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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: GENERAL EQUITY
ESSEX COUNTY
DOCKET NO. _____

GURBIR S. GREWAL,
Attorney General of New Jersey,
on behalf of
CHRISTOPHER W. GEROLD,
Chief of the New Jersey Bureau of
Securities,

Plaintiff,

v.

GPB CAPITAL HOLDINGS, LLC;
ASCENDANT ALTERNATIVE STRATEGIES, LLC;
ASCENDANT CAPITAL, LLC;
DAVID GENTILE,
individually, as Managing Member of
GPB Capital Holdings, LLC, and
as indirect part-owner of Ascendant
Alternative Strategies, LLC;
JEFFRY SCHNEIDER,
individually, as Chief Executive
Officer and Sole Member of Ascendant
Capital, LLC, and indirect part-owner
of Ascendant Alternative Strategies,
LLC,
JEFFREY LASH, as GPB Capital Director
of Automotive Retail,

Defendants.

Civil Action

COMPLAINT

Gurbir S. Grewal, Attorney General of New Jersey, on behalf of Christopher W. Gerold, Chief of the New Jersey Bureau of Securities (the "Bureau Chief" or "Plaintiff"), alleges the following by way of Complaint against the above-named Defendants:

NATURE OF THE ACTION

1. This action involves a massive securities fraud that has affected approximately 17,000 investors in New Jersey and across the United States. Defendants - a fund manager, a broker-dealer, a placement agent, and their individual principals and employees - raised more than \$1.8 billion between 2013 and 2018 through sales of unregistered, high-commission limited partnership interests in a series of eight alternative-asset investment funds managed by defendant GPB Capital Holdings, LLC ("GPB Capital") that they described as "income-producing private equity."

2. Led by David Gentile ("Gentile") and Jeffry Schneider ("Schneider"), Defendants lured investors in with false and misleading promises of reliable monthly returns "fully covered" by operating profits, even as they increasingly relied on Ponzi financing, using new investors' capital contributions to pay prior investors the monthly distributions.

3. Defendants' carried out this scheme principally through four of the eight funds, including: GPB Automotive Portfolio, LP; GPB Holdings, LP; GPB Holdings II, LP; and GPB Waste Management, LP (the "GPB Funds"). Nearly \$1.7 billion was invested in these

four GPB Funds.

4. Defendants further harmed investors by repeatedly diverting and misappropriating fund assets for their own benefit, including by engaging in undisclosed related-party transactions. Gentile, Schneider and other Defendants earned tens of millions of dollars in fees and commissions on continuing sales of the GPB Funds even as they destroyed long-term value for investors. As of June of 2019, GPB Capital estimated the fair market value of the funds' portfolio assets at approximately \$1 billion - representing more than a 40% loss on investors' initial capital contributions. The current portfolio asset values are unknown, as the GPB Funds have not issued audited financials since 2016, in violation of Securities and Exchange Commission ("SEC") regulations.

5. The scheme began when Gentile, a partner at a mid-sized Long Island accounting firm founded by his father, joined forces with two long-time clients, Schneider and Jeffrey Lash ("Lash"), to organize the GPB Funds and the associated entities needed to manage and market them.

6. Despite being a "novice" with respect to private placements and having no prior experience as a fund manager or investment adviser, Gentile oversaw and managed the GPB Funds as founder, sole member and CEO of GPB Capital Holdings, LLC ("GPB Capital"), which acted as the general partner for each of the funds.

7. Lash, who had spent most of his career in automotive retail, pursued auto dealerships for acquisition by the GPB Funds, and for a time oversaw the operation of the portfolio dealerships. Among the earliest portfolio companies acquired by the GPB Funds were several auto dealerships operated by Lash and owned by Gentile, Lash and others. As the GPB Funds grew, Lash brought in another dealership owner-operator, A ("owner-operator A"), who sold several dealerships to the GPB Funds and helped manage the funds' automotive portfolio.

8. Schneider, a securities broker with a long regulatory and disciplinary record and a history of association with questionable or demonstrably fraudulent activity, marketed, offered, and sold the GPB Funds through his company, Ascendant Capital, LLC ("Ascendant"). Ascendant acted as wholesaler and placement agent, distributing limited partnership interests through the broker-dealers Axiom Capital Management, LLC ("Axiom") and, later, Ascendant Alternative Strategies, LLC ("AAS"), which is majority-owned by Gentile and Schneider.

9. Gentile, Schneider, and the other Defendants aggressively promoted the GPB Funds as an attractive alternative to traditional private equity funds. Whereas typical private equity funds may deploy investor capital for long periods before paying a return, the GPB Funds, they promised, would seek to provide monthly income almost immediately. But the supposedly safe and reliable

distributions, paid at an 8% annualized rate, month-in and month-out, were a fraud. As the GPB Funds grew, the promised distributions quickly exceeded the cash flows from the portfolio companies. Rather than reduce distributions to a sustainable level, Defendants falsely continued to claim that the distributions were fully covered and initially attempted to paper over the shortfalls through further frauds. They falsified financial statements and manufactured back-dated "performance guarantees" to manufacture fictitious income.

10. At times, without disclosure to the investors, the monthly distributions were paid entirely out of investors' own capital contributions. Every dollar of investor capital that was returned in a monthly distribution was a dollar that could not be deployed in income-producing investments. To maintain the charade of profitable operations - a fundamental component of Defendants' marketing strategy - Defendants sacrificed investors' long-term returns.

11. Investors also were harmed by Defendants' other misrepresentations and misappropriations of funds. In 2015, for example, Gentile and GPB Capital forced two GPB Funds to take out unnecessary high-interest loans from a Gentile-controlled entity in a convoluted scheme that funneled profits to Schneider, Ascendant and non-U.S. investors in a separate Cayman Islands fund. Gentile and GPB Capital then restructured the loans to shift nearly

\$5 million of Gentile's personal liabilities onto the GPB Funds. All in all, these predatory loans cost GPB Fund investors at least \$14 million over five years.

