is a registered securities broker with a long and troubled history in the securities industry.

4. Gentile, Schneider, and the other Defendants marketed their funds to investors as an attractive "income-producing" alternative to traditional private equity funds. They highlighted the funds' monthly cash distributions, which amounted to an 8% annual return. These distributions, said Defendants, would be "fully covered" by the profits of the companies in the funds' portfolios – which included auto dealerships and waste management companies.

5. These representations were simply false. The funds routinely failed to generate enough operating income to pay the advertised monthly distributions. Yet to keep investors in the funds and entice new ones, Defendants kept making the monthly distributions (and sometimes "special" distributions on top of those), filling in any shortfalls by using new investors' capital contributions. At times, when the funds were losing money, they made distributions that consisted entirely of investor capital. Defendants also tried to conceal the true state of the funds' finances by creating false documents and by making undisclosed, and sometimes entirely undocumented, interfund loans.

6. By the time the funds closed to new investments in mid–2018, Defendants had used more than $100 million of investor capital to pay the supposedly "fully covered" distributions. These fraudulent distributions were used to maintain the charade of profitable operations, which was central to Defendants' marketing strategy. But every dollar of investor capital that was paid out in monthly distributions was a dollar that could not be deployed in productive investments, thereby reducing the funds' long-term returns.

7. Defendants raised roughly $1.8 billion from investors in eight separate limited partnership offerings. Nearly $1.7 billion of that total was invested in GPB Capital's four flagship funds (the "GPB Funds," as defined below), which drew investors in large part because of their fraudulent monthly distributions. As of June 2019, GPB Capital estimated the fair market value of its funds' portfolio assets at approximately $1 billion – representing a more than 40% loss on investors' initial capital contributions. The exact portfolio asset values are unknown, as the funds have not issued audited financials since 2016.

8. The individual Defendants also depleted fund assets by diverting monies from portfolio companies to themselves through shell companies. Gentile and Schneider collected nearly $2 million in undisclosed "stipends" and fees for work for which they were already otherwise being paid. Investors paid for private planes and payments to Gentile's wife. Gentile even had a portfolio company purchase a Ferrari for his personal use.

9. In addition, Gentile shifted nearly $5 million of personal liabilities to investors, which – because of how he structured it – ended up costing them at least $14 million. The funds also paid tens of millions of dollars in undisclosed acquisition fees that further enriched Schneider and Gentile.

10. The OAG brings this action seeking disgorgement, restitution, an accounting, and the payment of costs. The OAG also seeks an order barring all Defendants from future violations of the securities laws, and barring Schneider and Gentile permanently from in any way participating in the selling or offering for sale of securities in or from the State of New York and enjoining them from engaging in fraudulent practices.

PARTIES

11. Plaintiff brings this action by and through New York State Attorney General Letitia James.

12. The Attorney General is the chief law enforcement officer of the State of New York and is charged by law with protecting the integrity of the business and securities markets within New York, as well as the economic health and well-being of investors who reside or transact business in the State.

13. The Attorney General is authorized to bring this action and to assert the causes of action set forth below pursuant to General Business Law § 352 et seq. (the "Martin Act") and Executive Law § 63(12), and under the common law pursuant to the Attorney General's *parens patriae* authority.

14. Defendant GPB Capital is a Delaware limited liability corporation with its principal place of business at 535 West 24th Street, New York, New York. GPB Capital is registered with the Securities and Exchange Commission ("SEC") as an investment adviser, with the Investment Adviser Registration Depository number 169825. GPB Capital serves as the general partner of a series of limited partnership investment vehicles that Defendants managed, marketed and sold within and from New York State.

15. Defendant Gentile is the sole managing member of GPB Capital. Gentile is also indirectly a part-owner of Defendant AAS, as defined below. His Central Registration Depository ("CRD") number is 6763402. He is a resident of Florida.

16. Defendant Ascendant Alternative Strategies, LLC ("AAS") is a Delaware limited liability corporation with its principal place of business in White Plains, New York. AAS is a broker-dealer registered with the SEC, the Financial Industry Regulatory Authority ("FINRA")

and 53 U.S. states and territories, including New York. Its CRD number is 283881. AAS is indirectly majority-owned by Gentile and Schneider. AAS served as GPB Capital's managing broker-dealer beginning in 2017.

17. Defendant Ascendant Capital, LLC ("Ascendant") is a Texas limited liability company with its principal place of business in Austin, Texas. It is wholly owned by Schneider. Between 2012 and May 2020, Ascendant operated as a wholesaler and placement agent, a non-registered entity providing a wide range of marketing services and back-office operations, and serving as a third-party liaison to AAS, issuers, retail broker-dealers and investment advisers. Ascendant forfeited its Texas corporate status in May 2020 for failure to pay taxes. Upon information and belief, Schneider has since shifted his activities to a new entity called Kensington Analytics, LLC, which shares Ascendant's address, as well as many key personnel and business assets.

18. Defendant Schneider was, until in or about May 2020, the Chief Executive Officer ("CEO") and sole member of Ascendant. He is currently a registered broker-dealer representative and indirect part-owner of AAS. Schneider was previously a broker-dealer representative of Axiom Capital Management, LLC ("Axiom"). Schneider's CRD number is 2089051. Schneider was at all relevant times deeply involved in the management and direction of GPB Capital. He has transacted substantial business within New York State on behalf of AAS and GPB Capital.

19. Defendant Jeffrey Lash ("Lash"), upon information and belief, is a resident of the State of Florida. From 2013 through February 2018, he was GPB Capital's Director of Automotive Retail and regularly transacted business in New York.

JURISDICTION AND VENUE

20. This Court has jurisdiction over the subject matter of this action, personal jurisdiction over the Defendants, and authority to grant the relief requested pursuant to General Business Law § 352 et seq., Executive Law § 63(12), and the common law.

21. Pursuant to C.P.L.R. § 503, venue is proper in New York County, because Plaintiff resides in that county, Defendant GPB Capital resides in that county, and because a substantial part of the events and omissions giving rise to the claims occurred in that county.

LEGAL BACKGROUND

22. Fraudulent practices in connection with securities transactions are prohibited under Article 23-A of New York General Business Law ("the Martin Act"). The Martin Act prohibits "any deception, misrepresentation, concealment, suppression, fraud, false pretense or false promise" in connection with securities transactions. GBL § 352. It similarly prohibits "any practice . . . relating to . . . investment advice . . . which is fraudulent or in violation of the law and which has operated . . . as a fraud upon the purchaser." GBL § 352.

23. The Martin Act applies to transactions in "any stocks, bonds, notes, evidences of interest or indebtedness or other securities," including the limited partnership interests in the GPB Funds at issue in this case. GBL § 352.

24. The Martin Act extends, not only to the primary wrongdoer, but also to "any other person or persons theretofore concerned in or in any way participating in or about to participate in such fraudulent practices." GBL § 353.

25. In addition, section 63(12) of the Executive Law empowers the OAG to bring a civil action against persons who "engage in repeated fraudulent or illegal acts or otherwise

demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business." Exec. Law § 63(12).

26. By statute and common law, investment advisers and fund managers owe a fiduciary duty to their clients – the funds and the limited partners – which comprises the duties of care, disclosure and loyalty.

27. A non-fiduciary may be liable for aiding and abetting a breach of fiduciary duty by another where the non-fiduciary knowingly induces or participates in another's breach of fiduciary duty.

FACTUAL ALLEGATIONS

I. GPB CAPITAL'S BUSINESS AND STRUCTURE

28. Defendants Gentile and Schneider created corporate structures in 2012 and 2013 that they used for the better part of a decade to defraud investors and enrich themselves and their co-Defendants. Using a series of interconnected entities, Defendants marketed and sold limited partnership interests in a series of alternative-asset investment funds.

29. GPB Capital – the manager of the GPB Funds – was at the center of the fraudulent scheme, but it relied heavily on the individual and corporate Defendants described below. GPB Capital worked especially closely with Schneider's company, Ascendant, the placement agent for the funds. Indeed, one 2017 marketing document described the two companies as "essentially one organization."

A. The Individuals

30. The leaders of the fraudulent scheme were Gentile and Schneider, who respectively founded GPB Capital and Ascendant. Gentile and Schneider repeatedly misled investors about the fact that significant portions of the monthly distributions to investors were secretly being paid

from investors' own capital contributions rather than from operating profits, as promised. Both Gentile and Schneider also misappropriated monies from the investment funds and their portfolio companies, received undisclosed payments, and caused the funds to pay Defendants' luxurious personal expenses – such as a Ferrari for Gentile. Lash, as a manager at GPB Capital, also participated in creating false and misleading documents, and participated in and profited from diverting assets from the portfolio companies owned by the GPB Funds.

i. Gentile

31. David Gentile is an accountant who, before founding GPB Capital, was a partner in a New York-based accounting firm, Gentile, Pismeny & Brengel, LLC ("GP&B"). Gentile's clients included local small businesses, to whom Gentile offered strategic advice on growth and business development. It was through his work at GP&B that Gentile met Lash and Schneider, who were clients of the firm.

32. In marketing the GPB Funds, Defendants underscored Gentile's accounting background, representing that "during [Gentile's] career at GP&B, David has advised, oversaw [sic], structured or financed over $1 billion worth of transactions in the private and public markets." Gentile, however, had never previously managed an investment fund. In fact, Gentile has since admitted under oath that he was a "novice" in private placements and private equity funds: "I'd never been in this business. I've been a CPA for 25 years in an accounting firm …. So, I'm learning. I'm a novice…."

33. Gentile was personally involved in the key decisions of the GPB Funds including decisions on how investor capital should be deployed and whether distributions should made. Yet, the decisions that Gentile made were clouded by his own self-interest. Through his involvement with GPB Capital and the GPB Funds, Gentile directed the movement of money from the GPB

Funds and their investors to entities in which he had a direct or indirect interest. Gentile also ensured that several of the early fund acquisitions were companies in which he had an ownership interest. Gentile used the GPB Funds to benefit himself and his family through, among other things, expense payments for luxury items and family salaries, and offloading financial obligations on to the GPB Funds. All told, Gentile reaped benefits of over $27 million.

ii. Schneider

34. Jeffry Schneider assisted Gentile in setting up and running the GPB Funds. As Schneider once told an interviewer:

> I reached out to a friend of mine, David Gentile, who had been buying and expanding companies for over 25 years. Throughout my relationship with Dave, I had witnessed the tremendous growth of companies he purchased and partnered with. It was fascinating. **I approached him with the idea of partnering on an income-producing private equity fund.** Ultimately, investors need income, and I knew that if we could buy companies and generate income, there would be huge demand. (Emphasis added.)

