



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

JEFF LIPMAN and CAROL  
LIPMAN, Derivatively on Behalf of  
GPB HOLDINGS II, LP and GPB  
AUTOMOTIVE PORTFOLIO, LP,

Plaintiffs,

v.

GPB CAPITAL HOLDINGS, LLC, a  
Delaware limited liability company,  
DAVID GENTILE, JEFFREY  
LASH, and JEFFREY SCHNEIDER,

Defendants,

and

GPB HOLDINGS II, LP, a Delaware  
limited partnership and GPB  
AUTOMOTIVE PORTFOLIO, LP, a  
Delaware limited partnership,

Nominal Defendants.

C.A. No. 2020-0054-SG

PUBLIC VERSION FILED:  
January 31, 2020

**VERIFIED DERIVATIVE COMPLAINT**

Plaintiffs Jeff and Carol Lipman (“Plaintiffs”), on behalf of GPB Holdings II, LP (“Holdings II”) and GPB Automotive Portfolio, LP (“Auto,” and together with Holdings II, the “Partnerships”), bring the following Verified Derivative Complaint (the “Complaint”) for (1) damages resulting from the breach of fiduciary duties by Defendant GPB Capital Holdings, LLC (“GPB” or the “General Partner”) as the General Partner of Holdings II and Auto, and from the aiding and abetting of those breaches by individual defendants, and (2) for a declaration that GPB has engaged

in fraud, gross negligence, or willful misconduct which has had a material effect on the Partnerships. The allegations of the Complaint are based on Plaintiffs' knowledge as to themselves. All other matters are based on information and belief, including the investigation of counsel and their inspection of books and records pursuant to 6 Del. C. § 17-305, and their review of publicly available information.

### **INTRODUCTION**

1. This case concerns the mismanagement of one of the nation's largest automobile dealership groups by scoundrels who never should have been allowed to run a legitimate company.

2. The Partnerships were set up as funds that would invest in, among other things, successful automotive retail dealerships, generating revenue that would provide limited partners with a lucrative return on their investment. Toward that end, GPB bought a majority interest in dozens of dealerships, and eventually acquired through the Partnerships a majority interest in Prime Automotive Group, which Automotive News ranked as the 11th largest dealership group in the country based on 2018 new-vehicle retail sales.

3. However, as a result of the bad faith and misconduct of GPB and the other Defendants, the assets of the Partnerships have been cannibalized to enrich Defendants and to satisfy GPB's pie-in-the-sky promises to investors, to the

detriment of the Partnerships. This in turn has hobbled the Partnerships' ability to grow and take advantage of any legitimate business opportunities.

4. In addition, the Partnerships have incurred substantial legal and other expenses and indemnification obligations as a result of myriad investigations, proceedings, and litigation arising from GPB's mismanagement of the Partnerships and the potentially criminal conduct of its officers. These unnecessary and costly distractions also have diverted the attention of personnel of the Partnerships away from legitimate, profitable business activities and therefore created substantial opportunity costs.

5. Absent the Court's intervention, GPB's looting and mismanagement of the Partnerships will go unaddressed. At a minimum, the Partnerships will continue unguided with no driver and no map, as GPB is besieged from all sides in a catastrophe of its own making.

### **THE PARTIES**

6. Plaintiffs Jeff Lipman and Carol Lipman have been, and continue to be, limited partners of both Holdings II and of Auto and were limited partners at the time of the wrongs alleged in this Complaint. Plaintiffs invested ██████ in Holdings II and ██████ in Auto, pursuant to private placement memoranda.

7. Nominal Defendant Holdings II is a Delaware limited partnership that shares an office in Manhattan with GPB. Holdings II reportedly raised approximately \$650 million from investors. Holdings II was formed in 2015 to acquire and operate automotive retail, healthcare, and information technology companies.

8. Nominal Defendant Auto is a Delaware limited partnership that shares an office in Manhattan with GPB. Auto reportedly raised approximately \$622 million from investors. Auto was formed in 2013 to acquire and operate automotive dealerships.