12. Gentile and GPB Capital caused the GPB Funds to make undisclosed, undocumented and often interest-free interfund loans, routinely propping up one fund at the expense of another. When asked about this practice, Defendants falsely denied that it took place.

13. In another notable scheme, Schneider, Gentile, and others diverted lucrative finance and insurance revenue from several auto dealerships to a special-purpose entity and then into Defendants' respective shell companies. At least \$1.5 million was diverted in this way.

14. Gentile, Lash and Schneider also used shell companies to collect roughly \$1.7 million in "board stipends" and finance management fees that were not adequately disclosed to investors.

15. GPB Capital also caused the GPB Funds to pay tens of millions of dollars in acquisition fees to Ascendant, Axiom and, later, AAS, thereby further enriching Gentile and Schneider. Although the fund offering documents disclosed the existence of the acquisition fees, they described them as being paid to "qualified third parties or affiliates" and omitted material information that Gentile received additional compensation for tasks that he was already obligated to perform as the managing

member of GPB Capital.

JURISDICTION AND VENUE

16. The New Jersey Bureau of Securities (the "Bureau") is the state regulatory agency charged with the administration of the Securities Law (1997) N.J.S.A. 49:3-47 to -89 ("Securities Law").

17. The Bureau Chief brings this action against Defendants for violations of:

- a. N.J.S.A. 49:3-52(a) (employing any device, scheme, or artifice to defraud);
- b. N.J.S.A. 49:3-52(b) (making untrue statements of material fact or omitting to state material facts necessary in order to make the statements not misleading); and
- c. N.J.S.A. 49:3-52(c) (engaging in an act, practice, or course of business which operates or would operate as a fraud or deceit upon any person).

18. Jurisdiction is proper over Defendants pursuant to N.J.S.A. 49:3-51(a)-(c) for violations of the Securities Law that are the subject of this Complaint because: (1) Defendants offered and sold the securities issued by the Funds to investors in New Jersey; (2) Defendants' offers to sell securities issued by the Funds to investors in New Jersey were made and accepted in New Jersey; and (3) Defendants' offers to sell securities issued by the Funds was directed to and received by New Jersey investors,

whether or not either party was present in this State.

19. Venue is proper in Essex County pursuant to R. 4:3-2(a) because it is the county in which the cause of action arose, the Bureau is located in Essex County, and Defendants offered and sold the securities issued by the Funds to residents of Essex County.

PARTIES

20. The Bureau Chief is the principal executive officer of the Bureau, with offices at 153 Halsey Street, Newark, New Jersey. This action is brought by Gurbir S. Grewal, Attorney General of New Jersey on behalf of the Bureau Chief pursuant to N.J.S.A. 49:3-69(a)(2).

21. Defendant GPB Capital (Central Registration Depository ("CRD") No. 169825) 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 SEC as an investment adviser. GPB Capital serves as the general partner of a series of limited partnership investment vehicles that Defendants managed, marketed, offered, and sold to investors in New Jersey and elsewhere.

22. Defendant Gentile (CRD No. 6763402), residing in Florida, is the sole managing member of GPB Capital. Gentile is also indirectly a part-owner of AAS, as defined below. Gentile is not registered with the Bureau in any capacity.

23. Defendant AAS (CRD No. 283881) is a Delaware limited

liability corporation with its principal place of business at 777 Westchester Avenue, White Plains, New York. AAS is a broker-dealer registered with the SEC, FINRA and 53 U.S. states and territories, including New Jersey. AAS has been registered with the Bureau as a broker-dealer since May 24, 2017. AAS is indirectly majority-owned by Gentile and Jeffry Schneider. AAS served as GPB Capital's managing broker-dealer beginning in 2017.

24. Defendant 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 has never been registered with the Bureau in any capacity. 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.

25. Defendant Schneider (CRD No. 2089051) was, until in or about May 2020, the Chief Executive Officer ("CEO") and sole member of Ascendant. Schneider has been registered with the Bureau as an agent of several broker-dealers since March 22, 1991. Most

recently he was registered with the Bureau as an agent of Axiom from May 30, 2013 until June 2, 2017, and AAS since June 2, 2017. Schneider is also an indirect part-owner of AAS. Schneider was at all relevant times deeply involved in the control, management and direction of GPB Capital.

26. Defendant 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.

FACTUAL ALLEGATIONS

I. GPB Capital's Business and Structure

27. 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, offered and sold limited partnership interests in a series of alternative-asset investment funds. They targeted "accredited investors," an investor population eligible to invest in private placement securities transactions that may be exempt from SEC registration and to which reduced regulation applies.

28. GPB Capital - the manager of each 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 Ascendant, the placement

agent for the GPB Funds. Indeed, one marketing document from 2017 described the two companies as "essentially one organization."

A. The Individuals

29. 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 and increasing 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 GPB Funds and their portfolio companies, received undisclosed payments, and caused the GPB Funds to pay Defendants' luxurious personal expenses - such as a Ferrari for Gentile. Lash also participated in creating false and misleading documents, and participated in and profited from the diversion of assets from portfolio companies.

i. Gentile

30. 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"), that was co-founded by his father. Gentile's clients included a number of 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.

31. Over the years, Gentile also sometimes personally invested in the companies he was advising. In the years just before he created GPB Capital, Gentile had invested in various companies with a pool of other investors, including Lash. Among the companies Gentile invested in were certain Volkswagen automobile dealerships that were managed by Lash and which eventually became some of the first portfolio company acquisitions for GPB Capital. When certain of Gentile's co-investors decided to divest their holdings, Gentile teamed up with Schneider and Lash to form the GPB Fund structure.