35. Others at GPB Capital described Schneider as the "co-creator" with Gentile of the overall business plan. Both Schneider and Gentile stated under oath that they jointly developed GPB Capital and its fund structures. Others have described Schneider and Gentile as "essentially partners."

36. Schneider first registered as a broker-dealer agent in 1991; since that time, he has worked for twelve different broker-dealers. Schneider has twice been terminated or permitted to resign by an employer; once by Merrill, Lynch, Pierce, Fenner & Smith, Inc. and once by CIBC World Markets Corp. ("CIBC"). He was permitted to resign by CIBC after that firm discovered his involvement in a fraudulent scheme in which he transferred accounts to another broker to help that broker secure a loan, the proceeds of which Schneider shared.

37. Schneider was sanctioned by two securities regulators in connection with his misconduct at CIBC. In 2004, the National Association of Securities Dealers (a predecessor to FINRA) suspended him for ninety days and fined him $15,000. In 2006, the Illinois Secretary of State initiated an action denying Schneider's salesperson registration application. The action resulted in a consent order wherein Schneider agreed to withdraw his application and not re-apply for registration for a period of two years.

38. Schneider has been the subject of fourteen customer complaints, with allegations that include unauthorized trading, unsuitable investments, excessive trading, and misrepresentation. Six of the customer complaints, still pending, relate to his activities in connection with the GPB Funds.

39. Schneider also has a history of involvement with firms and individuals that regulators or prosecutors found have violated the law. Two of his former employers – J.P.R. Capital Corp. and IMS Securities, Inc. – were expelled by FINRA from the securities industry. While working at another firm, Paradigm Global Advisors LLC, as a marketer, Schneider helped create a co-branded fund with R. Allen Stanford. Although Schneider's fund was not accused of wrongdoing, Stanford was later convicted and sentenced to 110 years in prison in connection with an $7 billion Ponzi scheme – the second-largest in history. Schneider also marketed Ponte Negra Fund I LLC, a private investment fund that was revealed to be an accounting fraud. Francesco Rusciano, the fund manager of Ponta Negra, later pleaded guilty to wire fraud in connection with misrepresentations made in that fund's marketing materials.

40. Immediately before the creation of GPB Capital, Schneider was a registered representative at Axiom, a New York broker-dealer, primarily selling real estate investment trusts.

41. Schneider is the founder and sole owner of Ascendant, an unregistered entity of which he is the sole member, which acted as a placement agent for the GPB Funds. And although Schneider is a de facto senior manager of GPB Capital, he holds no formal title there, and the company has not disclosed Schneider's checkered regulatory history to investors. Finally, Schneider is, together with Gentile, an indirect majority owner of AAS.

42. Based on a review of bank records, Schneider received at least $13 million from his association with GPB Capital, the GPB Funds and Gentile from 2016 through 2019 alone.

iii. Lash

43. Jeffrey Lash had been a business associate and friend of Gentile since around 1990 when Lash was a client of GP&B. Lash owned and operated a series of automobile dealerships, for which GP&B performed auditing and accounting services. Before the creation of GPB Capital, Gentile invested in several of Lash's Volkswagen dealerships. These dealerships were some of the first assets purchased for the GPB Funds. Lash served as GPB Capital's Director for Automotive Retail, overseeing various operating companies, until February 2018, when he resigned with a generous severance package.

44. Lash participated in the misappropriation of fund assets for Defendants' personal benefit. In addition, Lash was involved in the creation of back-dated and misleading "performance guaranties" that inflated the reported income of some of the GPB Funds. Lash himself signed these guaranties.

B. The Entities

i. GPB Capital and the GPB Funds

45. GPB Capital is an SEC-registered investment adviser that describes itself as "a New York-based middle-market acquisition and operations firm with a management team of

experienced financial, management and accounting professionals with private investment and acquisitions experience."

46. GPB Capital serves as the general partner or manager of a series of investment funds. GPB Capital's four flagship funds (the "GPB Funds") are:

- GPB Holdings, LP ("Holdings"), launched in March 2013;
- GPB Automotive Portfolio, LP ("Automotive Portfolio"), launched in May 2013;
- GPB Holdings II, LP ("Holdings II"), launched in April 2015; and
- GPB Waste Management, LP ("Waste Management"), launched in August 2016.

47. The GPB Funds are structured as limited partnerships that act as holding companies, "acquir[ing] controlling majority (and in many cases, wholly owned) interests . . . in income-producing, middle-market private companies in North America." The portfolio companies acquired by the GPB Funds are in the "automotive retail, waste management, technology enabled services, energy, healthcare, and real estate" sectors. GPB Capital promotes its "hands-on managerial and operational assistance" to the portfolio companies owned by the funds.

48. From 2013 through mid–2018, the GPB Funds sold unregistered limited partnership interests in what are known as "private placement" transactions. The limited partnership interests were marketed to "accredited investors" as defined by the SEC's Regulation D. When a securities offering qualifies for a Regulation D exemption from registration, its regulatory burden is significantly reduced. That is to say, there are fewer rules and less oversight.

49. Gentile was and is the sole member and Chief Executive Officer of GPB Capital, and thus had total legal control over it and, therefore, also over each of the GPB Funds.

50. Schneider, despite having no formal role at GPB Capital, in practice exercised significant control over the GPB Funds and their portfolio companies. Schneider was regularly

involved in, among other things, acquisition discussions, analysis of fund and portfolio company performance, negotiation of payments that would flow from the portfolio companies to the GPB Funds, meetings with portfolio company operators, and establishing the structure of the funds. Schneider also reviewed and approved the language used in the funds' private placement memoranda ("PPMs").

51. Employees and management at GPB Capital viewed Schneider's approval as necessary for major operational decisions, regularly kept Schneider apprised of management issues and sought his input. When they failed to do so, he reprimanded them. When Schneider learned that a GPB Capital executive had left him off an email about a potential portfolio acquisition, Schneider responded quickly: "Can you please keep me in the loop on any and all info regarding potential or existing portfolio companies. I have asked you this in the past and should not have to ask again." Text messages sent among Lash, Gentile and Schneider from 2014 through 2016 contained discussions of portfolio company budgets and revenues, the timing of special distributions, and the coverage ratios of the funds. Schneider was also involved in the negotiation of Lash's performance guaranties and severance agreements, discussions on the release of dealership financials, and whether the Waste Management fund should acquire a portfolio company.

52. Despite Schneider's actual management of GPB Capital and the GPB Funds, he was not listed as a control person in any PPMs or in any marketing materials. His extensive disciplinary history also was not disclosed to investors.

53. More than 1,400 New York investors purchased limited partnerships in various GPB Funds, with a total investment of more than $150 million.

ii. Ascendant and AAS

54. Schneider founded Ascendant and was its sole owner. Ascendant, based in Texas, acted as a branch office of two different New York broker-dealers. Initially, Ascendant was a branch office of Axiom, where Schneider was a registered representative. Later, beginning in 2017, Ascendant began acting as a branch office of AAS, a new broker-dealer majority-owned by Schneider and Gentile jointly through a company called DJ Partners, LLC.

55. Ascendant was the exclusive marketer and wholesaler for the GPB Funds from their inception until they closed to new investments in 2018. Ascendant typically did not sell the GPB Funds directly to investors. Rather, Ascendant focused on marketing the GPB Funds to independent broker-dealers and investment advisers who would in turn sell the GPB Funds to their retail investors. Ascendant would reach out to those firms' compliance and due diligence personnel with the goal of getting the firms to approve one or more GPB Funds for sale on their platforms. Ascendant and GPB Capital together prepared due diligence presentations that were often hosted at GPB Capital's office in New York. GPB Capital and Ascendant often paid for the target firms' personnel to attend these events.

56. Ascendant was responsible for assisting GPB Capital in drafting investor updates and preparing offering documents, limited partnership agreements, and marketing materials. They also prepared responses to due diligence questionnaires ("DDQs") from the broker-dealers and investment advisers. These DDQs often contained detailed information about the performance and strategies of the GPB Funds.

57. The fees and commissions that GPB Fund investors were charged flowed, at least in part, to Axiom, and later, to AAS, and were then distributed to Schneider and Gentile, among others. Based on a review of bank and other financial records, from 2013 through 2018, GPB Capital and the GPB Funds paid Axiom and AAS more than $77 million in fees and commissions,

with approximately $37 million paid to Axiom and over $40 million paid to AAS. As indirect owners of 33.3% interests in AAS, Gentile and Schneider individually obtained over $13 million each for marketing the GPB Funds.

II. DEFENDANTS MISREPRESENTED THE SOURCE OF MONTHLY DISTRIBUTIONS TO INVESTORS

58. The core misrepresentations to investors were repeated representations that the monthly distributions being made to them were fully from the profits of the portfolio companies. In fact, they were not. GPB was, instead, using money from new investors' capital contributions to pay promised distributions to existing investors, thus covering up how poorly the investments were, in truth, doing.

59. The central marketing concept for the GPB Funds was that they were "unique" products without any real competitors in the alternative investment space – "income-producing private equity," as Defendants often described them. GPB Capital and Ascendant consistently told investors, broker-dealers and investment advisors that the GPB Funds would pay investors regular monthly distributions, at an 8% annualized rate, that were "fully earned" or "fully covered" by cash flow from the portfolio companies. Investors were also told that the funds might pay special additional distributions where GPB Capital determined it was appropriate, based on the funds' ability to pay them. Variations on these fundamental representations appeared in offering and marketing documents, responses to DDQs, and correspondence with potential investors and salespeople.

60. Given the low interest-rate environment that prevailed during the time the GPB Funds were offered, the robust 8% annual distribution from operating profits was a powerful marketing tool that enabled GPB Capital to raise nearly $2 billion in investor capital in five years.

61. For example, an August 2014 GPB Capital response to a DDQ described a fund as "[u]nlike any other private equity investment program" because "it pays a substantial current dividend that is fully covered with funds from operations." In differentiating the fund from other investments, GPB Capital identified as "of utmost importance" that the fund "is the only income producing private equity offering in the space" paying distributions "fully covered with funds from operations."

