

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

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Index No.:

ADAM YOUNKER, DENNIS AND CHERYL SCHNEIDER,
ELIZABETH PLAZA, AND PLAZA PROFESSIONAL
CENTER INC PFT SHARING,

SUMMONS

Plaintiffs,

- against -

GPB CAPITAL HOLDINGS, LLC, GPB HOLDINGS, LP, GPB
HOLDINGS II, LP, GPB AUTOMOTIVE PORTFOLIO, LP,
GPB COLD STORAGE, LP,

DAVID GENTILE, MACRINA KGIL, A/K/A MINCHUNG
KGIL, WILLIAM EDWARD JACOBY, SCOTT NAUGLE,
JEFFRY SCHNEIDER,

ASCENDANT ALTERNATIVE STRATEGIES, LLC,
ASCENDANT CAPITAL, LLC, AND AXIOM CAPITAL
MANAGEMENT, INC.,

Defendants.

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YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiffs attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the inconvenience relief demanded in the complaint.

**GOLDMAN SCARLATO &
PENNY, P.C.**

Dated: August 6, 2019

By: /s/ Brian D. Penny

Brian D. Penny, Esq. New York Bar # 4820106.

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SCHNEIDER, ELIZABETH PLAZA, AND PLAZA
PROFESSIONAL CENTER INC PFT SHARING,

Plaintiffs,

- against -

GPB CAPITAL HOLDINGS, LLC, GPB HOLDINGS, LP,
GPB HOLDINGS II, LP, GPB AUTOMOTIVE
PORTFOLIO, LP, GPB COLD STORAGE, LP,

DAVID GENTILE, MACRINA KGIL, A/K/A MINCHUNG
KGIL, WILLIAM EDWARD JACOBY, SCOTT NAUGLE,
JEFFRY SCHNEIDER,

ASCENDANT ALTERNATIVE STRATEGIES, LLC,
ASCENDANT CAPITAL, LLC, AND AXIOM CAPITAL
MANAGEMENT, INC.,

Defendants.

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VERIFIED COMPLAINT

AND

DECLARATORY ACTION

Plaintiffs Adam Younker, Dennis and Cheryl Schneider, Elizabeth Plaza, and Plaza Professional Center Inc. PFT Sharing (together, “Plaintiffs”), through their undersigned attorneys, for their complaint against Defendants GPB Capital Holdings, LLC (“GPB CH”), GPB Holdings, LP (“Holdings”), GPB Holdings II, LP (“Holdings II”), GPB Automotive Portfolio, LP (“Automotive”), GPB Cold Storage, LP (“Cold Storage”) (together, the “GPB Corporate Defendants”), David Gentile, Macrina Kgil, a/k/a Minchung Kgil, William Edward Jacoby, Scott Naugle, Jeffry Schneider (together, the “GPB Individual Defendants,” and, together with the GPB Corporate Defendants, the “GPB Defendants”), Ascendant Alternative Strategies, LLC, Ascendant Capital, LLC, and Axiom Capital Management, Inc. (together, the “GPB Underwriters”), allege

the following upon information and belief, except as to those allegations concerning Plaintiffs, which are alleged upon personal knowledge. Plaintiffs' information and belief are based upon, among other things, their counsel's investigation, which includes without limitation: (a) review and analysis of regulatory filings made by various GPB Corporate Defendants and other GPB CH-sponsored or affiliated investment programs ("GPB Programs") with the United States Securities and Exchange Commission ("SEC"); (b) review and analysis of press releases and media reports issued by and disseminated by Defendants and other GPB Programs; (c) media reports concerning Defendants and other GPB Programs; (d) various court filings by Defendants and others, and (e) review of other publicly available information concerning Defendants and other GPB Programs.

Plaintiffs bring this class action on behalf of all persons or entities who purchased or otherwise acquired securities issued by Holdings, Holdings II, Automotive, and/or Cold Storage (the "Class"). Plaintiffs seek monetary relief for themselves and the class, and such other and further relief as the Court may deem just and proper.

I. NATURE AND SUMMARY OF THE ACTION

1. This action arises out of a fraudulent investment scheme in which Defendants raised money and assisted in raising money from investors for Holdings, Holdings II, Automotive, and Cold Storage (the "GPB Investment Programs" or "Programs") through misrepresentations and omissions and thereafter misused investor money.