32. In marketing the GPB Funds, Defendants touted Gentile's accounting background, claiming 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." While Gentile may have had some experience in direct investment, he had never previously managed an investment fund. In fact, unbeknownst to investors, Gentile was largely ignorant about private placements and private equity funds even while he offered them to others and admitted under oath, "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. As described at length below, through his involvement with GPB Capital and the GPB Funds, Gentile has engaged in various transactions that moved money from the GPB Funds and their

investors to entities in which he had a direct or indirect interest. All told, through those transactions and his general involvement with GPB Capital and the GPB Funds, Gentile reaped benefits of over \$27 million.

ii. Schneider

34. Given Gentile's inexperience with fund structures, he could not have set up GPB Capital or the GPB Funds without substantial help. He got that help - and perhaps even the original inspiration for the GPB Funds - from Jeffrey Schneider. 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 similarly 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 had more than two decades of experience in the securities industry when he approached Gentile with the idea for

the GPB Funds. However, his record shows a troubling history of involvement with fraudulent activity and individuals. 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 ("NASD," 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 for registration and not re-apply 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 a \$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 Ponte Negra, later pleaded guilty to wire fraud in connection with misrepresentations made in that fund's marketing materials.

40. Immediately prior to the creation of GPB Capital, Schneider was an agent of Axiom, the broker-dealer, primarily selling real estate investment trusts ("REITs").

41. After he and Gentile conceived of the GPB Funds, Schneider founded Ascendant, an unregistered entity of which he is the sole member, to act as a placement agent. As discussed below, Schneider is a *de facto* senior manager of GPB Capital. Schneider holds no formal title at GPB Capital, 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 and Owner-Operator A

43. Jeffrey Lash had been a business associate and friend of Gentile since approximately 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. Prior to the creation of GPB Capital, Gentile invested in several of Lash's Volkswagen dealerships through an investment company. 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 also introduced Gentile to owner-operator A, a non-party to this action, who owned and operated several Nissan dealerships. After owner-operator A agreed to sell certain dealerships to the GPB Funds, he and Lash acted for a time as co-directors of GPB Capital's Automotive Retail unit. According to Gentile, owner-operator A introduced the other individual Defendants to the scheme of diverting profits from the sale of insurance and warranty products, rather than retaining those profits at the dealerships themselves.

45. Both Lash and owner-operator A participated in the misappropriation of fund assets for Defendants' personal benefit. In addition, both were involved in the creation of back-dated and misleading "performance guarantees" that inflated the reported income of some of the GPB Funds. Lash himself signed these guarantees.

46. Owner-operator A and the GPB Capital management team were at odds almost from the start, in particular arguing over the terms and timing of the acquisitions of owner-operator A's dealerships. GPB Capital sued owner-operator A in July 2017, seeking to compel him to close on dealership transactions and to make promised payments. Owner-operator A counterclaimed, alleging misconduct on the part of Gentile, Schneider and others. That litigation is still pending.

B. The Entities

i. GPB Capital and the GPB Funds

47. 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."

48. GPB Capital serves as the general partner or manager of the GPB Funds. These funds include: GPB Automotive Portfolio, LP; GPB Cold Storage LP; GPB Holdings, LP; GPB Holdings Qualified, LP;

GPB Holdings II, LP; GPB Holdings III, LP; GPB NYC Development, LP; and GPB Waste Management, LP. GPB Capital is not merely a passive overseer; it promotes its "hands-on managerial and operational assistance" to the portfolio companies owned by the funds.

49. 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.

50. From 2013 through mid-2018, the GPB Funds sold unregistered limited partnership interests in what are known as "private placement" transactions. Investors could purchase limited partnership units that were priced at either \$50,000 or \$100,000 per unit. The GPB Fund limited partnership units were offered only to "accredited investors," defined by SEC rules as individuals with at least \$1 million in net worth (excluding the value of a primary residence) or income of at least \$200,000 (\$300,000 for a couple) in each of the past two years with the expectation of making the same income in the coming year.

51. The GPB Funds focused on "accredited investors" because SEC Regulation D allows for an exemption from registration with

unlimited sales of the securities to accredited investors, and up to 35 non-accredited investors under Rule 506(b) of Regulation D. When a securities offering qualifies for a Regulation D exemption, its regulatory burden is significantly reduced.

52. Gentile, as the sole member and Chief Executive Officer of GPB Capital, had total control over that entity and therefore over each of the GPB Funds.

53. 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").

54. 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. 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 guarantees and severance

agreements, discussions on the release of dealership financials, and whether the Waste Management fund should acquire a portfolio company. When employees and management at GPB Capital failed to include Schneider, he reprimanded them. For example, 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."

55. 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.

56. Approximately 700 New Jersey investors purchased limited partnerships in various GPB Funds, with a total investment of approximately \$70.4 million.

ii. Ascendant, Axiom and AAS

57. Schneider founded Ascendant and was its sole owner. 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 was

also responsible for drafting investor updates and helping to prepare offering documents and limited partnership agreements.

58. Ascendant, based in Texas, was 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. Beginning in 2017 and thereafter, Ascendant was the branch office of AAS, a new broker-dealer majority-owned by Schneider and Gentile jointly through a company called DJ Partners, LLC.

59. 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.

60. As indirect owners of 33.3% interests in AAS, Gentile and Schneider individually obtained over \$13 million each for marketing the GPB Funds. As explained below, that money should never have been paid to them, as their conduct was unlawful and fraudulent.

61. It was Ascendant's responsibility to line up independent broker-dealers and investment adviser firms that would sell the GPB Funds to their retail clients. 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.

62. 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 responses to DDQs often contained detailed information about the performance and strategies of the GPB Funds.