62. GPB Capital's and Ascendant's emphasis on this issue demonstrates that the source of the monthly distributions was material to investors. Indeed, Ascendant repeatedly responded to broker-dealers and investment advisers who sought to clarify and confirm that the distributions paid by the GPB Funds would not include invested capital.

63. Defendants also lured investors by having the GPB Funds pay additional "special" distributions on top of the regular monthly distributions. The special distributions were effective fundraising tools for at least two reasons. First, they served as a proof of concept, demonstrating the GPB Funds' ability to generate excess income from their portfolio companies. GPB Capital and Ascendant routinely represented that these special distributions were also "fully covered with funds from operations." Second, they created a sense of urgency. The special distributions were announced in advance, and payable only to those who invested by a stated deadline. Ascendant then sent out "blast" emails promoting the special distributions and investment deadlines to whip up investor interest. GPB Capital and Ascendant used special distributions as a critical part of their plan to raise money for the GPB Funds.

64. But these representations were false and misleading. It simply was not true that the portfolio companies steadily produced income that fully funded the monthly distributions to

investors. In fact, the Defendants routinely returned investor capital as distributions, falsely claiming the money was from portfolio company operations.

65. The Defendants' own internal records show the falsity. Internally, GPB Capital and Ascendant tracked whether distributions to investors were "fully covered by cash flow" from operations. This measurement was expressed as a percentage figure – sometimes referred to as the "coverage ratio" – that was based on a fund's net investment income, plus any realized gains or losses, divided by the distributions paid to investors.

66. A coverage ratio of 100% or higher meant the fund's net investment income plus realized gains were equal to or greater than the distributions to investors; in other words, the distributions were "fully covered." A coverage ratio below 100% meant that a fund was paying distributions in excess of operating income. In that event, the shortfall would have to be made up from another source – mostly commonly, investors' capital contributions. If a fund had negative operating income – *i.e.*, was losing money – but continued to pay distributions, the coverage would also be negative, or less than 0%. A negative coverage ratio effectively meant that every dollar distributed to investors was coming from investors' own capital contributions.

67. Any use of investor capital to pay distributions necessarily reduced the amount of capital a GPB Fund could deploy in productive investment. Because GPB Capital assumed significant positive returns on deployed capital, each dollar of investor capital paid out in distributions would reduce long-term value by an even greater amount.

68. Starting in 2014, the GPB Funds repeatedly used investor capital to make distributions to investors, while repeatedly falsely stating that the distributions were fully funded from operations. Between 2014 and 2018, more than $100 million was distributed to investors

under the false pretenses that the monies were profits from the GPB Funds' profitable investments in income-producing portfolio companies.

A. Holdings

69. Holdings, launched in March 2013, was the first GPB Fund. The initial offering was in the amount of $150 million, and the PPM described the purpose of the fund as investing in "early-stage and middle-market Portfolio Companies" in the sectors of automotive retail, information technology and healthcare.

70. A 2014 due diligence presentation prepared to educate broker-dealers about the GPB Funds stated that the targeted monthly distributions at an annualized rate of 8% were "paid 100% [with] funds from operations" – in other words, with the "cash flow from portfolio companies." A 2015 version of the presentation repeated these representations, and added a "highlights" slide stating that the GPB Funds provided investors with "meaningful income… 100% fully covered distribution – funds from operations."

71. But in truth, for the full year 2014, Holding's income fell far short of the roughly $2.5 million in distributions it made to investors. Effectively, a large chunk of the distributions Holdings paid out in 2014 was simply a return of the investors' own capital.

72. Defendants covered up this shortfall by manufacturing fictitious "performance guaranties" and falsifying financial statements. Specifically, on May 8, 2015, Holdings released its audited financial statements for 2014, which reported $2,498,858 in net investment income. This was false: the net investment income figure relied on fictitious earnings from portfolio companies – in particular, two auto dealerships that Lash operated.

73. The falsehood had its roots in February 2015, when GPB Capital and Ascendant personnel began to prepare the 2014 financial statements. As they looked at the numbers, they saw a significant shortfall in Holdings' income "when you compare it to what we distributed."

74. To help cover up the shortfall, GPB Capital created back-dated "performance guaranties" from Lash to the two auto dealerships. The performance guaranties purported to require Lash to pay the portfolio companies for any shortfalls in dealership net income below stated thresholds. Although the documents are dated "as of February 20, 2014," they were not drafted until early 2015, after GPB Capital and Ascendant had discovered the income shortfall.

75. As an Ascendant Managing Director wrote in an October 2015 email, the guaranties were "issued for 2014 audit purposes." They were reverse engineered to generate the amount of fictitious dealership income that Holdings needed to get its coverage ratio back to 100%. For that reason, Defendants had to wait to finalize the guaranty agreements for "all of the accounting to be resolved as the first step so the agreements would reflect that," as GPB Capital's Director of Asset Management described it in a March 2015 email.

76. Gentile, Schneider, and Lash were actively involved in this deception. In early March 2015, one GPB Capital employee emailed another about getting Gentile and Schneider to agree to the precise amount of the income manipulations (referred to as a "true up"): "to make sure that you and I are totally in agreement regarding the remaining true up for 2014 from the dealerships.… I know that Dave [Gentile] and Schneider are together in Texas, can we please get them to agree, along with Lash and [Non-Party Manager, as defined below], to the amount of the true up this week."

77. On March 18, Gentile texted Schneider and Lash asking them to "please get on a call now with [a partner at the accounting firm GP&B ("GP&B Partner")]…. [GP&B Partner] feels

based on his convo with Schneider that the guarantee that keeps neutral income and no losses on the tax returns and therefore no negative effect to the capital accounts is 1.1mm…. I told [GP&B Partner] it was prudent to follow Schneider's instructions." Later that day, GPB Capital's Chief Operating Officer sent Lash two "deficiency notices" for the portfolio companies operating the dealerships, stating that Lash owed a combined total of $1,136,201 pursuant to the performance guaranties.

78. The amounts supposedly due under the performance guaranties were never collected in full. In October 2015, a GPB Capital finance manager noted that no payments had been made, commenting: "Let's be real. This is not going to be collected…. [W]ouldn't the investor want to know there is a shaky, non-performing receivable on the books?"

79. The fictional guaranties were also part of a false marketing scheme. GPB Capital was offering a new fund in April 2015, called Holdings II (discussed in more detail below). The marketing pitch relied heavily on the supposed 100% coverage ratio for the original Holdings fund. Disclosing the large shortfall in Holdings' 2014 income would have undermined the central premise of GPB Capital's business model.

80. Indeed, despite the 2014 shortfall, Holdings made yet another special distribution in order to maintain the false image of the GPB Funds as producing dependable returns from portfolio companies' operations. Thus, in April 2015, Holdings made a special distribution of 1.5%, which totaled roughly $500,000. Even Lash, whose fake performance guaranty was being crafted at the time, texted Gentile and Schneider that he had met with GPB Capital's then–Chief Financial Officer ("CFO-1"), who told Lash that making another special distribution under the circumstances was "basically suicide."

81. Holdings, nonetheless, went ahead and made the April 2015 distribution, using investor capital again. For the second quarter of 2015, Holdings booked net investment income of only $3,219,501 but paid total distributions of $3,851,958 -- a quarterly coverage ratio of 84%. By this point, Holdings' quarterly coverage ratio had been below 100% for three of the first seven quarters in which it had paid distributions.

82. Yet GPB Capital and Ascendant continued to falsely state that Holdings' distributions were fully covered by operating income. For example, on May 8, 2015 (the very same day that Holdings released its false 2014 financial statements), an Ascendant representative emailed a prospective investor, attaching a copy of the financial statements and highlighting Holdings' "full FFO coverage (funds from operations)." Similarly, a June 2015 GPB Capital DDQ response again falsely stated that all Holdings' "distributions are fully covered with funds from operations."

83. In the summer of 2015, Holdings continued to use investors' money to pay distributions. On August 10, 2015, the third-party fund administrator transferred $8.7 million of new investor capital into Holdings' investment account. The following month, GPB Capital caused Holdings to transfer nearly $700,000 of that new investor capital from its investment account to its distribution account, used to make the monthly payments to investors.

84. Gentile was fully aware of and approved these transactions. In October 2015, a GPB Capital employee emailed Gentile and CFO-1 to get approval to move cash from Holdings' investment account to the distribution account.

85. In the next calendar year, May 2016, Holdings issued a second amended PPM. For the first time, this new PPM stated that "we could include LPs' invested capital in amounts we distribute to LPs," but also stated, "we have no present plans to do so." This new statement was

false and misleading. As Gentile and Schneider well knew, Holdings already had used investor capital to pay distributions, and falsified financial statements to cover it up.

86. And, notwithstanding its assertion of no "present plans," the fund continued to pay distributions using investor capital. Between July and September 2016, Holdings lost more than $1.5 million. Despite that, Gentile continued to direct and approve monthly distributions. Holdings paid nearly $4 million in distributions during the third quarter. Holdings' quarterly coverage ratio came in at negative 38%, meaning that every single dollar distributed to investors during those three months came from investor capital rather than operations.

87. The fourth quarter of 2016 was even worse. Holdings recorded positive net investment income of nearly $1.4 million, but also realized a loss of more than $3.6 million in connection with an asset sale. Holdings continued to use investor funds to make monthly distributions, which totaled more than $3.9 million and led to a coverage ratio of negative 57%.

88. For full-year 2016, Holdings booked net investment income of $8.4 million, realized a loss of $3.6 million, and paid distributions of more than $15.8 million, resulting in an annual coverage ratio of 30%. In other words, more than two of every three dollars Holdings distributed to limited partners in 2016 came directly from investor funds.

89. In December 2016, Holdings issued a third amended PPM, which repeated the phrase that had first appeared in May: "While we have no present plans to do so, we could include LPs' invested capital in amounts we distribute to LPs." This statement was false and misleading. Holdings had been paying distributions mostly out of invested capital for the preceding six months, and would continue to do so for at least the next three quarters.

90. By the end of 2017, the cumulative amount of distributions funded by investors' own capital exceeded $20 million. The repeated statements that Holdings' distributions were fully

funded by operational income, and that there were no "present plans" to use investor capital to make distributions, were false and misleading.

B. Automotive Portfolio

91. The Defendants repeated the scheme in Automotive Portfolio, GPB's second fund, which was launched in May 2013 – only two months after Holdings. The Automotive Portfolio fund was focused on the acquisition, operation and resale of retail car dealerships, relying heavily (at least initially) on Lash's existing dealership portfolio.