2. Between 2013 and 2018, the GPB Investment Programs raised money from investors through offerings of securities (the "Offerings") ostensibly to use it primarily in acquiring and operating retail automobile dealerships.

3. The GPB Defendants, with assistance from the other Defendants, raised over \$1.3 billion from the investing public for the GPB Investment Programs, and thereafter failed to safeguard the investors' money or use it as promised.

4. The misrepresentations and omissions centered upon Defendants' failure to disclose (1) the materially inadequate accounting and corporate controls and supervisory systems of the GPB Corporate Defendants / GPB Investment Programs; (2) the materially inadequate due diligence processes and procedures in connection with the GPB Defendants acquisitions of car dealerships, and the fact that such car dealerships' operations and accounting were not adequately vetted before the GPB Defendants purchased them; (3) the dysfunctional and hostile relationship between certain of the key control persons and senior executives of the GPB Corporate Defendants, which had a serious, negative impact on the GPB Corporate Defendants' operations; (4) self-dealing and misuse of investor funds and corporate assets by GPB Corporate Defendants' control persons and senior executives; and (5) the existence of an additional control person of the GPB Corporate Defendants – Defendant Schneider – whose identity, role, and tainted background were not disclosed to prospective investors.

5. Defendants' misrepresentations and omissions were material to the GPB investors' decisions to invest in the GPB Investment Programs and proximately caused such investments and subsequent losses.

6. After raising money from Plaintiffs and the other GPB investors through misrepresentations and omissions, the GPB Defendants failed to safeguard the investors' money and diligently invest it, and failed to disclose to the GPB investors the ongoing deficiencies in the GPB Corporate Defendants' accounting and corporate control systems as well as in their due

diligence of new dealership acquisitions, in breach of the GPB defendants' fiduciary duties owed to their investors.

7. As a result of such faulty control systems and due diligence processes, the GPB Defendants overpaid for new dealerships they acquired, failed to detect and/or fix accounting and operational irregularities as to such dealerships, and failed to adequately, if at all, account for certain transactions in their books.

8. These failures, in turn, caused the values of the GPB investors' units, including those of Plaintiffs, to substantially decline and cause Plaintiffs to suffer losses.

9. By 2018, the GPB scheme was starting to unravel.

10. First, Automotive Portfolio failed to file a registration statement and audited financial statements with the Securities and Exchange Commission by April 30, 2018, as required.

11. In July 2018, GPB Capital disclosed "material weaknesses in [the] internal controls" of at least Automotive and Holdings II.

12. One month later, GPB Capital disclosed that its financial statements and independent accountants' reports for 2015 and 2016 should no longer be relied upon by investors.

13. In August 2018, GPB Capital also announced that it was suspending Automotive's securities offering, as well as investor redemptions.

14. In November 2018, GPB Capital announced that the auditor for the partnerships for which it served as the general partner, Crowe LLP ("Crowe"), had resigned due to "perceived risks that Crowe determined fell outside of their internal risk tolerance parameters."

15. In December 2018, securities industry media reports indicated that the Securities and Exchange Commission has commenced an investigation into GPB Capital, following the initiation of a similar investigation by the Massachusetts state securities regulators.

16. In the meantime, the GPB Investment Programs' financial performance substantially deteriorated, as illustrated by drastic drops in the value of the GPB Investment Programs' units, communicated to investors in recent weeks, prompting investors to investigate and take action.

II. PARTIES

a. Plaintiffs

17. Plaintiff Adam Younker is a resident of Lehigh Acres, Florida. On or about August 7, 2015, Adam Younker purchased, in his IRA account, one (1) unit of Automotive for \$50,000, in the Automotive securities offering. On or about August 15, 2015, Adam Younker purchased, in his IRA account, one (1) unit of Holdings II for \$115,000, in the Holdings II Offering.

18. Plaintiffs Dennis and Cheryl Schneider are residents of Woodbury, Minnesota. On or about November 28, 2017, Dennis and Cheryl Schneider jointly purchased, in their IRA account, one (1) unit of Automotive Portfolio for \$50,000, in the Automotive securities offering.