II. Defendants Misrepresented the Source of Monthly Distributions to Investors

63. 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 advisers 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 private placement memoranda and other offering documents, marketing documents, responses to due diligence questionnaires and correspondence with potential investors and salespeople.

64. Given the low interest-rate environment that prevailed during the time the GPB Funds were offered, the robust 8 percent 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.

65. For example, an August 2014 GPB Capital response to a DDQ touted 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." Another GPB Capital DDQ response prepared in December 2014 described the fund as a "unique offering with virtually no competition in the marketplace." In differentiating the fund from other investments, GPB Capital identified as "of utmost importance" the representation that the fund "is the only income producing private equity offering in the space" paying distributions "fully covered with funds from operations."

66. 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.

67. 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 for salespeople and investors. 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.

68. For years, the Defendants mislead investors about these core characteristics of the GPB Funds. 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.

69. 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.

70. 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 zero percent. A negative coverage ratio effectively meant that every dollar distributed to investors was coming from investors' own capital contributions.

71. 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.

72. 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.

73. 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. In reality, these distributions were largely a return of investors' own capital, at the expense of long-term returns.

A. GPB Holdings, LP

74. 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. 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 2016 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."

75. However, for the full year 2014, Holding's income fell far short of the roughly \$2.5 million in distributions it paid to investors. Effectively, a substantial portion of the distributions Holdings paid out in 2014 was simply a return of the investors' own capital. Defendants covered up this shortfall by manufacturing fictitious "performance guarantees" and falsifying financial statements.

76. 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.

77. The falsehood in the financial statements had its roots in February of 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."

78. To help cover up the shortfall GPB Capital created back-dated "performance guarantees" from Lash to the two-auto dealerships. The performance guarantees 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.

79. As an Ascendant Managing Director wrote in an October 2015 email, the guarantees 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 guarantee 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.

80. Gentile, Schneider, Lash, and owner-operator A 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 [owner-operator A], to the amount of the true up this week."

81. On March 18, 2015, Gentile texted Schneider and Lash asking them:

please get on a call now with K[B] [KB, a partner at the accounting firm GP&B]. . . . K 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 K 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 guarantees.

82. The amounts supposedly due under the performance guarantees 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?"

83. The fictional guarantee were also part of a false marketing scheme. GPB Capital was marketing and offering a new fund in April 2015, called Holdings II. 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.

84. 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 guarantee was being crafted at the time, texted Gentile and Schneider that he had met with GPB Capital's Chief Financial Officer, who told Lash that making another special distribution under the circumstances was "basically suicide."

85. 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.

86. 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."

87. In the summer of 2015, Holdings continued to use investors' money to pay distributions. On August 10, 2015, the fund administrator Phoenix American 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 and then back to Phoenix American for distribution to existing investors.

88. Gentile was fully aware of and approved these transactions. In October 2015, a GPB Capital employee emailed Gentile and the then-CFO ("CFO-1") to get approval to move cash from Holdings' investment account to the distribution account (used to make monthly payments to investors).

89. In the next calendar year, May of 2016, Holdings issued a second amended private placement memorandum ("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.

90. 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

\$1.2 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 percent, meaning that every dollar distributed to investors during those three months came from investor capital rather than operations.

91. 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 percent.

92. For full-year 2016, Holdings booked net investment income of \$8.47 million, realized a loss of \$3.6 million, and paid distributions of nearly \$16.5 million, resulting in an annual coverage ratio of 31 percent. In other words, more than two of every three dollars Holdings distributed to limited partners in 2016 came directly from investor funds.

93. In December of 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.

94. 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 were false and misleading. The repeated statements that there were no "present plans" to use investor capital to make distributions were false and misleading.

B. Automotive Portfolio

95. 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.

96. As it had for Holdings, the Defendants marketed the Automotive Portfolio fund and offered it 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.)

97. 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, GPB Capital's 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.

98. 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."

99. This was untrue. Automotive Portfolio recorded a fourth quarter 2015 coverage ratio of only 34%, and an annual coverage ratio of 71%. Measured from the inception of the fund ("inception to date"), Automotive Portfolio's internal record showed the lifetime coverage ratio had fallen to 80%. One of every five dollars distributed to limited partners had come from investor capital rather than profits from operations.

100. Even this 80% coverage rate was inflated. As Defendants had done for Holdings in 2014, Automotive Portfolio's 2015 numbers were inflated by a manufactured performance guarantee from Lash. Like the earlier "guarantee," 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.

101. 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.

102. 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.

103. By late April of 2016, however, Defendants scrapped that plan and decided to increase net investment income by padding Automotive Portfolio's top-line earnings. As GPB's 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 performance guarantee was first conceived of in April 2016 and was not signed by Lash until early May, it falsely purports to have been executed on January 1, 2015.

104. Automotive Portfolio's final 2015 financial statements stated in May of 2016:

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.

105. This statement was misleading. The performance guarantee 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.

106. Even had the performance guarantee 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 guarantee, the fund's inception-to-date coverage ratio at the end of 2015 would have been 61%.

107. 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."

108. 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.