9. Defendant GPB is a Delaware limited liability company and has been the General Partner of both Holdings II and Auto during all breaches of fiduciary duty alleged in this Complaint. GPB manages several investment funds and, working with independent broker-dealers, has raised more than \$1.5 billion from investors invested under Regulation D through a variety of unregistered private placements, including Holdings II and Auto. Its principal place of business is located in Chelsea at 535 West 24th Street, New York, New York 10011, which is also the office of the Partnerships.

10. GPB rapidly grew its automobile dealership portfolio from four stores in 2013 to more than 60 by the end of 2017. In Fall 2017, GPB acquired a majority

stake in Prime Motor Group from Abrams Capital, which it then combined with Capstone Automotive Group to form Prime Automotive Group. In February 2019, Prime Motor Group, with funding from GPB, also acquired Gallery Automotive Group.

11. Since beginning its investments in auto dealerships in 2013, GPB has diversified its portfolio to include funds in other growth industries. Other funds managed by GPB include Armada Waste Management, LP (formerly known as GPB Waste Management, LP); GPB Cold Storage, LP; GPB Holdings, LP; GPB Holdings Qualified, LP; GPB Holdings II, LP; GPB Holdings III, LP; GPB NYC Development; GPB Scientific, LLC; and GPB Eurobond Finance PLC.

12. Defendant David Gentile is the sole member and Chief Executive Officer (“CEO”) of GPB. As CEO of GPB, Gentile has been actively involved in the day-to-day operations of the Partnerships and also in their marketing to limited partners such as Plaintiffs through private placement memoranda.

13. Defendant Jeffrey Lash is a former automotive retail director of GPB who managed many of the retail dealerships in which GPB acquired majority control. Together, Gentile and Lash engaged in various improper transactions that enriched themselves personally and/or artificially inflated the results of the Partnerships.

14. Defendant Jeffrey Schneider is the founder of investment firm Ascendant Alternative Strategies, LLC, the exclusive dealer manager of GPB's funds. Ascendant received a subpoena from the SEC in October 2018 in connection with the SEC's investigation of GPB (described below). According to a former GPB automotive director, Schneider and Gentile engaged in various schemes to direct assets of the Partnerships to themselves for their own benefit.

### **SUBSTANTIVE ALLEGATIONS**

#### **Defendants Cannibalize The Partnerships And Enrich Themselves**

15. To coax investors to become limited partners in the entities it managed, GPB represented that they would receive monthly distributions that would run at an 8% annual rate of return.

16. This return on equity was unsustainable over even the short- to medium-term, particularly when one considers the many ways in which Defendants engaged in self-interested transactions and otherwise directed the assets of the Partnerships to themselves, rather than using them to grow the stated business of the Partnerships.

17. For example, in July 2017, GPB sued former automotive retail director Patrick DiBre over an alleged failure to complete auto dealership sales valued at \$40 million. In March 2018, Patrick DiBre alleged in a counterclaim that senior GPB

executives had engaged in a pattern of self-dealing, effectively diverting Partnership assets to themselves without disclosing their self-interested transactions. Among other things, DiBre alleged that: (i) Gentile and Schneider indirectly purchased property on which a dealership located and charged the dealership rent; (ii) Gentile and Schneider received undisclosed stipends from dealerships acquired by GPB; (iii) Gentile and Schneider created an entity, LSG, to which they directed more than \$4 million from reinsurance funds and manufacturer rebates that should have gone to dealerships and ultimately to the Partnerships;<sup>1</sup> (iv) Gentile engaged his father's accounting firm to perform approximately \$100,000 worth of services each month, and those services either were not performed or were overbilled; (v) Gentile and Schneider expensed various luxury items for their own personal use; and (vi) Gentile and Schneider overstated the purchase price for dealerships and then redirected the overage to themselves in the form of "acquisition fees."