19. Plaintiffs Elizabeth Plaza and Plaza Professional Center Inc. PFT Sharing ("Plaza Professional"), through Elizabeth Plaza, are residents of Dorado, Puerto Rico. They invested a total of \$1.5 million in two GPB programs as follows: on or about September 30, 2013, Elizabeth Plaza purchased ten (10) units of Holdings for \$50,000 per unit, for a total of \$500,000, in the Holding securities offering. On or about July 24, 2015, Plaza Professional, through Elizabeth Plaza, purchased twenty (20) units of Cold Storage for \$50,000 per unit, for a total of \$1,000,000, in the Cold Storage securities offering.

b. Defendants

The GPB Corporate Defendants

20. Defendant GPB CH is a Delaware limited liability company with its principal place of business located in New York City, New York. GPB CH is the general partner of Holdings, Holdings II, Automotive, and Cold Storage. Defendant GPB CH bills itself as a “global asset management firm” and was at all relevant times the control person, manager, and majority owner of Holdings, Holdings II, Automotive, and Cold Storage. In that capacity, Defendant GPB CH orchestrated the securities offerings of the GPB Investment Programs, and offered and sold to Plaintiffs and other investors securities issued by the GPB Investment Programs.

21. Defendant Holdings is a Delaware limited partnership and a securities issuer with its principal place of business located in Great Neck, New York. During the relevant times hereto, Defendant Holdings offered and sold securities in the form of partnership units to investors including Plaintiff Plaza.

22. Defendant Holdings II is a Delaware limited partnership and a securities issuer with its principal place of business located at Garden City, New York. During the relevant times hereto, Defendant Holdings II offered and sold securities in the form of partnership units to investors including Plaintiff Younker.

23. Defendant Automotive is a Delaware limited partnership and a securities issuer with its principal place of business located at Great Neck, New York. During the relevant times hereto, Defendant Automotive offered and sold securities in the form of partnership units to investors including Plaintiffs Younker and the Schneiders.

24. Defendant Cold Storage is a Delaware limited partnership and a securities issuer with its principal place of business located at New York City, New York. During the relevant times hereto, Defendant Holdings offered and sold securities in the form of partnership units to investors including Plaintiff Plaza Professional.

The GPB Individual Defendants

25. Defendant David Gentile (“Gentile”) is an individual with his principal place of business in New York City, New York. At all times relevant hereto, Defendant Gentile was the director, officer, manager, control person, and co-owner of GPB CH, Holdings, Holdings II, Automotive, and Cold Storage. In that capacity, Defendant Gentile orchestrated, directed, executed, and oversaw the GPB Investment Programs’ securities offerings, and offered and sold to Plaintiffs and others securities issued by the GPB Investment Programs, and thereafter failed to safeguard the investors’ money and diligently invest it, and failed to disclose to the GPB investors the ongoing deficiencies in the GPB Corporate Defendants’ accounting and corporate control systems as well as in their new acquisition due diligence processes and procedures. Defendant Gentile is one of the original co-founders of GPB, and the principal driving force behind the GPB entities.

26. Defendant Macrina Kgin, also known as Minchung Kgil (“Kgil”) is an individual with her place of business in New York City, New York. During the times relevant hereto, Defendant Kgin was the manager, control person, and officer of GPB CH, Holdings, Holdings II, Automotive, and Cold Storage. In that capacity, Defendant Kgil was a direct participant who helped orchestrate, direct, execute, and oversee the GPB Investment Programs’ securities offerings, and/or offered and sold to investors securities issued by the GPB Investment Programs, and thereafter failed to safeguard the investors’ money and diligently invest it, and failed to disclose to the GPB investors the ongoing deficiencies in the GPB Corporate Defendants’ accounting and corporate control systems as well as in their new acquisition due diligence processes and procedures.

27. Defendant William Edward Jacoby (“Jacoby”) is an individual with his place of business in Miami, Florida. During the times relevant hereto, Defendant Jacoby was the control person and officer of GPB CH, Holdings, Holdings II, Automotive, and Cold Storage in New York. In that capacity, and acting out of New York, Defendant Jacoby was a direct participant who helped orchestrate, direct, execute, and oversee the GPB Investment Programs’ securities offerings, and/or offered and sold to investors securities issued by the GPB Investment Programs, and thereafter failed to safeguard the investors’ money and diligently invest it, and failed to disclose to the GPB investors the ongoing deficiencies in the GPB Corporate Defendants’ accounting and corporate control systems as well as in their new acquisition due diligence processes and procedures .