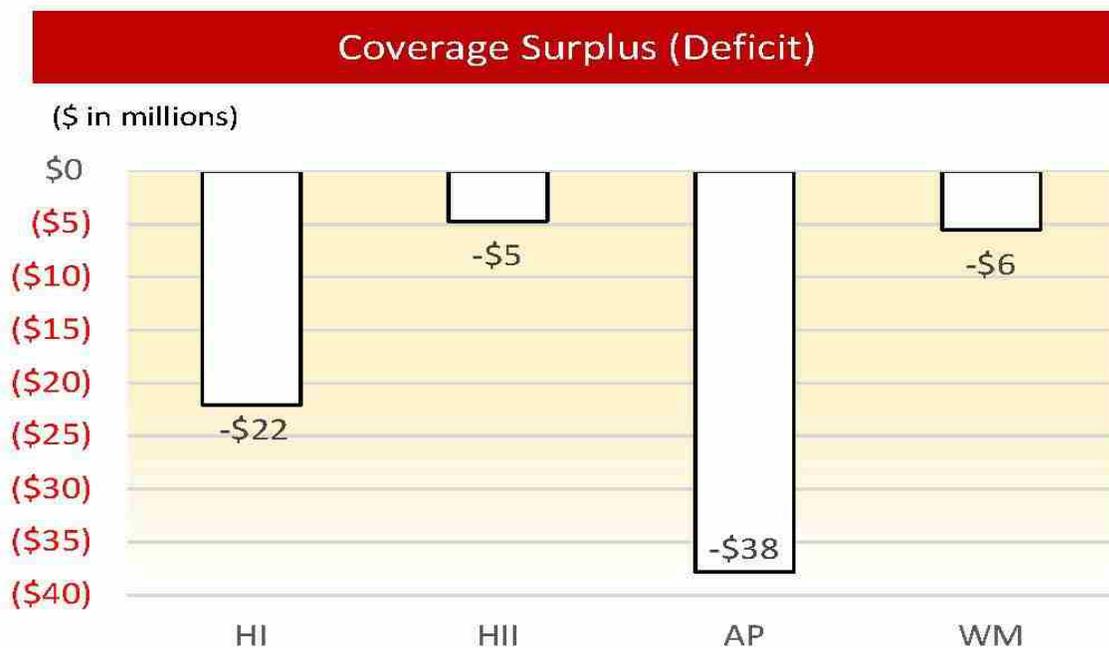
109. In December of 2016, Automotive Portfolio issued yet another amended PPM, and repeated the representation that the fund had "no present plans" to use investor capital to fund investor distributions. This statement was still false and misleading.

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 income from operations. 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, two of every three dollars distributed to limited partners over the previous twelve months had come from investors' capital. The then-GPB Capital CFO ("CFO-2") later stated in sworn testimony that the December 2016 PPM language was not accurate.

110. 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 brand-new investor capital to pay that month's regular distribution to existing investors.

111. Similarly, on July 11, Automotive Portfolio received approximately \$11.5 million of new investor capital from fund administrator Phoenix American. 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.

112. 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.



Defined as inception to date ("ITD") Net Investment Income in excess (deficit) of ITD distributions

113. 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.

114. By August of 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. GPB Holdings II

115. In April of 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 predecessor Holdings. Part of the marketing effort was to falsely tell potential investors that Holdings had paid all distributions out of operating income.

116. 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."

117. 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).

118. 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.

119. In other investor documents and marketing communications, GPB Capital promised unequivocally that all Holdings II's distributions 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."

120. 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 dip 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.

121. 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.

122. 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 of 2017, CFO-2 warned Gentile and Schneider that Holdings II's coverage ratio for the first quarter of 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 distribution to existing investors.

123. 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.”

124. 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.



125. 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.

126. In April and May of 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."

127. Even this disclosure was materially misleading because it failed to disclose that by the end of the first quarter of 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 the first quarter of 2018.

128. 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

129. 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.

130. 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."

131. Waste Management's initial PPM dated August 5, 2016, recited the 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.

132. 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.

133. In May of 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."

134. By the end of second quarter 2017, Waste Management had

a quarterly coverage ratio of only 62%. By the end of 2017, its annual coverage ratio was less than 50%.

135. Nevertheless, as late as October of 2017, Ascendant continued to falsely claim that Waste Management's monthly distributions had been "fully covered with funds from operations since inception."

136. In the first quarter of 2018, Waste Management lost money, but continued to make monthly distributions, 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

137. By August of 2017, CFO-2 circulated a report to senior management, including both Gentile and Schneider, pointing out that each of the GPB Funds were well below full coverage. In fact, CFO-2 estimated that over the twelve-month period ending in June of 2017, only Holdings II had reported positive net investment income. CFO-2 reported that the other three flagship funds were **losing** money on their investments and therefore the implication being that those funds were paying distributions entirely out of investor capital. CFO-2 included a chart that showed the TTM coverage ratios for Holdings, Holdings II and Automotive

Portfolio, all of which were far below 100% and steadily getting worse.



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

139. By the end of the first quarter of 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 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.

ITD Coverage Surplus (Deficit)

(\$ in 000s)



140. GPB Capital officially closed all the GPB Funds to new investment by July 2018, having raised roughly \$1.8 billion in total. By that point, the Director of Fund Accounting calculated that the cumulative coverage deficit was well over \$100 million. A few months later, in December of 2018, GPB Capital directed the GPB Funds to cease payment of the monthly distributions.

141. 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 November of 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 Assume Unwarranted Liabilities

142. 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.

143. 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.

144. The scheme worked as follows: GPBAIF raised money from non-U.S. investors by offering 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%.

145. Upon information and belief, there was no valid business purpose for Automotive Portfolio and Holdings to borrow the money in the first place. 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 at an exorbitant interest rate. 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.

146. Nevertheless, Gentile and GPB Capital directed Automotive Portfolio to borrow \$12 million from Borrower in October of 2015, thereby 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 of 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.

147. 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.

148. Schneider and Ascendant also benefitted from this arrangement. Upon information and belief, they earned commissions on every investment into GPBAIF.

149. Despite the intake of unwarranted interest payments from the fraudulent loans, Borrower ended up sustaining heavy operating losses. In the fifteen months between May of 2015 and August of 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.

150. 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.

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

152. 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.

153. 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):

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

154. 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.

155. A senior executive at Trident Trust, a 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?"

156. In a July 26, 2016 email to CFO-1, the same Trident 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..."

157. 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.

158. 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."

159. 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

160. 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.