18. In July 2019, David Rosenberg, the chief executive officer of Prime Automotive, filed a lawsuit in Massachusetts state court over GPB's failure to make a \$5.9 million payment under a March 1, 2019 Amended and Restated Repurchase Agreement. Among other things, Rosenberg stated that GPB refused to pay him and

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<sup>1</sup> As discussed below, Defendants Gentile, Schneider, and Lash all were involved in the LSG scheme.

sought to replace him as CEO of Prime Automotive after he reported GPB's alleged financial misconduct to EisnerAmper LLP ("EisnerAmper"), the auditor of the Partnerships.<sup>2</sup>

19. Rosenberg's complaint contained several detailed allegations summarizing how Gentile and Lash, among others, had engaged in fictitious transactions and other improper accounting procedures both to enrich themselves and to inflate the Partnerships' financial results.

20. For example, Rosenberg alleged:

Gentile and Lash had funneled nearly \$2,000,000 in revenue to entities they controlled, including some under the guise of "management fees." For the year 2015, \$201,7076 was transferred to Emdykycol, Inc., and \$201,706 was transferred to Jachirijo, Inc., an entity owned by Gentile. Upon information and belief, Emdykycol, Inc. is owned by Lash and is owned by Gentile. Dealership funds have also been siphoned off to LSG Auto Wholesale, an entity named for Lash, Schneider (a close associate of Gentile), and Gentile. Upon information and belief, the payments described above served no legitimate purpose nor were they disclosed to investors.

(underlining in original).

21. Rosenberg also alleged, upon information and belief, that: (i) Lash improperly drew an advance of \$750,000 that he labelled a "retention bonus," which he then distributed to himself and others; (ii) Lash and others inexplicably received

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<sup>2</sup> On September 16, 2019, GPB did in fact replace Rosenberg as CEO of Prime Automotive with Kevin Westfall.

approximately \$100,000 worth of sporting vehicles and equipment after the close of a dealership purchase, suggesting a kickback arrangement; and (iii) Lash and others orchestrated kickback payments to themselves of \$100 per vehicle for every Canadian used car purchase.

22. To prevent limited partners from realizing that GPB had promised more than it reasonably could deliver (particularly in light of Defendants' own self-interested transactions), GPB further exacerbated the problem by using the individual capital accounts of limited partners to fund "distributions." GPB implied that, as it previously had represented, the retail dealerships in which it had invested could throw off enough cash to allow the regular payment of distributions. In fact, GPB was simply "robbing Peter to pay Peter," by returning the limited partners' own capital to them and characterizing it as a return on investment. This in turn created a vicious cycle in which GPB would need to continue to withdraw capital from the accounts of new investors (or even the same ones) to perpetuate the illusion of a cash cow.

23. GPB's clumsy effort to cover its tracks could not go on for long. Even if the capital accounts did not themselves run out of funds before someone noticed the Partnerships were not actually earning enormous profits, annual tax returns would force a day of reckoning due to the different tax treatment applicable to a

return of capital. GPB therefore has stonewalled and put off as long as possible the completion of the Partnerships' audits and the preparation of audited financial statements and K-1 Forms.<sup>3</sup> However, as Lash, Gentile, and others had engaged for a period of years in fictitious and other transactions that were not compliant with Generally Accepted Accounting Principles ("GAAP"), this auditing delay also made it more difficult for the Partnerships to document misconduct and to recover from persons who had breached their fiduciary duties to the Partnerships by enriching themselves.

### **GPB's Mismanagement Implodes**

24. In December 2017, GPB reported in a letter to limited partners that the Partnerships had failed to meet performance expectations in 2018 and likely would have an intangible asset impairment charge. GPB stated its intention to divest certain underperforming assets, which would report a net loss from operations for fiscal year 2018.

25. GPB assured investors it would provide more detail on divestitures in forthcoming audited financial statements.

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<sup>3</sup> A Schedule K-1 (Form 1065) is the annual form that reports investments in partnership interests.

26. As of April 2018, however, the Partnerships had failed to provide the U.S. Securities and Exchange Commission (“SEC”) with required audited financial statements. That summer, GPB announced that financial statements for the Partnerships for 2015 and 2016 would need to be restated.