92. As it had for Holdings, the Defendants marketed the Automotive Portfolio fund to investors as a reliable, income-generating investment. Thus, in February 2014, GPB Capital issued an amended PPM for Automotive Portfolio that stated: "At the core of the GPB strategy is the provision that all distributions paid to limited partners ***will be fully covered*** by funds from the portfolio company's operations." (Emphasis added.) In early 2015, GPB Capital and Ascendant continued to represent in marketing and due diligence materials that Automotive Portfolio distributions was fully covered with funds from operations. For instance, in March 2015 GPB Capital represented in a DDQ response that "the initial distribution rate of 8% is paid monthly ***only from funds from operations***." (Emphasis added.)

93. But as the year went on, GPB Capital and Ascendant personnel repeatedly noted in internal emails that Automotive Portfolio's distributions exceeded income from the portfolio companies. In July 2015, CFO-1 reviewed the monthly management report and wrote, "we are not covering our distributions with profits from operations at June YTD." In September, GPB Capital's Director of Fund Accounting confirmed to CFO-1 that Automotive Portfolio was "not able to cover its monthly distributions from the assets/investments it currently holds." CFO-1 forwarded the email to Ascendant's then–Chief Operating Officer, saying, "Let's you and I both

be sure [Schneider] and [Gentile] understand this is the case." In October, the Director of Fund Accounting emailed Gentile directly, making clear that Automotive Portfolio had used more than $500,000 from its investment account to pay investor distributions for the preceding two months. He also sought Gentile's approval to repeat the transfer to cover the October distribution.

94. Nonetheless, the false statements continued. In January 2016, an Ascendant sales representative emailed an investment adviser firm and insisted that Automotive Portfolio's distributions were solely from operating profits: "It is important to note, the distributions received by investors are fully covered (100% derived from FFO) at all times. There is zero return of capital."

95. This was untrue. Automotive Portfolio recorded a fourth quarter 2015 coverage ratio of only 34%. Measured from the inception of the fund, Automotive Portfolio's coverage ratio had fallen to 80% as of year-end 2015, meaning that one of every five dollars distributed to limited partners had come from investor capital rather than profits from operations.

96. Even the 80% coverage rate was inflated. As Defendants had done for Holdings in 2014, Automotive Portfolio's 2015 numbers were inflated by a manufactured performance guaranty from Lash. Like the earlier guaranty, this was a document created after-the-fact to generate artificial earnings to "cover up for the income [Automotive Portfolio] did not make," as one GPB Capital employee described it.

97. In March 2016, GPB Capital's Director of Automotive Strategy emailed a large group, including Gentile and Schneider, summarizing "the final income numbers for 2015 per my phone call today with Dave Gentile." The email proposed increasing Automotive Portfolio's 2015 net investment income by $1,050,000 in order to "get us to… 70.4% coverage" for the year.

98. Initially, Defendants intended to inflate the fund's net investment income figure by reducing fund expenses. An early draft of the fund's 2015 financial statements said that GPB Capital (by Gentile) had "agreed to refund $1,050,000" in management fees to Automotive Portfolio.

99. By late April 2016, however, Defendants scrapped that plan and decided to increase net investment income by padding Automotive Portfolio's top-line earnings. As CFO-1 wrote in an email, the management fee refund "will no longer be there and it will become a performance guarantee from Lash. So revenue will increase 1,050,000…." Although the Automotive Portfolio performance guaranty was first conceived of in April 2016 and was not signed by Lash until early May, it is falsely dated as of January 1, 2015.

100. Automotive Portfolio's final 2015 financial statements, released in May 2016, stated:

> In some cases the Partnership has agreements in place with the operating partners to guarantee a certain amount of income at the dealership level for a specified amount of time. For the year ended December 31, 2015, $1,050,000 was earned by the Partnership and is included in income receivable from investments on the balance sheet. The $1,050,000 was collected in April 2016.

101. This statement was materially misleading. The performance guaranty was not in place during 2015 (it was manufactured after the fact) and it was never paid in full. In December 2016, Automotive Portfolio wrote off a related receivable of $515,808 from Country Motors II, the Lash dealership whose performance purportedly was being guaranteed.

102. Even had the performance guaranty been paid in full, Automotive Portfolio's coverage ratio would have been no better than 71% for full-year 2015, and only 80% inception-to-date. Without the artificial boost provided by the performance guaranty, the fund's inception-to-date coverage ratio at the end of 2015 would have been 61%.

103. Nevertheless, Defendants continued to falsely assure investors that the distributions were funded from operations. For instance, an Ascendant representative emailed a broker-dealer firm in April 2016, falsely stating that Automotive Portfolio's distributions were "fully earned."

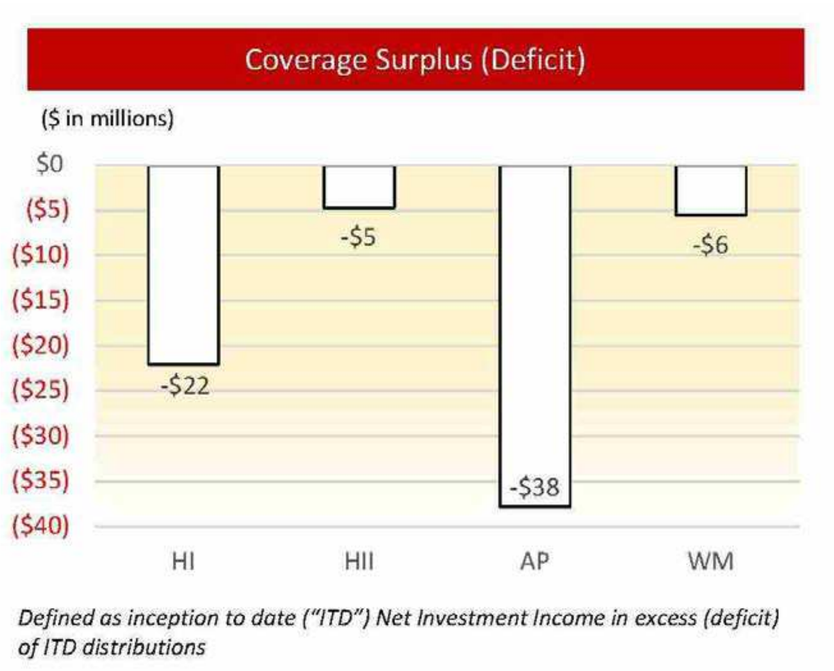
104. In June 2016, Automotive Portfolio amended its PPM, stating for the first time that the fund reserved the "right to return Capital Contributions to LPs as part of our distributions," but adding that it had "no present plans to do so." This statement was false and misleading. At the time the PPM was issued, Automotive Portfolio had used over $2 million of investor capital to pay distributions.

105. In December 2016, Automotive Portfolio issued yet another amended PPM, and repeated the representation that the fund had "no present plans" to use investor capital to fund investor distributions. This statement was still false and misleading. Automotive Portfolio's own 2016 financial reports show that for the full year the fund made $14.3 million in distributions to investors while recording only $5.4 million of net investment income. Its coverage ratio for the full year was only 35%. In other words, at the moment that Automotive Portfolio was assuring investors it had "no present plans" to include investor capital in its monthly distributions, more than $9 million – nearly two of every three dollars distributed to limited partners over the previous twelve months – had come from investors' capital. GPB Capital's then–CFO ("CFO-2") stated in sworn testimony that the December 2016 PPM language was not accurate.

106. The scheme continued into 2017. In March 2017, CFO-2 emailed Gentile and Schneider, stating that the inception-to-date coverage ratio for Automotive Portfolio had fallen below 50%. That month, GPB Capital directed Automotive Portfolio to use more than $500,000 of new investor capital to pay the monthly distribution to existing investors.

107. Similarly, on July 11, Automotive Portfolio received approximately $11.5 million of new investor capital. Within two days, GPB Capital caused Automotive Portfolio to transfer more than $2.3 million of that new investor capital from the fund's investment account to its distribution account in order to make the monthly distribution to existing investors, which was paid on July 15.

108. An agenda for a GPB Capital leadership meeting that same month contained a talking point under Schneider's name noting that coverage for Automotive Portfolio had declined to "20% fund to date." In November 2017, CFO-2 emailed Schneider and Gentile with an update that Automotive Portfolio's cumulative coverage deficit – *i.e.*, the amount of investor capital used to pay distributions – had reached at least $38 million:



109. In April 2018, Automotive Portfolio issued its fourth amended PPM, which again falsely stated that "we do not presently have plans" to return investor capital as part of fund distributions.

110. By August 2018, Automotive Portfolio's coverage deficit had grown to more than $60 million. Every investor dollar fraudulently returned as a distribution permanently damaged the fund's long-term returns. As the new Director of Fund Accounting told Gentile in an email that month, using investor capital to pay distributions "reduces upfront capital available to invest… compounded this is $75mm to $100mm of value lost!"

C. Holdings II

111. In April 2015, GPB Capital and Ascendant began to fraudulently market a new, larger fund called Holdings II, which shared the name and multi-sector strategy of its Holdings predecessor. Part of the marketing effort was to falsely tell potential investors that the first Holdings fund had paid all distributions out of operating income.

112. These false and misleading statements began at the very time Defendants were aware of, and concealing, that Holdings had been using investor capital to pay distributions (leading to the May 2015 falsified financial statement for Holdings). For instance, a May 2015 due diligence response for Holdings II untruthfully said: "[s]trategies managed by GPB pay a substantial current dividend that is fully covered with funds from operations." A July 2015 due diligence questionnaire response for Holdings II falsely claimed that "[t]he prior Fund with the same strategy… paid a 10.5% distribution in 2014, fully covered with funds from operations."

113. The April 2015 PPM for Holdings II – presaging similar language that would later appear in amended PPMs for Holdings and Automotive Portfolio – said that "presently" the fund had no plans to make distributions using investor capital:

> We will make cash distributions when determined by GPB in its discretion…. GPB intends for us to make distributions of cash, if any, to the LPs… at annual return rates targeted to be 8% of LPs' gross Capital Contributions (though distributions could be more, less or none at all, depending on our cash flow…. We reserve the right to return Capital Contributions to LPs as part of our distributions, ***though we do not presently have plans to do so***. (Emphasis added).

114. This statement about "plans" was false and misleading, as Holdings II's predecessor fund – on which it was closely modeled – was already repeatedly making distributions with investor capital.