28. Defendant Scott Naugle (“Naugle”) is an individual with his place of business in New York City, New York. During the times relevant hereto, Defendant Naugle was the manager, control person, and officer of GPB CH, Holdings, Holdings II, Automotive, and Cold Storage. In that capacity, Defendant Naugle was a direct participant who helped orchestrate, direct, execute, and oversee the GPB Investment Programs’ securities offerings, and/or offered and sold to investors securities issued by the GPB Investment Programs, and thereafter failed to safeguard the investors’ money and diligently invest it, and failed to disclose to the GPB investors the ongoing deficiencies in the GPB Corporate Defendants’ accounting and corporate control systems as well as in their new acquisition due diligence processes and procedures .

29. Defendant Jeffry Schneider (“Schneider”) is an individual who resides in Austin, Texas and conducts business out of Austin and New York City, New York. At the relevant times hereto, Defendant Schneider was a director, officer, manager, and control person of GPB CH, Holdings, Holdings II, Automotive, and Cold Storage. In that capacity, Defendant Schneider was a direct participant who helped orchestrate, direct, execute, and oversee the GPB Investment

Programs' securities offerings, and offered and sold to investors securities issued by the GPB Investment Programs, and thereafter failed to safeguard the investors' money and diligently invest it, and failed to disclose to the GPB investors the ongoing deficiencies in the GPB Corporate Defendants' accounting and corporate control systems as well as in their new acquisition due diligence processes and procedures. Defendant Schneider is one of the original co-founders of GPB, and one of the principal driving forces behind the GPB entities and in particular the GPB Investment Programs' securities offerings.

30. The GPB Individual Defendants, because of their positions with the GPB Corporate Defendants, as well as their senior positions with other GPB affiliates, possessed the power and authority to control and did control the content and form of the GPB Investment Programs' prospectuses, reports, press releases and other materials provided to investors. Because of their positions with the GPB Corporate Defendants, as well as their senior positions with other GPB affiliates, the individual defendants possessed the power and authority to create, implement, and enforce adequate accounting and corporate controls and supervisory systems of the GPB Corporate Defendants. The GPB Individual Defendants authorized the publication of the documents and materials alleged herein to be misleading prior to their issuance and had the ability and opportunity to prevent the issuance of these false statements or to cause them to be corrected. Because of their positions with the GPB Corporate Defendants, as well as their senior positions with other GPB affiliates, they had access to material non-public information, and they knew, or recklessly or negligently failed to know, that the adverse facts specified herein had not been disclosed to and were being concealed from the public and that the positive representations being made were false and misleading.

The GPB Underwriters

31. Defendants Ascendant Alternative Strategies, LLC and Ascendant Capital LLC (together, “Ascendant”) are alter egos of each other. Ascendant is a financial service business with offices in New York City, New York, and Austin, Texas, and a licensed securities broker-dealer firm. Ascendant was founded by Defendant Schneider and is controlled by Defendants Schneider and Gentile. Ascendant indicated that it is affiliated with Defendant GPB CH. Defendant Schneider indicated that, as Ascendant’s “Founder and CEO, Mr. Schneider drives the firm’s strategic direction and oversees the activities of all departments.” Ascendant further indicated that it served as “the exclusive distribution partner” for the GPB Investment Programs.

32. Out of its New York office and elsewhere, Ascendant served as the underwriter for the GPB Investment Programs’ securities offerings. In that capacity, it played a key role in structuring and overseeing the GPB Investment Programs’ securities offerings, preparing the offering materials (“Offering Documents,” defined *infra*) distributed to investors, overseeing the distribution of such offering materials to investors, and/or offering and selling GPB Investment Program securities to investors.

33. Defendant Axiom Capital Management, LLC (“Axiom”) is a financial service business with offices in New York City, New York, and a licensed securities broker-dealer firm. During the relevant times hereto, Defendant Schneider, along with another control person of Defendant Ascendant, were affiliated with Axiom. Axiom served as the underwriter (or managing broker-dealer) of the GPB Investment Programs’ securities offerings, and also supervised and approved Defendant Schneider’s offering and sales of GPB Investment Programs’ securities. As underwriter of the GPB Investment Programs’ securities offerings, Defendant Axiom played a key role in structuring and overseeing the GPB Investment Programs’ securities offerings, preparing

the offering materials distributed to investors, overseeing the distribution of such offering materials to investors, and/or offering and selling GPB Investment Program securities to investors.