27. GPB did not, however, disclose the reason for the restatement – specifically, the attempted resignation of Crowe LLP (“Crowe”) as auditor for the General Partner and several entities managed by the General Partner, including Auto.<sup>4</sup> In a July 27, 2018 resignation letter, Crowe, which had replaced Auto’s prior auditor in 2016, stated several damning conclusions concerning Auto’s financial statements, including:

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>4</sup> In response to a books and records demand by Plaintiffs described below, GPB claimed that Crowe has never been the auditor of Holdings II and that Holdings II’s auditor did not resign, but has not disclosed an alternative reason for GPB’s ongoing failure to provide audited financial statements for Holdings II on a timely basis.

[REDACTED]

[REDACTED]

28. In a second resignation letter also dated July 27, 2018, Crowe stated its resignation as auditor for GPB Capital Holding, LLC (the General Partner itself); GPB Holdings, LP; GPB Holdings Qualified, LP; GPB Automotive Income Fund, Ltd. and GPB Automotive Income Sub-Fund, Ltd.; and Ron Carter Autoworld, LLC and Alvin Autoworld, LLC, was based on [REDACTED]

[REDACTED] Crowe stated that as a result, its audit reports on those statements [REDACTED]

[REDACTED]

29. In response to these letters, GPB's Chief Executive Officer David Gentile, its Interim Chief Financial Officer Kyle Brengel, and its counsel James Prestiano met with Crowe, entreating the auditor to remain engaged [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

30. Based on the representations by GPB, on August 2, 2018, Crowe sent GPB two letters in which [REDACTED]

[REDACTED] Crowe stated that it would [REDACTED]

[REDACTED]

[REDACTED] Crowe clarified that it [REDACTED]

[REDACTED]

[REDACTED]

31. On September 26, 2018, Crowe sent a follow up letter in which [REDACTED]

[REDACTED]

[REDACTED] GPB would fail to disclose this highly material information for another six weeks, and even then, GPB's disclosure still omitted material details regarding Crowe's resignation.

**GPB Continues to Prolong Audits of The Partnerships**

32. The Partnerships still lack the promised restated financial statements for fiscal years 2015 and 2016, to say nothing of original audited financial statements for 2017 and 2018. Thus, the Partnerships have failed to provide Plaintiffs with

audited financial statements on a timely basis, despite provisions in the Partnerships' limited partnership agreements that require such statements to be prepared in compliance with GAAP every year and forwarded to all limited partners. For reasons that should be apparent, this problem is likely to continue in perpetuity until GPB is replaced as General Partner.

33. In November 2018, GPB announced that it was temporarily suspending redemptions by limited partners and not accepting any new capital from investors, while it attempted to resolve accounting and financial reporting issues at Holdings II and Auto.

34. GPB also belatedly disclosed in November that Crowe, Auto's public auditor, had resigned, and offered a materially incomplete and misleading explanation for the resignation. According to Gentile's "Dear Valued Partner" letter dated November 9, 2018, Crowe's resignation was "due to perceived risks [Crowe] determined fell outside of their internal risk tolerance parameters." This late disclosure did not mention that Crowe had informed GPB in July that it was resigning for a number of reasons including: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

35. Thus, rather than promptly disclosing the resignation, GPB waited until it had found a replacement auditor, EisnerAmper, and implied that Crowe had only recently elected to resign. GPB also made a vague reference to risk tolerance and suggested that Crowe “had been awaiting our 2017 draft financial statements, including supplementary information,” rather than disclosing in its November 9 letter that among the reasons for Crowe’s resignation was the fact that [REDACTED]

[REDACTED]

[REDACTED]

36. Taken together, even the events that had been disclosed signaled that the Partnerships would likely not be in a position to prepare restated or new financial statements in compliance with GAAP by the end of 2018. That was only the tip of the iceberg.

37. In March 2019, GPB informed limited partners that it would not be providing them with Schedule K-1 documents before the April 15, 2019 tax filing deadline.

38. In April 2019, GPB finally disclosed that the audits of Holdings II and Auto were being delayed due to internal deficiencies. However, GPB indicated the June 2017 audits would be complete by June 30, 2019 and the 2018 audits would be

complete by September 30, 2019.