115. In other investor documents and marketing communications, GPB Capital promised unequivocally that all Holdings II distributions to investors would be "fully" funded by operations income. For example, an April 2015 response to a due diligence questionnaire asserted that Holdings II would seek to pay 8% annualized monthly distributions, plus special distributions, and that "[a]ll distributions will be fully covered with funds from operations." Likewise, an April 2016 Ascendant email to a broker-dealer firm described Holdings II's distributions as "8%, fully earned."

116. But as had been true for its sister funds, the new Holdings II fund used investor capital to pay dividends. An April 2016 special distribution of 1.5% caused Holdings II's second quarter 2016 coverage ratio to fall to less than 50%, and the fund's inception-to-date coverage to slip below 100%, only a year after accepting its first investors. Still, the April 2016 amended PPM falsely repeated that Holdings II "did not presently have plans" to use investor capital to pay distributions.

117. By the fourth quarter of 2016, Holdings II was below 100% coverage whether measured by quarter, year, or inception to date. Once again, however, an amended PPM released in December 2016 falsely and misleadingly asserted there were no "plans" to pay distributions out of investor capital.

118. In 2017, as Holdings II's performance steadily declined, GPB Capital and Ascendant continued to misrepresent the source of fund distributions. At the end of April 2017, CFO-2 warned Gentile and Schneider that the fund's coverage ratio for first quarter 2017 was only

27%. That same month, GPB Capital directed Holdings II to use more than $1.6 million in new investor capital to pay distributions to existing investors.

119. Yet, in a May 2017 due diligence presentation, GPB Capital and Ascendant falsely claimed that distributions were "based off cash flows from portfolio companies." From May through at least July 2017, Ascendant representatives continued to falsely state that distributions to Holdings II investors were "fully covered from funds from operations."

120. In November 2017, CFO-2 sent Gentile and Schneider a chart illustrating the continued decline in Holdings II's coverage ratio. Whether measured on the basis of the trailing twelve months ("TTM," represented by vertical bars) or from the fund's inception to date ("ITD," represented by the solid line), Holdings II's coverage ratio had been well below 100% throughout the first three quarters of 2017.

121. By the end of 2017, Holdings II's coverage ratio was 72% for the year, and 78% for the life of the fund. At this point, GPB Capital had caused Holdings II to use more than $7.7 million of investor capital to pay distributions.

122. In April and May 2018, as Holdings II continued to hemorrhage money, GPB Capital and Ascendant produced and distributed investor presentations disclosing that the fund's distributions could include invested capital, and that doing so "may negatively impact the value of the portfolio's investments."

123. Even this disclosure was materially misleading, because it failed to disclose that by the end of first quarter 2018, Holdings II had already used more than $21 million of investor capital to pay distributions. In addition, although the marketing deck disclosed that the fund's coverage ratio from inception through year-end 2016 was 94.48%, it misleadingly omitted the material information that the fund's coverage ratio had worsened significantly thereafter. Holdings II's inception-to-date coverage ratio stood at only 53% by the end of first quarter 2018.

124. Holdings II issued a fourth amended PPM in July 2018, acknowledging to all investors for the first time that: "amounts that we distribute to LPs have been and may in future include LPs' invested capital, and have been and may in the future not be entirely comprised of income generated by the Portfolio Companies."

D. Waste Management

125. In August 2016, just as Holdings, Holdings II, and Automotive Portfolio were using large amounts of investor capital to pay distributions, GPB Capital rolled out yet another new fund. The Waste Management fund focused on acquiring and operating private carting companies and recycling and waste processing plants.

126. Once again, Defendants advertised monthly distributions of 8% "based off cash flow from portfolio companies." They scheduled a large 1.5% special distribution for those who invested early, acknowledging internally that "obviously the special distributions are key to the raise efforts."

127. Waste Management's initial PPM recited the by then standard language that the fund "reserve[d] the right to return Capital Contributions to LPs as part of our distributions, though we do not presently have plans to do so." This statement was false and misleading. The Defendants knew full well that Waste Management's sister funds were already repeatedly making distributions that included investor capital and that they were misleading investors about the source of distributions. Waste Management employed a nearly identical business model.

128. Indeed, Waste Management fell behind on its coverage ratio right out of the gate. Defendants nonetheless falsely marketed Waste Management's distributions as fully covered.

129. In May 2017, Ascendant's Executive Director asked GPB Capital's then–Director of Fund Accounting for an estimate of Waste Management's coverage ratio. The Director of Fund Accounting replied, "I'd ballpark around 50%. Between you and I." Ascendant's Executive Director responded, "My lips are sealed."

130. By the end of second quarter 2017, Waste Management had an inception-to-date coverage ratio of only 62%. By the end of 2017, the fund's coverage ratio had fallen below 50%. Nevertheless, as late as October 2017, Ascendant continued to falsely claim that Waste Management's monthly distributions had been "fully covered with funds from operations since inception."

131. In first quarter 2018, Waste Management actually lost money, but continued to make monthly distributions nonetheless, bringing its cumulative coverage deficit to more than $4.7 million. Waste Management issued an amended PPM in April 2018, in which it repeated the false and misleading assurance that it "d[id] not presently have plans" to include investor funds in its distributions.

E. The GPB Funds Close to New Investment

132. By August 2017, CFO-2 circulated a report to senior management, including both Gentile and Schneider, pointing out that each of the GPB Funds was well below full coverage. In fact, CFO-2 estimated that over the twelve-month period ending in June 2017 only Holdings II had reported positive net investment income. She reported that the other three flagship funds were ***losing*** money on their investments – the implication being that those funds were paying distributions entirely out of investor capital. CFO-2 included a chart that showed the trailing-twelve-month ("TTM") coverage ratios for Holdings, Holdings II and Automotive Portfolio, all of which were far below 100% and steadily getting worse:

133. In November 2017, CFO-2 warned Gentile, Schneider and other senior management that the cumulative coverage deficit across the GPB Funds – *i.e.*, the amount of investor capital that had already been used to pay distributions – exceeded $70 million.

134. By the end of the first quarter 2018, the cumulative coverage deficit for the GPB Funds had grown to nearly $100 million. As GPB Capital's Director of Fund Accounting summarized in a series of charts that he circulated to Gentile and other senior management, every

one of the GPB Funds had been using significant and steadily increasing amounts of investor capital to pay distributions (as indicated by the lines tracking each fund's inception-to-date or "ITD" coverage deficit): Holdings had a deficit of $25 million; Holdings II's deficit was more than $21 million; Waste Management had a nearly $5 million deficit; and Automotive Portfolio's deficit was closing in on $50 million.

135. GPB Capital officially closed all the GPB Funds to new investment by July 2018, having raised roughly $1.7 billion in total. By then, the Director of Fund Accounting calculated that the cumulative coverage deficit had grown to well over $100 million. A few months later, in December 2018, GPB Capital directed the GPB Funds to cease payment of the monthly distributions.

136. Only after the GPB Funds had stopped raising money did GPB Capital admit to all investors that prior distributions had included their own invested capital. For example, letters sent to fund investors in November 2019 included a footnote in small print disclosing that

"Distributions have been paid out of Company working capital and available assets, including, but not limited to, limited partner Net Capital Contributions (as defined in the LPA)."

III. GENTILE AND GPB CAPITAL CAUSED GPB FUNDS TO BORROW UNNEEDED FUNDS AT HIGH RATES AND TO ASSUME UNWARRANTED LIABILITIES

137. In addition to making fraudulent misrepresentations about distributions to new and existing investors, Gentile and GPB Capital misappropriated assets and breached their fiduciary duties to the Automotive Portfolio and Holdings funds by (1) causing both funds to borrow millions of dollars unnecessarily from a Gentile-owned entity at a marked-up interest rate, and then (2) having the funds assume that entity's liabilities to protect that entity and Gentile from incurring losses.

138. Gentile and GPB Capital created two new entities in 2015: (1) an offshore investment fund called GPB Automotive Income Fund ("GPBAIF"), and (2) a Delaware corporation called GPB Borrower, LLC ("Borrower"). Both GPBAIF and Borrower were managed by GPB Capital – and therefore were controlled by Gentile. Gentile also held a 100% membership interest in Borrower's profits and losses.

139. The scheme worked as follows: GPBAIF raised money from non-U.S. investors by advertising an 8.25% return "through investment in income-producing, retail automotive assets." GPBAIF did not, however, invest directly in auto dealerships. Nor did it act as a feeder fund for the existing Automotive Portfolio or Holdings funds. Instead, GPBAIF simply loaned money to Borrower at an interest rate of 8.25%. To be able to pay the interest to GPBAIF, Borrower, in turn, loaned money to the Automotive Portfolio and Holdings funds. But in making those loans, Borrower marked-up the interest rate to 13.5%.

140. In addition, upon information and belief, there was no valid business purpose for Automotive Portfolio and Holdings to borrow the money at all. In October 2015, for instance, Automotive Portfolio had approximately $70 million in undeployed investor capital, and had no apparent need to borrow any additional funds, much less loans that had been marked up by Gentile. Indeed, as discussed below, GPB Capital was at this very time using Automotive Portfolio's undeployed capital to make undisclosed loans to other GPB funds.

141. Nevertheless, Gentile and GPB Capital directed Automotive Portfolio to borrow $12 million from Borrower in October 2015, causing Automotive Portfolio to incur an unnecessary interest obligation of approximately $1.6 million per year. Gentile and GPB Capital then directed a subsidiary of the Holdings fund to borrow an additional $5 million from Borrower in December 2015, creating another unnecessary interest obligation of $675,000 per year. These unnecessary loans and the marked-up interest on them directly contributed to the coverage shortfalls in both funds.

142. Others benefitted at the expense of the investors in Automotive Portfolio and Holdings. Non-U.S. investors in GPBAIF, for instance, were promised a substantial 8.25% return but – unlike investors in Automotive Portfolio and Holdings – paid no upfront fees. The new Borrower entity reimbursed GPBAIF for every penny of its organizational and operational expenses.

143. Schneider and Ascendant also benefitted from the fraud. Upon information and belief, they earned commissions on every investment into the GPBAIF.

144. Despite the influx of unwarranted interest from the fraudulently made loans, Borrower ended up sustaining heavy operating losses. In the fifteen months between May 2015 and August 2016, Borrower reported more than $5.3 million in losses, most of which consisted of

fees, commissions and expenses for GPBAIF. Because Gentile held a 100% membership interest in Borrower's profit and loss, these losses represented a significant personal liability for him.