161. The existence of interfund loans was material to investors. Indeed, due diligence firms repeatedly asked about them. When challenged, Defendants 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. The PPMs for the GPB Funds Did Not Disclose Initially Defendants' Practice of Interfund Loans

162. Prior to 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.

163. 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.

164. GPB Capital's use of undisclosed loans harmed investors, as illustrated by a fraudulent set of transactions in March and April of 2015. On March 30, 2015, 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

165. 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 FactRight, a third-party diligence

firm that was copied on the June 1, 2015 letter.

166. In October of 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."

167. 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."

168. 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.

169. The same day, Holdings transferred \$25 million to Holdings II in another undocumented transaction.

170. 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.

171. 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.

172. In March of 2016, Holdings II first disclosed the existence interfund loans in its First Amended PPM dated March 7, 2016. In June of 2016, Automotive Portfolio disclosed the practice to its investors. It was not until December of 2016 that Holdings disclosed the practice to its investors.

V. Gentile, Schneider, and Lash Misappropriated Money Through a Shell Company Named LSG

173. Gentile, Schneider, and Lash failed to disclose that they had unlawfully misappropriated portfolio company earnings from 2014 to 2016.

174. 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 ("Lender"), also controlled by Gentile, and (3) EMDYKYCOL, Inc. ("EMDYKYCOL"), 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 former CFO, 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.

A. Defendants Failed to Disclose the Diversion of Financial & Insurance Earnings to Investors

175. 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 of 2017, GPB Capital stated that F&I sales represented 27% of the gross profits of the automotive assets of the GPB Funds in the third quarter of 2016. GPB Capital and its valuation experts classified F&I income as an asset when valuing the dealerships within the GPB Funds.

176. Defendants Gentile, Schneider, and Lash misappropriated F&I monies from two groups of car dealerships: nearly \$500,000 from dealers owned by owner-operator A and more than \$830,000 from a dealership owned by Lash. At owner-operator A'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.

177. Defendants Gentile, Schneider, and Lash carefully tracked the cash they diverted from the owner-operator A 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	
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	
Owner-Operator A												
Partner 1		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)

178. As shown in the statement above, during this period, Gentile, Schneider, and Lash received almost \$500,000 in F&I profits from owner-operator A's dealerships.

179. Defendants 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 owner-operator A'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.

180. 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 the GPB Funds. These diversions were not disclosed to investors.

181. 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

182. Schneider and Gentile together received over \$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, they denied it.

183. 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.

184. 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.

185. 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).

186. 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.

187. 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, FactRight, the 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.**

188. FactRight 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.

189. 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.

VI. AAS, Gentile, and Schneider Received Undisclosed and Unwarranted Fees and Commissions

190. As part of the 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.

191. 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.

192. Between 2013 and 2018, the GPB Funds paid acquisition fees of more than \$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.

193. 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.

194. 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.

VII. GPB Capital Engaged in Conflicted Transactions

195. 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 GPB Capital Advisory Committee Members Were Not Independent.

196. Multiple members of GPB Capital's Advisory Committee ("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])."

197. 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 approximately August of 2014, and eventually named him a Managing Director and Head of IT Strategies. In approximately 2015, AC Member also became a Senior Advisor to Ascendant. AC Member continued to participate in the Advisory Committee despite these employment relationships.

198. 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.

199. 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 Grand Parkway Capital, LLC, 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.

200. 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 Engage in Related-Party Transactions Without Advisory Committee Approval

201. In addition, prior to late 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.

202. 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.

203. The following year, in October 2015, the GPB Investment Committee (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."

204. 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 on information and belief, there was no Advisory Committee approval of the acquisition.

VIII. Gentile, Schneider and Others Engaged in Persistent Self-Dealing and Conflicted Transactions

205. 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. Defendants Failed to Disclose Years of Conflicts of Interest and Related-Party Consultant Engagements in the GPB Funds

206. While Defendants represented to investors that its funds would avoid related-party transactions, the GPB Funds made payments to individuals and entities closely linked to Gentile,

including to one of Gentile's brothers-in-law as manager of GPB Cold Storage fund and to his wife's now-defunct law firm, Cardali & Cardali. Cardali & Cardali's owners were Gentile's wife and a brother-in-law. A third brother-in-law became GPB Capital's initial CFO.

207. As to Cardali & Cardali, as of March 24, 2017, GPB had paid Cardali & Cardali 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 Cardali & Cardali over \$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 Cardali & Cardali, GPB Capital also paid her \$91,291 individually as a so-called "payroll expense."

208. GPB Capital failed to disclose to investors that Cardali & Cardali, 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

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

210. 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, Margolin Winer & Evans LLP ("Margolin"), show: (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, Margolin noted, "includes David's 50th Bday."

211. 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.

212. Gentile even used fund assets to buy himself a Ferrari at investors' expense. In November of 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.

213. 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.

214. 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."

215. Gentile not only indulged himself at investors' expense, he also apparently gave free rein to abuses by others. In October of 2017, David Rosenberg, a manager in GPB Capital's automotive business, eventually wrote to Gentile to stress the need to "clean up" GPB's culture. Specifically, "[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)."

COUNT I

EMPLOYING ANY DEVICE, SCHEME OR ARTIFICE TO DEFRAUD, IN VIOLATION OF N.J.S.A. 49:3-52 (a)

216. Plaintiff repeats and incorporates the allegations in the preceding paragraphs as if more fully set forth herein.

217. Pursuant to N.J.S.A. 49:3-52:

It shall be unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly

. . . .

(a) To employ any device, scheme, or artifice to defraud[.]