34. The Ascendant Defendants, along with Axiom (together, the “GPB Underwriters”) possessed the power and authority to control the content and form of the GPB Investment Programs’ prospectuses, periodic reports, press releases and other materials provided to investors. The GPB Underwriter Defendants authorized and/or allowed the publication of the documents and materials alleged herein to be misleading prior to its issuance and had the ability and opportunity to prevent the issuance of these false statements or to cause them to be corrected. Because of their close relationship – and, the case of the Ascendant Defendants, common control – with the GPB Corporate Defendants, they had access to material non-public information, and they knew that the adverse facts specified herein had not been disclosed to and were being concealed from the public and that the positive representations being made were false and misleading.

III. JURISDICTION AND VENUE

35. Venue is proper in New York County, New York, given that (1) Defendants engaged in and participated to the alleged misconduct out of New York County, (2) a substantial portion, and likely the vast majority, of the evidence is located in New York County, and (3) the vast majority of the witnesses with direct knowledge of the conduct alleged herein are located in, or have their place of business in, New York County. Further, the Subscription Agreement designates New York County state courts as the appropriate venue.

36. This Court has personal jurisdiction over all Defendants and over this proceeding pursuant to CPLR §§ 301 and 302 given that at all relevant times they engaged in the misconduct alleged herein, and conducted business, in this County.

IV. SUBSTANTIVE ALLEGATIONS

Gentile and Schneider Organize GPB CH to Sponsor and Manage Investment Vehicles Including the GPB Investment Programs, That Would Raise Money from Investors.

37. GPB CH was co-founded in or about 2013 by Defendants Gentile and Schneider, along with at least one other co-founder, as a private equity, alternative asset management firm in the business of launching, sponsoring, and managing investment vehicles, or funds, including the GPB Investment Programs.

38. At its height, GPB CH indicated that it had raised a total of approximately \$1.5 billion for its investment vehicles.

39. The GPB Investment Programs were in the business of acquiring income-producing private companies in select fields, with a primary focus on automotive retail (car dealerships).

40. To fund the purchase of these companies – and in particular car dealerships – GPB CH and the GPB Individual Defendants needed to raise capital from the investing public.

41. To raise capital, GPB CH and the GPB Individual Defendants enlisted the support of the GPB Underwriter Defendants, which helped orchestrate the GPB Investment Programs' securities offerings.

42. The GPB Investment Programs issued securities in the form of partnership units and, together with all Defendants, offered them for sale to individual investors across the country.

43. The GPB Investment Program securities were unregistered and were offered to investors pursuant to a claimed exemption from registration under the SEC's Regulation D.

44. However, as more fully detailed below, the GPB Investment Programs' securities offerings did not qualify for an exemption from registration pursuant to Regulation D, because they were conducted fraudulently and Regulation D does not apply to fraudulent securities offerings.

45. Defendants worked with numerous “retail” broker-dealer firms to market the GPB Investment Programs’ securities to individual investors. GPB CH and the GPB Individual Defendants incentivized these broker-dealers, and the GPB Underwriter Defendants, by paying an extraordinarily high commission rate to induce them to sell GPB’s illiquid and highly risky securities.

46. The GPB Investment Programs were not publicly traded and did not have to file periodic reports with the SEC. However, once they reached a certain size, they were required to file forms with the SEC even though the securities were not publicly traded.

Defendants Raise Over \$1.8 Billion from Investors for the GPB Investment Programs and Other GPB Funds

47. Defendants raised over \$1.8 billion dollars from thousands of investors nationwide for the funds they sponsored and managed, including the GPB Investment Programs, in exchange for selling them units in those funds. Most of the money went to the GPB Investment Programs, which raised over \$1.3 billion from investors.

48. For example, on December 18, 2015, one of the GPB Investment Programs, Cold Storage, filed an amended Form D with the SEC listing the numerous broker-dealers through which it sold over \$35 million in limited partnership interests to over 268 investors, at a minimum investment of \$100,000. Sales commissions paid to financial advisors on these sales exceeded \$3.5 million.

49. On May 12, 2016, another one of GPB CH’s investment vehicles, GPB NYC Development, P.C. filed its initial Form D with the SEC listing the numerous broker-dealers through which it expected to sell \$40 million of limited partnership interests and to pay over \$4 million in commissions in connection with those sales.

50. On or about May 19, 2016, another GPB Investment Program, Holdings II, filed an amended Form D with the SEC listing the numerous broker-dealers through which it sold over \$76 million in limited partnership interests to over 800 investors, at a minimum investment of \$100,000. Sales commissions paid to financial advisors on these sales exceeded \$8 million.