39. In June 2019, GPB once again kicked the can on its audits, this time predicting that audits for 2016, 2017, and 2018 all would be released on September 30, 2019.

40. On August 30, 2019, Plaintiffs made a demand on GPB for an inspection of Partnership books and records relating to, among other things, GPB's failure to provide audited financial statements for the Partnerships.

41. In September 2019, GPB stated that as a result of SEC and FBI investigations, it now expected audits to be completed by the end of 2019.

42. As discussed below, in November 2019, GPB's Audit Committee elected to resign *en masse* and its new auditor suspended its pending work indefinitely. Thus, yet another deadline for providing audited financial statements came and went without the required information. As of this filing, the Partnerships still do not have audited financial statements for 2015 and 2016, let alone more recent years, and now there is not even a target date for GPB to ignore.

### **A High-Ranking GPB Officer Is Indicted for Obstruction of Justice**

43. In October 2019, a federal indictment was unsealed that charged GPB's Managing Director and Chief Compliance Officer, Michael Cohn, with obstruction of justice relating to an SEC investigation of GPB. The indictment states that during

the period from September 2018 to October 2018 while Cohn worked in the SEC's Enforcement Division, he retrieved information concerning an investigation of GPB from databases he was not authorized to access. At the same time, while interviewing with GPB for a high-ranking position, Cohn advised that he had inside information about the SEC's investigation. Rather than show Cohn the door and immediately alert law enforcement authorities, GPB instead hired him for a lucrative compliance position paying \$400,000 per year, which he began in October 2018. After the indictment was unsealed, GPB appointed Aileen Doherty as its new Chief Compliance Officer and scrubbed all mentions of Cohn from its website.

44. In November 2019, a former compliance officer for broker-dealer Purshe Kaplan Sterling, Toni Caiazzo Neff, gave a press conference in which she stated that she believed her confidential report to FINRA had been among the confidential materials stolen by Cohn during his tenure with the SEC. Neff claimed that since the indictment of Cohn had been made public, she had been followed and the lug nuts on her car had been tampered with.

45. Also, in November 2019, GPB reported that in light of the Cohn indictment and a related private investigation by a law firm retained by GPB: (i) EisnerAmper, the accounting firm hired by GPB after Crowe's resignation, was immediately suspending its work reviewing outstanding financial statements; and

(ii) GPB's Audit Committee had elected to resign no later than November 27, 2019.

**GPB's Problems Have Become the Partnerships' Problems**

46. The bad faith misconduct of GPB has caused the Partnerships to be the subject of several investigative proceedings, arbitrations, and litigations, potentially exposing the Partnerships to indemnification obligations, and otherwise resulting in unnecessary legal and other expenses for the Partnerships.

47. For example, the SEC continues to investigate the possibility of securities fraud in connection with the marketing of the Partnerships.

48. Moreover, in addition to an investigation by the Financial Industry Regulatory Authority ("FINRA"), investors have filed arbitrations with FINRA against broker-dealers who sold them units in the Partnerships. These arbitrations likely will lead to demands by broker-dealers for indemnification and/or other expenses (including opportunity costs) to the Partnerships.

49. Other regulators also took interest in the Partnerships' accounting and marketing practices. In September 2018, the Commonwealth of Massachusetts announced it was investigating dozens of broker-dealers that had helped GPB to market the Partnerships. In October 2018, GPB received a subpoena from the New Jersey Bureau of Securities. On information and belief, certain government entities have retained external counsel whose fees and expenses they may seek to recover

from the Partnerships.

50. The former executives mentioned above, DiBre, Rosenberg, and Lash, also have been involved in litigation with GPB arising from its management of the auto dealership business. In addition, Cohn is now a defendant in federal criminal proceedings.

51. Other limited partners also have filed individual and class actions against GPB and the Partnerships in state and federal courts in several different jurisdictions. These actions include:

*DeLuca v. GPB Automotive Portfolio, LP*, 1:19-cv-10498-LAK (S.D.N.Y.)