218. Defendants directly and/or indirectly employed a device, scheme or artifice to defraud investors, in violation of N.J.S.A. 49:3-52(a) by, among other things:

- a. Misrepresenting and omitting to state material facts in connection with the offer and sale of the securities;
- b. GPB Capital, Gentile, Schneider, and Lash falsifying financial statements by adding fictitious performance guarantee payments by Lash which created a false appearance to investors of illusory profits earned by certain Fund auto dealerships owned by Lash and inflating the income of certain GPB Funds;
- c. Gentile, Schneider, and Lash using investor funds without investor knowledge for personal benefit, including private jets, and luxury automobiles;
- d. Gentile and GPB Capital causing certain GPB Funds to borrow unneeded money at high interest rates from other GPB entities and to assume unwarranted liabilities;
- e. GPB Capital making numerous undisclosed interfund loans;
- f. Gentile, Schneider, and Lash misappropriating funds and business opportunities through shell company LSG;
- g. Gentile and Schneider receiving stipends and fees from portfolio companies that were not adequately disclosed to investors;
- h. AAS, Gentile, and Schneider receiving undisclosed and unwarranted fees and commissions;
- i. Gentile and GPB Capital engaging in conflicted transactions; and
- j. Gentile, Schneider, and others engaging in persistent and undisclosed self-dealing and conflicted transactions.

219. Each device, scheme or artifice to defraud is a violation

of N.J.S.A. 49:3-52(a).

220. Each violation of N.J.S.A. 49:3-52(a) by each Defendant upon each investor is a separate violation and is cause for the imposition of civil monetary penalties pursuant to N.J.S.A. 49:3-70.1.

COUNT II

**MAKING UNTRUE STATEMENTS OF A MATERIAL FACT OR
OMITTING TO STATE A MATERIAL FACT NECESSARY IN ORDER
TO MAKE THE STATEMENTS MADE, IN LIGHT OF THE
CIRCUMSTANCES UNDER WHICH THEY ARE MADE, NOT
MISLEADING, IN VIOLATION OF N.J.S.A. 49:3-52(b)**

221. Plaintiff repeats and incorporates the allegations in the preceding paragraphs as if more fully set forth herein.

222. Pursuant to N.J.S.A. 49:3-52(b):

It shall be unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly

. . . .

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading[.]

223. Defendants made materially false and misleading statements and/or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading to investors.

224. As demonstrated above, Defendants made materially false and misleading statements to its fund investors, by:

- a. Representing that Fund distributions would be fully funded from the operations of the portfolio of companies in which the Funds were invested;
- b. Representing that the Funds had no present intention of making distributions from a return of investor capital, when the Funds had been making significant distributions from investor capital and had every intention of continuing to do so;
- c. Representing that the Funds were not and would not be engaging in interfund transactions, where the Funds were engaging in interfund transactions and continued to do so; and
- d. Creating back-dated and misleading "performance guarantees" by Lash that created a false appearance to investors of illusory profits earned by certain Fund auto dealerships owned by Lash and inflating the income of certain GPB Funds.

225. Additionally, Defendants omitted to state material facts to fund investors, including:

- a. Gentile owned a 33% interest in the broker-dealer distributing the GPB Funds which allowed him to collect approximately \$16,000,000 in fraudulent acquisition fees;
- b. Schneider's pivotal role in the formation, management, and marketing of GPB Capital and the GPB Funds;
- c. Schneider's long and troubled regulatory history, including termination for involvement in a fraudulent scheme, regulatory sanctions, fines, suspensions, and numerous customer complaints alleging unauthorized trading, unsuitable investments, excessive trading, and misrepresentation;
- d. Certain GPB Funds borrowed unneeded money at high rates from other GPB entities and assumed unwarranted liabilities;
- e. GPB Capital made numerous undisclosed interfund loans;

- f. Gentile, Schneider, and Lash misappropriated funds and business opportunities through shell company LSG;
- g. Gentile and Schneider received stipends and fees from portfolio companies that were not adequately disclosed to investors;
- h. AAS, Gentile, and Schneider received undisclosed and unwarranted fees and commissions;
- i. Gentile and GPB Capital engaged in conflicted transactions;
- j. Gentile, Schneider, and others engaged in persistent and undisclosed self-dealing and conflicted transactions;
- k. Using investor funds for personal benefit, including private jets, and luxury automobiles; and
- l. The creation of false and misleading performance guarantees by Lash that conveyed a false appearance of illusory profits in certain auto dealerships owned by Lash and which inflated the income of certain of the GPB Funds.

226. Each materially false or misleading statement and each omission of a material fact is a violation of N.J.S.A 49:3-52(b).

227. Each violation of N.J.S.A. 49:3-52(b) by Defendants upon each GPB Fund investor is a separate violation and is cause for the imposition of a civil monetary penalty pursuant to N.J.S.A. 49:3-70.1.

COUNT III

ENGAGING IN ANY ACT, PRACTICE, OR COURSE OF BUSINESS WHICH OPERATES OR WOULD OPERATE AS A FRAUD OR DECEIT

UPON ANY PERSON, IN VIOLATION OF N.J.S.A. 49:3-52(c)

228. Plaintiff repeats the allegations in the preceding paragraphs as if more fully set forth herein.

229. Pursuant to N.J.S.A. 49:3-52(c):

It shall be unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly

. . . .