145. Borrower's losses also created a potential tax liability for GPBAIF and its investors. If Borrower were unable to make its interest payments on the loans from GPBAIF, those loans could be considered an equity investment by GPBAIF, which would necessitate imposing a 30% withholding tax on GPBAIF investors.

146. To avoid these consequences, Gentile executed a guaranty dated as of December 2015 that had GPB Capital both guarantee any losses by Borrower and provide cash infusions to Borrower.

147. Then, in August 2016, Gentile and GPB Capital offloaded most of Borrower's losses onto the books of Automotive Portfolio and Holdings. Borrower effectively was dissolved and replaced by a new offshore entity called GPB Automotive Income Sub-Fund ("Sub-Fund"). The existing loans from Borrower to the Automotive Portfolio fund and the Holdings subsidiary were retired; in their place, Automotive Portfolio and Holdings entered into new promissory notes with Sub-Fund.

148. A critical and fraudulent feature of the new promissory notes was that they increased the amount of aggregate principal to be repaid by more than $4.8 million – from $17 million to nearly $22 million – with no legitimate justification. A subsequent memorandum by the auditors for the Automotive Portfolio and Holdings funds summarized the effect of the restructuring as follows ("Fund Expenses" here refers to GPBAIF's organizational and operational expenses as well as sales commissions and fees):

Fund Expenses		4,833,687			
	Original Principal	% of Total Original Principal	Pro Rata Allocation	A&R Principal	
AP	12,000,000	71%	3,412,014	15,412,014	Agrees to amended note agreement
H1	5,000,000	29%	1,421,673	6,421,673	Agrees to amended note agreement
Total	17,000,000	100%	4,833,687	21,833,687	

149. Neither Automotive Portfolio nor Holdings – nor any of their investors – received any net benefit from this restructuring. Neither fund received any supplemental infusion of capital in exchange for assuming significant additional repayment liability. The restructured notes did lower the interest rate from 13.5% to 8.75%, and established a fixed 4-year maturity date, but any reduction in interest expenses was dwarfed by the increase in principal.

150. A senior executive at the Cayman Islands–based administrator, registrar and transfer agent for GPBAIF and Sub-Fund questioned executives at GPB Capital over email: "How would that be justified, that the investors of [Automotive Portfolio] all the sudden have a $4 million expense that they have to pay for? Would that be ok with that Funds documents and how would you explain to the auditors of that Fund?"

151. In a July 26, 2016 email to GPB Capital's CFO-1, the same senior executive asked pointedly about "the fiduciary consequences of socking the Funds with $4 million in historical costs" that had been – and should have continued to be – guaranteed by Gentile. When CFO-1 raised the issue internally, GPB Capital's Chief Compliance Officer wrote "the big picture is that is [sic] Auto Portfolio is put in a worse place post-restructuring than its [sic] in today…."

152. Gentile and GPB Capital went ahead with the restructuring nevertheless, and the final restructured notes included even more injurious terms. For instance, the restructured notes obligated Automotive Portfolio and Holdings to pay for all of GPBAIF's and Sub-Fund's future organizational and operational expenses, including sales commissions and fees payable in part to Schneider and Ascendant.

153. Worse, Gentile and GPB Capital directed Automotive Portfolio and Holdings to enter into a side agreement that required those two funds to pay an additional "Arranger Fee." The side agreement provided that, upon maturity of the restructured notes, Automotive Portfolio and Holdings would be obligated to "pay to [GPB Capital] (or its designee) an arranger fee in an amount equal to one half of the gross realized profits, if any, that such [] Fund achieved attributable to the proceeds of such [] Fund's Notes."

154. All told, Gentile's and GPB Capital's misappropriations and breaches of fiduciary duty with respect to the original and restructured notes cost Automotive Portfolio and Holdings at least $14 million ($4.8 million in the restructuring, and more than $9 million in unnecessary interest payments over the life of the loans and notes), before even accounting for the additional expenses and arranger's fees.

IV. GPB CAPITAL MADE NUMEROUS UNDISCLOSED INTERFUND LOANS

155. From 2013 through mid-2016, GPB Capital moved money between the GPB Funds through a series of undisclosed (and at times wholly undocumented) interfund loans that exaggerated the strength of the "borrowing" funds.

156. The existence of interfund loans was material to investors. Indeed, due diligence firms repeatedly asked about them. When challenged, Defendants falsely stated that they would discontinue the practice, then made even larger interfund loans. GPB investors were not told about the interfund loans until 2016.

A. Early PPMs Did Not Disclose Interfund Loans

157. Before 2016, none of the PPMs for the GPB Funds disclosed that Defendants would make interfund loans. For example, in Automotive Portfolio's February 2014 PPM, GPB Capital told investors that the investment objective of the fund was to "identify assets ("Assets") of auto

dealerships ("Dealerships") to acquire, profitably operate and then resell for gains." GPB Capital also told investors that any distributions paid to investors would come from "cash flow we have received from Dealerships." Nothing in that PPM told investors that their money would be used to make loans to other GPB funds to acquire companies in unrelated sectors.

158. Several PPMs affirmatively stated that the funds would not engage in related-party transactions without the approval of an independent Advisory Committee. With respect to interfund loans, this was false. Between September 2013 and November 2015, GPB Capital caused the GPB Funds to make at least 20 interfund loans (some of which were undocumented) in amounts ranging from $12,000 to $25 million, for periods from one day to several months. Upon information and belief, none of these transactions were approved by the Advisory Committee.

159. The harm of undisclosed loans to investors is illustrated by a fraudulent set of transactions in March and April 2015. The story begins on March 30, 2015, when Automotive Portfolio had only $7,927,605.59 in its investment account. The next day, March 31, 2015, Holdings sent $1,456,040 to Automotive Portfolio, bringing Automotive Portfolio's balance to just over $9 million. There was no loan agreement related to this transaction. Then, the very next day, April 1, 2015, Automotive Portfolio loaned $9 million to Holdings – a loan that included the money that Holdings had secretly sent to Automotive Portfolio just the day before. As Holdings then duly paid interest to Automotive Portfolio on that $9 million loan, Holdings' investors were paying interest on their own money.

B. Defendants Represented that They Would Not Make Interfund Loans, But Continued to Do So

160. Beginning in mid-2015, GPB Capital and Ascendant got questions about interfund loans from broker-dealers and due diligence firms. For example, on June 1, 2015, responding to apparent concerns raised by a broker-dealer about interfund loans, GPB Capital's Chief Operating

Officer sent a letter to the broker-dealer stating: "This letter serves as notice that GPB Capital Holdings, LLC will not make any intra-fund [sic] loans between affiliated entities as of the date of this memo." Ascendant gave similar oral representations to a third-party diligence firm that was copied on the June 1, 2015 letter.

161. A few months later, in October 2015, Ascendant's newly hired Director of Capital Markets sent Schneider an email expressing concerns about the use of interfund loans at GPB Capital. He wrote that such loans could be "a very big issue for many BDs," and might "become deal-breakers." He stated that in his personal experience, many prominent BDs would not agree to market investment products that "loaned money from one fund to another."

162. Schneider and Gentile, however, dismissed the Director of Capital Market's email. Schneider waited three days to send the email to Gentile, doing so with a quick note: "Just an FYI. We should discuss." Gentile wrote back: "Interesting. We will have to find a solution." Schneider replied: "Or not."

163. Despite the representations that it had made and despite the internal warnings, on October 22, 2015, GPB Capital executed an additional series of interfund loans. First, GPB Capital transferred $25 million from Automotive Portfolio to Holdings. Upon information and belief, this transfer was made without any loan documentation between Automotive Portfolio and Holdings. The same day, Holdings transferred $25 million to Holdings II in another undocumented transaction.

164. Shortly thereafter, GPB Capital caused Holdings II to invest in three portfolio holding companies using roughly $24.2 million of the $25 million it had borrowed from sister funds in undocumented transactions.

165. All told, between 2013 and early 2016, GPB Capital moved over $65 million around the various GPB Funds without disclosing the practice to investors, and, at times, without any written agreements.

166. In March 2016, Holdings II first disclosed interfund loans its First Amended PPM. In June 2016, Automotive Portfolio disclosed the practice to its investors. It was not until December 2016 that Holdings disclosed the practice to its investors.

V. GENTILE, SCHNEIDER AND LASH MISAPPROPRIATED MONEY THROUGH A SHELL COMPANY CALLED LSG

167. Schneider, Gentile, and Lash unlawfully misappropriated portfolio company earnings from 2014 to 2016. In doing so, Gentile breached his fiduciary duty to the GPB Funds, and Schneider and Lash aided and abetted Gentile's breach and knowingly participating in the misappropriation.

168. The instrumentality of this diversion was a shell company called LSG Auto Wholesale, LLC ("LSG") – named for Lash, Schneider and Gentile, its primary beneficiaries. LSG was formed on April 9, 2014 as a Delaware limited liability holding company. It had only three corporate members: (1) Jachirijo, LLC ("Jachirijo"), controlled by Gentile; (2) GPB Lender, LLC, also controlled by Gentile, and (3) EMDYKYCOL, Inc., a now-dissolved Florida corporation owned by Lash. The existence of LSG and the payments through it were a secret even to GPB Capital's own CFO-2, its current Chief Operations Officer and its former auditors. All of them testified that they had been unaware of LSG's existence until after it was disclosed in a counterclaim filed against GPB Capital in 2018.

169. Retail automobile dealerships make money not only from the sale of automobiles, but also from the sale of extended warranties, service contracts, credit insurance and guaranteed asset protection insurance – collectively known in the industry as financial and insurance products

or "F&I." F&I income can represent a significant portion of a dealer profit. In a due diligence presentation in March 2017, GPB Capital stated that F&I sales represented 27% of the gross profits of the automotive assets of the GPB Funds in the 3rd quarter of 2016. GPB Capital and its valuation experts classified F&I income as an asset when valuing the dealerships within the GPB Funds.

170. The Defendants misappropriated F&I monies from two groups of car dealerships: (1) nearly $500,000 from dealerships owned by an operating partner ("Non-Party Manager") who was, for a time, the co-manager (with Lash) of GPB Capital's Automotive Retail unit; and (2) more than $830,000 dollars from a dealership owned by Lash. At Non-Party Manager's dealerships, Defendants routed the misappropriated funds through two intermediate holding companies. These two companies, in turn, paid the F&I profits to LSG from where it went on to Lash, Schneider, and Gentile.