*Wade v. GPB Capital Holdings, LLC*, 1:19-cv-07250-ALC (S.D.N.Y.)

*Kinnie Ma Individual Ret. Account v. Ascendant Capital, LLC*, 1:19-cv-0150 (W.D. Tex.)

*Barasch v. GPB Capital Holdings, LLC*, 1:19-cv-01079 (W.D. Tex.)

*Golder v. GPB Capital Holdings, LLC*, 657232/2019 (N.Y. Sup. Ct.)

*Yunker v. GPB Capital Holdings, LLC*, 157679/2019 (N.Y. Sup. Ct.)

*Purcell v. Potratz*, 30-2019-01115653-CV-FR-CJC (Cal. Sup. Ct.)

All of these actions will result in expenses for the Partnerships, either directly or through demands for indemnification.

52. Costs to the Partnerships will also result from GPB's misconduct and/or mismanagement in connection with its management of other lines of business. For example, in 2017 GPB acquired Five Star Carting, the third largest waste disposal company hauling the commercial waste of New York City businesses, which it manages through its waste management fund, Armada Waste Management, LP. GPB's director of waste strategy is Rodney L. Proto.

53. Proto's name may be familiar, as he was fired by Waste Management in 1999 after serving as its president and chief operating officer, and charged with insider trading by the SEC. In 2002, the SEC charged five other former senior executives of Waste Management with perpetrating a massive financial fraud lasting more than five years. In 2003, Proto agreed to a \$3.7 million fine and a five-year ban from serving as an officer or director of a public company.

54. In summer 2018, GPB received a subpoena from the United States Attorney for the Eastern District of New York as part of a joint investigation by the FBI and the New York City Business Integrity Commission ("BIC") related to GPB's waste management fund. On February 28, 2019, the FBI and the BIC raided the Manhattan office of GPB and the Partnerships.

55. GPB's conduct has created the very likely prospect that GPB's employees and staff, as well as the physical office in which the Partnerships also do

business, will continue to be overwhelmed by a maelstrom of chaos and investigation into all aspects of GPB's various activities.

### **Once Promising Businesses Have Run Aground**

56. GPB's breaches of fiduciary duty have been devastating to the financial health of the Partnerships.

57. In June 2019, Fidelity Investment's National Financial Services stated that it would need to remove GPB's private placements, such as the Partnerships, from its platform within 90 days if it could not determine their true value. In response, GPB admitted the value of its portfolio had declined from approximately \$1.8 billion to approximately \$1.1 billion, and expressed its intention to provide audited statements in Fall 2019, which it still has not done.

58. As for the Partnerships specifically, GPB reported that as of December 31, 2018, Holdings II had lost 25.4% of its fair market value and Auto had lost 39% of its fair market value.

59. Although the Partnerships continue to be invested in many legitimate auto retail dealerships, absent judicial relief, there will be no manager or leadership team who can focus on that business and deploy the assets of the Partnerships in anything resembling a rational, coherent business strategy.

## **DEMAND FUTILITY ALLEGATIONS**

60. Plaintiffs repeat and re-allege each and every allegation as if set forth in full herein.

61. Under Delaware law, a limited partner may bring an action in the Court of Chancery in the right of a limited partnership to recover a judgment in its favor if an effort to cause general partners with authority to bring such an action to do so is not likely to succeed.

62. GPB, the General Partner of the Partnerships, is incapable of disinterestedly and independently considering a pre-suit demand to take corrective action to remedy the injuries alleged in the Complaint.

63. Among other things, GPB has: (i) repeatedly promised to provide limited partners with restated and other audited financial statements, only to miss every deadline and concoct increasingly implausible excuses, in violation of the limited partnership agreements; (ii) disbanded its Audit Committee; (iii) according to a federal indictment, hired as its Chief Compliance Officer an individual with inside knowledge of an SEC investigation into its conduct, who obstructed justice by providing GPB's management with confidential information both during the interview process and after his hiring; (iv) failed to disclose material information to limited partners, such as the revelation that an auditor had resigned due to the lack

of [REDACTED] (v) provided a materially incomplete and misleading explanation for the auditor's resignation when that disclosure finally was made; and (vi) hired persons with a history of having been banned from service as the officer or director of a public company.