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

230. As alleged above, Defendants engaged in an act, practice, or course of business which operated or would operate as a fraud or deceit on investors, including by:

- a. Misrepresenting and omitting to state material facts in connection with the offer and sale of the securities;
- b. GPB Capital, Gentile, Schneider, and Lash falsifying financial statements by adding fictitious performance guarantee payments by Lash which created a false appearance to investors of illusory profits earned by certain Fund auto dealerships owned by Lash and inflating the income of certain GPB Funds;
- c. Gentile, Schneider, and Lash using investor funds without investor knowledge for personal benefit, including private jets, and luxury automobiles;
- d. Gentile and GPB Capital causing certain GPB Funds to borrow unneeded money at high interest rates from other GPB entities and to assume unwarranted liabilities;
- e. GPB Capital making numerous undisclosed interfund loans;
- f. Gentile, Schneider, and Lash misappropriating funds and business opportunities through shell company LSG;

- g. Gentile and Schneider receiving stipends and fees from portfolio companies that were not adequately disclosed to investors;
- h. AAS, Gentile, and Schneider receiving undisclosed and unwarranted fees and commissions;
- i. Gentile and GPB Capital engaging in conflicted transactions; and
- j. Gentile, Schneider, and others engaging in persistent and undisclosed self-dealing and conflicted transactions.

231. Each violation of N.J.S.A. 49:3-52(c) by Defendants upon each investor is a separate violation and is cause for the imposition of a civil monetary penalty pursuant to N.J.S.A. 49:3-70.1.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the entry of a judgment pursuant to N.J.S.A. 49:3-47 to -89:

- A. Finding that Defendants engaged in the acts and practices alleged above;
- B. Finding that such acts and practices constitute violations of the Securities Law;
- C. Permanently enjoining Defendants from violating the Securities Law in any manner;
- D. Permanently enjoining Defendants from engaging in the securities business in New Jersey in any capacity, including, but not limited to, acting as a broker-

dealer, investment adviser, investment adviser representative, agent, or otherwise;

E. Permanently enjoining the issuance, sale, offer for sale, purchase, offer to purchase, promotion, negotiation, solicitation, advertisement, or distribution from or within New Jersey of any securities, by or on behalf of Defendant GPB Capital Holdings, LLC, any Funds to which GPB Capital Holdings, LLC is a general or limited partner or adviser, and its employees, agents, brokers, partners, stockholders, attorneys, successors, subsidiaries, members, and affiliates;

F. Permanently enjoining Defendants GPB Capital Holdings, LLC, Gentile, and Schneider from directly or indirectly controlling any issuer as that term is defined in N.J.S.A. 49:3-49(h);

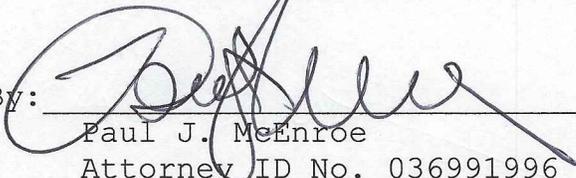
G. Permanently enjoining Defendants from receiving, directly or indirectly, any fees, stipends, commissions, compensation or any other remuneration, things of value, or any other monetary or financial benefit from any of the GPB Funds;

H. Permanently enjoining Defendants GPB Capital Holdings, LLC, Gentile, or Schneider from acting as an officer or director of, or directly or indirectly occupying any

managerial or advisory role with respect to any of the
GPB Funds;

- I. Assessing civil monetary penalties against Defendants,
jointly and severally, for each violation of the
Securities Law in accordance with N.J.S.A. 49:3-70.1;
- J. Requiring Defendants, jointly and severally, to pay
restitution to all GPB Fund investors;
- K. Requiring Defendants to disgorge all monies gained
through violations of the Securities Laws; and
- L. Affording Plaintiff any additional relief the Court may
deem just and equitable.

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: 

Paul J. McEnroe
Attorney ID No. 036991996
Deputy Attorney General
Michael G. Eleneski
Attorney ID No. 185332016
Deputy Attorney General

Brian F. McDonough
Assistant Attorney General
Attorney ID No. 026121980

DATED: February 4, 2021
Newark, New Jersey

RULE 1:38-7(c) CERTIFICATION OF COMPLIANCE

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

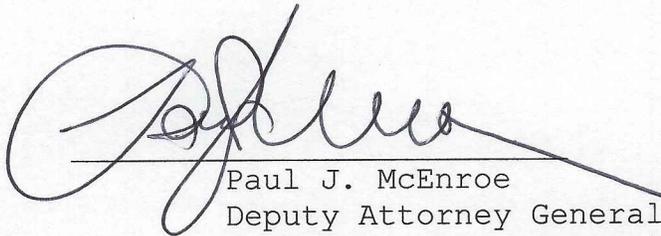


Paul J. McEnroe
Deputy Attorney General
Attorney ID No. 036991996

Dated: February 4, 2021
Newark, New Jersey

RULE 4:5-1 CERTIFICATION

I certify, based on my personal knowledge, that the matter in controversy in this action involving the aforementioned violations of the Securities Law in this complaint, is not the subject of any other action in any other court of this State. I certify, based on my personal knowledge, that the matter in controversy in this action is not the subject of a pending arbitration proceeding in this State, nor is any other action or arbitration proceeding contemplated, except, that the New Jersey Bureau of Securities is issuing a Summary Order of Revocation against defendants Jeffry Schneider and Ascendant Alternative Strategies, LLC arising out of the subject matter of this complaint. I certify that there is no other party who should be joined in this action at this time.



Paul J. McEnroe
Deputy Attorney General
Attorney ID No. 036991996

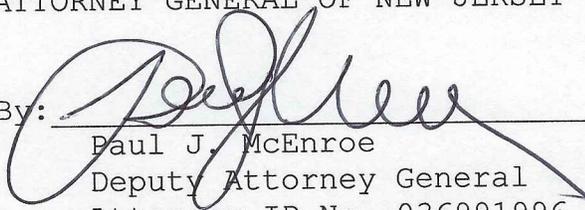
Dated: February 4, 2021
Newark, New Jersey

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Deputy Attorney General Paul J. McEnroe is hereby designated as trial counsel for Plaintiff in this action.

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: _____


Paul J. McEnroe
Deputy Attorney General
Attorney ID No. 036991996

Dated: February 4, 2021
Newark, New Jersey