171. The Defendants carefully tracked the cash they diverted from the Non-Party Manager dealerships. The affected dealerships prepared monthly accounting statements listing the F&I products sold and the amount of profit that would be sent to LSG. Here is a statement for April 2014 through August 2014:

Dealership	Product	Apr-14	May-14	Jun-14	Jul-14	Aug-14	Sep-14	Oct-14	Nov-14	Dec-14	Totals	Balance Due
NOD	CCP	-	-	-	-	-	-	-	-	-	-	
NOD	ETCH	-	-	-	86,644	77,980	-	-	-	-	164,624	
NOD	GAP	-	-	-	-	32,058	-	-	-	-	32,058	
NOD	TOTAL	-	-	-	86,644	110,038	-	-	-	-	196,682	
NOH	CCP	85,085	-	-	-	-	-	-	-	-	85,085	
NOH	TLP	-	80,910	64,467	82,476	82,476	-	-	-	-	310,329	
NOH	TOTAL	85,085	80,910	64,467	82,476	82,476	-	-	-	-	395,414	
VOH	CCP	67,415	-	-	-	-	-	-	-	-	67,415	
VOH	TLP	-	-	-	-	-	-	-	-	-	-	
VOH	TOTAL	67,415	-	-	-	-	-	-	-	-	67,415	
MONTHLY	TOTAL	152,500	80,910	64,467	169,120	192,514	-	-	-	-	659,511	
CUMULATIVE	TOTAL	152,500	233,410	297,877	466,997	659,511	659,511	659,511	659,511	659,511	659,511	
Partner 1	[redacted]	38,125	20,228	16,117	42,280	48,128						
Partner 2	Lash	38,125	20,228	16,117	42,280	48,128						
Partner 3	Schneider	38,125	20,228	16,117	42,280	48,128						
Partner 4	Gentile	38,125	20,228	16,117	42,280	48,128						
LSG (P 2 thru P 4)		114,375	60,683	48,350	126,840	144,385						
Cummulative		114,375	175,058	223,408	350,248	494,633						
PAYMENTS TO LSG					99,673		250,611				350,284	(144,349)

172. As shown in the statement above, during this time period, Gentile, Schneider and Lash received almost $500,000 in F&I profits from Non-Party Manager's dealerships.

173. Schneider, Gentile, and Lash used the same scheme at one of Lash's dealerships – Bob's Buick – to divert an additional nearly one million dollars from 2014 to 2017. As they had at Non-Party Manager's dealerships, they funneled F&I profits to LSG. From LSG, the diverted monies were then transferred to Lash, Schneider, and Gentile either directly or through companies that the individual Defendants controlled or in which they had interests.

174. Upon information and belief, there is no record that LSG provided genuine goods or services to the dealerships. The monies were simply misappropriated from the investors in GPB Funds. And the diversions were, of course, not disclosed to investors.

175. All told, through this scheme Gentile received more than $525,000, Lash received nearly $435,000, and Schneider received more than $360,000 – for a total of over $1.3 million. In sworn testimony, Gentile called the diversion a "mistake." After coming under regulatory scrutiny

in 2018, Gentile made a series of payments to the GPB Funds for the ostensible purpose of refunding amounts that had been misappropriated through LSG.

VI. GENTILE AND SCHNEIDER PAID THEMSELVES "STIPENDS" AND FEES FROM PORTFOLIO COMPANIES THAT WERE NOT ADEQUATELY DISCLOSED TO INVESTORS

176. Schneider and Gentile together received roughly $1.7 million dollars of payments from portfolio companies from 2013 to 2017, some in the form of "stipends" and other styled as "finance management fees." While the PPMs contained some boilerplate language about possible related party compensation, the fact that Schneider and Gentile were actually receiving these payments was not disclosed to investors. To the contrary, when GPB Capital was directly asked in June 2015 about separate compensation for executives, it denied it.

177. From 2013 through 2016, portfolio companies within the Automotive Portfolio and Holdings funds collectively paid more than $930,000 in "board stipends" to Gentile through Jachirijo. During the same time period, Gentile also received nearly $185,000 in additional "stipends" and other fees through Jachirijo Realty Holdings, another limited liability company wholly owned by Gentile.

178. Schneider was similarly paid board stipends, including through an entity he owned, JS Board Stipend, LLC. In 2015 alone, he was paid stipends of more than $540,000.

179. On top of that, Gentile and Schneider received nearly $18,000 per month – totaling more than $715,000 over several years – in "finance management fees" from D1 Holdings, LLC, a company within the Holdings corporate structure. Those fees were evenly split between two corporate entities: Jachirijo (owned by Gentile) and JS Board Stipend Account LLC (owned by Schneider).

180. Investors were not told that Gentile and Schneider received these payments. For example, in the initial PPM for Automotive Portfolio, neither the board stipends nor the "finance management fees" were included among the various fees described in the "Selling & Company Fees & Expenses" which detailed the fees investors could expect to pay. While certain of the PPMs contained boilerplate language that discussed the possibility that "related parties **may** … receive fees or other compensation in connection [with serving as a portfolio company officer or director]," the PPMs did not tell investors that Gentile and Schneider were in fact being paid board stipends and other fees. Failure to inform investors that these fees were actually being paid was false and misleading.

181. In fact, when questioned about the practice as part of the broker-dealer due diligence process, GPB Capital flatly denied it. Specifically, in June 2015, a third-party due diligence firm asked whether management and executives were collecting fees and other stipends. In response, GPB Capital falsely responded that management was not receiving any such fees (GPB Capital's responses in lighter text):

- Managerial Assistance - confirm that the Sponsor has not assigned this fee to Axiom/Ascendant in its previous investment programs (GPB Holdings and GPB Auto)? Confirmed
- Confirm that the General Partner's executives will not be separately compensated by the Portfolio Companies for providing managerial assistance? Confirmed. The General Partner's executives will not be separately compensated by the Portfolio Companies for providing managerial assistance.
- Can you confirm that the General Partner's executives were not separately compensated by the Portfolio Companies for providing their managerial assistance in GPB Holdings? Confirmed. The General Partner's executives were not be separately compensated by the Portfolio Companies for providing managerial assistance.

182. The third-party due diligence firm repeated GPB Capital's representations that management did not receive separate compensation for managerial assistance in its July 2015 due diligence report, which was made available to the broker-dealer firms selling the GPB Funds.

183. Each of these representations was false because Gentile was in fact receiving such payments. As with the amounts misappropriated through LSG, Gentile later made payments to the GPB Funds that he claimed were intended to reimburse the funds for the board stipends and finance management fees. Gentile made these payments only after coming under regulatory scrutiny.

VII. AAS, GENTILE AND SCHNEIDER RECEIVED UNDISCLOSED AND UNWARRANTED FEES AND COMMISSIONS

184. In another scheme to divert money from the GPB Funds to the Defendants, GPB Capital directed the GPB Funds to pay acquisition fees to Axiom, AAS, and Ascendant that, without disclosure to investors, were ultimately funneled to Gentile and Schneider.

185. The PPMs provided no notice that the acquisition fees – which could total up to 2.75% of the cost of the acquisition – were actually being paid to Gentile and Schneider. Initially, the PPMs told investors only that the acquisition fees would be paid to "qualified third parties or affiliates" and did not disclose that those fees were being paid to Axiom or Ascendant. In later years, the disclosure language was modified to inform investors that acquisition fees would be paid to Axiom and Ascendant (as of 2016), and eventually AAS (as of 2018). But investors still were not told that the ultimate recipients of those fees included Gentile and Schneider, neither of whom was a "qualified third party" as represented to investors.

186. Between 2013 and 2018, the GPB Funds paid acquisition fees of roughly $26 million. Axiom was paid more than $10 million in acquisition or "project fees" between 2013 and 2017. Starting in 2017, the broker-dealer activity – and related cash flows – were transferred to AAS, in which Gentile and Schneider each held a 33.3% stake. In 2017 and 2018 alone, the GPB Funds paid AAS acquisition fees of more than $16.3 million, meaning that Gentile and Schneider each received roughly $5.4 million through acquisition fees in this period. Investors were never

told that they were paying Gentile an additional $5.4 million in his capacity as an owner of AAS to perform the same tasks for which he was already compensated as the sole member of GPB Capital.

187. In addition, bank records show that Gentile was indirectly paid acquisition fees even before AAS was formed. Specifically, in a series of transfers beginning in February of 2015, Schneider sent portions of acquisition fees he had received through Axiom to a Chase bank account that was controlled by Gentile under yet a different corporate name. On March 11, 2015, Schneider transferred another $375,000 to a Crescent GP, LLC Chase account controlled by Gentile.

188. On March 26, 2015, GPB Capital wired $701,583 to Axiom "representing a project fee that needs to be paid to Jeff." The next month, on April 14, 2015, Axiom tendered a check payable to Schneider for $500,000. Six days later, Schneider transferred $250,000, half of the "project fee," to the Crescent GP, LLC account controlled by Gentile. Those funds were then transferred to another account controlled by Gentile and his wife.

VIII. GENTILE AND GPB CAPITAL DIRECTED RELATED-PARTY TRANSACTIONS WITHOUT ADVISORY COMMITTEE APPROVAL

189. From the beginning of 2014 through the end of 2016, GPB Capital represented in the PPMs that GPB Funds did not intend to engage in any related-party transactions but that, if they did, any such transactions would have to be approved unanimously by an Advisory Committee whose members were "independent" of GPB. These representations were false and misleading. First, many members of the Advisory Committee were not independent under the plain terms of the PPMs. Second, GPB Capital wholly bypassed the Advisory Committee when engaging in certain conflicted, related party transactions.

A. The Advisory Committee Members Were Not Independent.

190. Multiple members of GPB Capital's Advisory Committee did not meet the definition of independence in the PPMs. To be considered independent, a committee-member could not, *inter alia*, have any "material relationship with [GPB Capital] (either directly or as a partner, shareholder or officer of an organization that has a relationship with [GPB Capital])."

191. One member of the Advisory Committee ("AC Member") from approximately 2014 to 2016 was not independent because he was employed by GPB Capital throughout his time on the committee. GPB Capital hired AC Member in or around August 2014, and eventually named him a Managing Director and Head of IT Strategies. Around 2015, AC Member also became a Senior Advisor to Ascendant. AC Member continued to participate in the Advisory Committee despite these employment relationships.