64. Accordingly, an effort to cause GPB to bring the claims alleged in this Complaint is not likely to succeed and is therefore excused.

## **COUNT I**

### **Breach of Fiduciary Duty**

#### **(Against GPB)**

65. Plaintiffs repeat and re-allege each and every allegation as if set forth in full herein.

66. As the General Partner of Holdings II and Auto, GPB owes, among other duties, fiduciary duties of loyalty, good faith, care, and candor to the Partnerships. The limited partnership agreements of Holdings II and Auto do not purport to eliminate fiduciary duties. In addition, GPB's contractual obligations under the implied covenant of good faith and fair dealing cannot be waived as a matter of Delaware law.

67. GPB, in tandem with the individual defendants who run it, has knowingly, recklessly, and in bad faith violated its fiduciary duties to the

Partnerships and has acted to put its personal interests ahead of the Partnerships.

68. The Partnerships have been and continue to be injured by GPB's breaches of fiduciary duty.

69. Plaintiffs and the Partnerships have no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiffs and the Partnerships be adequately protected from the ongoing injuries resulting from GPB's inequitable conduct.

## **COUNT II**

### **Breach of Fiduciary Duty And/Or**

### **Aiding and Abetting Breach of Fiduciary Duty**

### **(Against Gentile, Lash, and Schneider)**

70. Plaintiffs repeat and re-allege each and every allegation as if set forth in full herein.

71. GPB has breached the fiduciary duties of care and loyalty it owes to the Partnerships as their General Partner.

72. As the CEO of GPB and as a former senior executive of GPB, respectively, Gentile and Lash also owed fiduciary duties to the Partnerships and breached them through their acts of bad faith and self-enrichment. In the alternative, Gentile and Lash knew that their own actions would cause GPB to breach its

fiduciary duties to the Partnerships and nevertheless continued those actions. Schneider also knew his actions would cause GPB to breach its fiduciary duties to the Partnerships.

73. The Partnerships have been and continue to be injured by the knowing participation of Gentile, Lash, and Schneider in GPB's breaches of fiduciary duty.

74. Plaintiffs and the Partnerships have no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiffs and the Partnerships be adequately protected from the ongoing injuries resulting from Defendants' inequitable conduct.

### **COUNT III**

#### **Declaratory Relief**

75. Plaintiffs repeat and re-allege each and every allegation as if set forth in full herein.

76. This Court has broad powers of equitable relief which it may exercise to ensure that equity is done.

77. The limited partnership agreement for each of the Partnerships provides that the limited partners may, by a vote of at least 20% of unaffiliated limited partners, remove the General Partner after a non-appealable judicial finding that the General Partner has engaged in fraud, gross negligence, or willful misconduct which

has a material effect on the Partnership.

78. At a minimum, GPB has engaged in gross negligence or willful misconduct which has had a material effect on the Partnerships.

79. A declaration by this Court that GPB has engaged in such conduct will facilitate the removal of the General Partner by the limited partners.

80. Plaintiffs and the Partnerships have no adequate remedy at law.

### **RELIEF REQUESTED**

**WHEREFORE**, on behalf of the Partnerships, Plaintiffs demand relief against Defendant as follows:

- a. Declaring that GPB breached its fiduciary duties owed to the Partnerships;
- b. Declaring that Gentile, Lash, and Schneider breached their fiduciary duties and/or aided and abetted breaches of fiduciary duty to the Partnerships by GPB;
- c. Declaring that GPB engaged in fraud, gross negligence, and/or willful misconduct which has had a material effect on the Partnerships;
- d. Declaring that a pre-suit demand on GPB for corrective action was excused;
- e. Awarding damages to the Partnerships;
- f. Awarding Plaintiff the costs and disbursements of this action, including attorneys', accountants', consultants' and experts' fees; and

- g. Granting such other and further relief as is just, proper and equitable.

Dated: January 28, 2020

**PRICKETT, JONES & ELLIOTT, P.A.**

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