192. Two other members of the Advisory Committee from 2014 to 2016 were financial advisors who not only had clients who invested, but also had their own personal investments in certain GPB Funds.

193. Another Advisory Committee member in or around 2015 also had material relationships with GPB Capital. At the time he joined the committee, he was a principal in an investment firm that had already made sizable investments in the Automobile Portfolio and Holdings II funds, and was himself a direct investor in at least one GPB portfolio company.

194. Thus, GPB Capital's representation about the members of the Advisory Committee being "independent of GPB" was false and misleading.

B. Gentile and GPB Capital Caused GPB Funds to Bypass Advisory Committee Review and Approval

195. In addition, prior to 2016, GPB Capital repeatedly bypassed the Advisory Committee's mandatory approval of related-party transactions, including – as discussed above –

over $50 million in intercompany loans. Under the terms of the PPMs, a "related party transaction" was defined as one in which "GPB, the Special LP and/or their respective affiliates, officers, directors, agents and equity-holders" held "a financial interest." Without the approval of the Advisory Committee, GPB Capital directed GPB Funds to acquire companies in which Gentile, Schneider and others in GPB Capital's management had prior financial interests.

196. One such unapproved transaction was the acquisition of a biotechnology firm called QT Ultrasound, LLC ("QTUS"). In the QTUS acquisition, the list of interested parties included Gentile, Schneider and others at GPB Capital. Gentile initially presented QTUS to GPB Capital in mid-2014 as an acquisition target. At the time he made that presentation, Gentile – and others at GPB Capital – had already invested in QTUS. In addition, Gentile sat on the QTUS Board of Directors. Upon information and belief, this transaction was not reviewed or approved by the Advisory Committee. Nevertheless, Defendants caused Holdings to invest approximately $930,000 in QTUS in May 2014.

197. The following year, in October 2015, the Investment Committee, which oversaw portfolio investments, met and approved an additional investment in QTUS of more than $1 million. At that meeting, five of the six attendees charged with making an investment decision on QTUS disclosed that they were also investors in QTUS. Gentile had also invested personally in QTUS. Indeed, as an early investor in QTUS, Gentile communicated to the head of QTUS about GPB Capital's potential role in financing QTUS and a desire "to continue supporting QT Ultrasound in any way we can."

198. In addition, because of uncertainty surrounding the QTUS's ability to create long-term shareholder value, QTUS did not even satisfy the normal investment criteria concerning stable and cash-generating assets set for GPB Funds. Approval of the Advisory Committee was

consequently required and, upon information and belief, there was no Advisory Committee approval of the acquisition.

IX. GENTILE, SCHNEIDER AND OTHERS ENGAGED IN PERSISTENT SELF-DEALING AND CONFLICTED TRANSACTIONS

199. Gentile and others used money from GPB Capital and the GPB Funds to enrich themselves, pay family members, support luxurious lifestyles, and even purchase a Ferrari for Gentile's personal use. GPB Capital made numerous payments to Gentile's wife, both through her law firm and also individually.

A. GPB Funds Failed to Disclose Payments to Family Members

200. While GPB Capital represented to investors that its funds would avoid related party transactions, the GPB Funds made repeated payments to individuals and entities closely linked to Gentile, including to one of Gentile's brothers-in-law as manager of the GPB Cold Storage, LP fund, and to a now-defunct law firm that was owned by Gentile's wife and another brother-in-law ("Family Law Firm"). A third brother-in-law became GPB Capital's initial CFO.

201. As of March 24, 2017, GPB had paid Family Law Firm at least $194,064 in consulting fees. At the time, Gentile's wife was the 100% owner of the firm. In addition, GPB Capital paid Family Law Firm $12,129 in monthly fees during the course of several months in both 2016 and 2017. On top of paying Gentile's wife as the owner of Family Law Firm, GPB Capital also paid her $91,291 individually as a so-called "payroll expense."

202. GPB Capital failed to disclose to investors that Family Law Firm, a related party, would perform work for GPB Capital. GPB Capital also failed to disclose to investors that it paid Gentile's wife substantial consulting fees and a salary.

B. Gentile and Schneider Used Fund Monies for Their Personal Benefit

203. GPB Capital and its principals for years incurred expenses without a clear business purpose and for their own personal enrichment.

204. In particular, both Gentile and Schneider made luxury purchases for their personal use at the expense of the GPB Funds or their portfolio companies. Documents prepared by GPB Capital's former auditors: (1) approximately $47,000 on private jets; (2) $2,500 for Gentile's wife's travel expenses; (3) approximately $58,000 in travel expenses for Jachirijo, a company 100% owned by Gentile; (4) $12,040 in charges for ATV rentals in Florida; and (5) $29,837 for an American Express bill that, the former auditor noted, "includes David's 50th Bday."

205. In January 2017, in violation of company policy, Gentile created a company, Volaire Management LLC, in order to purchase business aircraft and ultimately hire a flight attendant at a $90,000 annual salary beginning in the summer of 2017. Airfare expenses accrued by Volaire Management for Gentile and other GPB executives were allocated to GPB funds, at times without any explained business purpose. GPB Capital paid Volaire $1.4 million in 2017 and $1.2 million in 2018.

206. Gentile even used fund assets to buy himself a Ferrari at investors' expense. In November 2014, a Lash dealership that was a Holdings portfolio company purchased a new 2015 Ferrari FF for $355,000. A few weeks later, that dealership sold the Ferrari to another Lash-operated portfolio company doing business as Bob's Buick. Gentile has stated under oath that this Ferrari was his car for his own personal use.

207. Gentile's brand-new Ferrari, however, was never transferred into his name. Instead, with Gentile driving it, the Ferrari stayed on the books of Bob's Buick. Internal email traffic occasionally discussed whether Gentile would finally pay for it. He never did.

208. Finally, in 2017, GPB sold the car to someone else for $172,000. Investors in the Holdings fund bore the loss. As one employee wrote to another: "We are looking at a wholesale loss of ($183,000) that will be applied to Bob's Buick GMC wholesale loss for the month of December 2017."

209. Gentile not only indulged himself at investors' expense, he also apparently gave free rein to abuses by others. In October 2017, a manager in GPB Capital's automotive business wrote to Gentile to stress the need to "clean up" GPB's culture. The manager emphasized that "[t]here can never be broker kickbacks, boats and ATV's taken in by individuals, and incentive moneys paid to individuals (i.e. VW emissions money)."

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Martin Act Securities Fraud – General Business Law §§ 352 *et seq.*)

210. The OAG repeats and re-alleges the paragraphs above as if fully stated herein.

211. The acts and practices of Defendants alleged above violated General Business Law §§ 352 *et seq.*, insofar as such acts, practices, misstatements, and omissions employed deception, misrepresentations, concealment, suppression, fraud, and false promises regarding the issuance, distribution, exchange, sale, negotiation, or purchase within or from this state of securities.

SECOND CAUSE OF ACTION

(Martin Act Securities Fraud – General Business Law §§ 352 *et seq.)*

212. The OAG repeats and re-alleges the paragraphs above as if fully stated herein.

213. The acts and practices of Defendants alleged above violated General Business Law §§ 352 *et seq*., insofar as such acts, practices, misstatements, and omissions related to investment advice which is fraudulent or in violation of the law and which has operated as a fraud upon the purchaser of securities.

THIRD CAUSE OF ACTION
(Persistent Fraud and Illegality – Executive Law § 63(12))

214. The OAG repeats and re-alleges the paragraphs above as if fully stated herein.

215. The acts and practices of Defendants alleged herein constitute conduct proscribed by § 63(12) of the Executive Law, in that Defendants (a) engaged in repeated fraudulent or acts or otherwise demonstrated persistent fraud; (b) repeatedly violated the Martin Act, in the carrying on, conducting or transaction of business within the meaning and intent of Executive Law § 63(12); (c) repeatedly violated federal securities laws.

FOURTH CAUSE OF ACTION
(Breach of Fiduciary Duty Against Defendants GPB Capital and Gentile)

216. The OAG repeats and re-alleges the paragraphs above as if fully stated herein.

217. GPB Capital, as the general partner of the GPB Funds and their registered investment adviser, owed the fiduciary duties of care and loyalty to the GPB Funds and their investors.

218. Gentile, by virtue of his position as founder, sole member and CEO of GPB Capital and his control and dominance over the GPB Funds as alleged above, owed the fiduciary duties of care and loyalty to the GPB Funds and to the limited partners in those funds.

219. GPB Capital and Gentile breached their fiduciary duties to the GPB Funds and to the limited partners in those funds through their persistent fraud, self-dealing and other misconduct alleged above.

220. As a result of GPB Capital's and Gentile's breaches of their fiduciary duties, the GPB Funds and their investors were harmed in an amount to be determined at trial.

FIFTH CAUSE OF ACTION
(Inducement and Participation in a Breach of Fiduciary Duty
Against Defendants Schneider, Gentile, and Lash)

221. The OAG repeats and re-alleges the paragraphs above as if fully stated herein.

222. As alleged above, GPB Capital, as the general partner of the GPB Funds and their registered investment adviser, owed the fiduciary duties of care and loyalty to the GPB Funds and their investors.

223. Gentile, Schneider and Lash knowingly induced and participated in GPB Capital's breach of its fiduciary duties through their persistent fraud, self-dealing and other misconduct alleged above.

224. Through their conduct, Gentile, Schneider, and Lash caused financial harm to the GPB Funds and their investors in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, the OAG demands judgment against Defendants as follows:

A. Directing Defendants to disgorge all amounts obtained in connection with or as a result of the violations of law alleged herein, all moneys obtained in connection with or as a result of the fraud alleged herein, and all amounts by which Defendants have been unjustly enriched in connection with or as a result of the acts, practices, and omissions alleged herein;

B. Directing that Defendants make restitution in connection with the fraudulent and deceptive acts complained of herein;

C. Enjoining Defendants from engaging in any ongoing and future violations of New York law;

D. Permanently enjoining Defendants Gentile and Schneider from selling or offering for sale to the public within this state any securities issued or to be issued;

E. An accounting by Defendants of the disposition of all investor funds;

F. Directing such other equitable relief as may be necessary to redress Defendants' violations of New York law;

G. Directing that Defendants pay the State's costs and fees; and

H. Granting such other and further relief as may be just and proper.

Dated: February 4, 2021
New York, New York

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