51. On the same day, another GPB Investment Program, Automotive, filed an amended Form D with the SEC listing the numerous broker-dealers through which it sold over \$176 million in limited partnership interests to over 1,800 investors, at a minimum investment of \$100,000. Sales commissions paid to financial advisors on these sales exceeded \$19 million.

52. On August 30, 2016, a fifth GPB CH-sponsored fund, GPB Waste Management Fund, LLP, filed its initial Form D with the SEC. No sales, purchaser information, or commissions paid was listed in the filing.

53. These listings continued into 2017. On May 18, 2017, one of the GPB Investment Programs, Holdings II, filed an amended Form D with the SEC listing the numerous broker-dealers through which it sold over \$364 million in limited partnership interests to over 3,500 investors, at a minimum investment of \$100,000. Sales commissions paid to financial advisors on these sales exceeded \$42 million.

54. On May 18, 2017, Automotive filed an amended Form D with the SEC listing the numerous broker-dealers through which it sold over \$360 million in limited partnership interests to over 3,800 investors, at a minimum investment of \$100,000. Sales commissions paid to financial advisors on these sales exceeded \$43 million.

55. On the same day, GPB NYC Development, LP filed an amended Form D with the SEC listing the numerous broker-dealers through which it sold over \$41 million in limited

partnership interests to over 360 investors, at a minimum investment of \$50,000. Sales commissions paid to financial advisors on these sales exceeded \$4.8 million.

56. On August 30, 2017, GPB Waste Management, LLP, filed an amended Form D with the SEC listing numerous broker-dealers through which it sold over \$76 million in limited partnership interests to over 800 investors. Sales commissions paid to financial advisors on these sales exceeded \$6 million.

57. On January 26, 2018, another GPB-sponsored fund, GPB Holdings III, LLP, filed a Form D with the SEC listing the numerous broker-dealers through which it sold over \$6 million in limited partnership interests. Sales commissions paid to financial advisors on these sales exceeded \$190,000.

58. On April 25, 2018, GPB Waste Management, LLP, filed an amended Form D with the SEC listing numerous broker-dealers through which it sold over \$135 million in limited partnership interests to over 1,400 investors. Sales commissions paid to financial advisors on these sales exceeded \$10 million.

59. On May 14, 2018, Automotive filed an amended Form D with the SEC listing the numerous broker-dealers through which it sold over \$600 million in limited partnership interests to over 6,300 investors, at a minimum investment of \$100,000. Sales commissions paid to financial advisors on these sales exceeded \$43 million.

60. On May 16, 2018, Holdings II filed an amended Form D with the SEC listing the numerous broker-dealers through which it sold over \$645 million in limited partnership interests to over 6,000 investors, at a minimum investment of \$100,000. Sales commissions paid to financial advisors on these sales exceeded \$ 47 million.

61. As of late 2018, GPB CH and the other Defendants had raised more than \$1.8 billion from investors across the country for its sponsored and managed funds, through a network of over 60 securities broker-dealer firms.

62. As more fully detailed herein, Defendants' success in raising this considerable amount of money rested upon their failure to disclose, in the GPB Investment Programs' offering documents, material – indeed, crucial – information regarding the GPB CH and GPB Investment Programs' inadequate, if any, controls and due diligence procedures, the dysfunctional and hostile relationship between certain key control persons and senior executives of the GPB Corporate Defendants and its serious impact on their operations, self-dealing and misuse of investor funds and corporate assets by GPB senior executives and control persons, and an disclosed control person of the GPB Corporate Defendants, who had a tainted background.

Defendants Raise Money from Investors Nationwide Through Means of Interstate Commerce and Uniform Offering Documents Under the Federal Securities Laws

63. To orchestrate and execute the GPB Investment Programs' securities offerings, Defendants prepared and distributed to Plaintiffs and thousands of investors across the country, using means of interstate commerce, offering documents for each respective Program (the "Offering Documents").

64. The Offering Documents typically consisted of a Private Placement Memorandum (the "Memorandum" or "PPM") for each respective GPB fund and a Subscription Agreement for each respective GPB fund. All investors in any specific GPB Investment Programs received Private Placement Memoranda and Subscription Agreements that were substantially similar in all material respects. The Subscription Agreements for the GPB Investment Programs were substantially similar in all material respects.

65. In the Subscription Agreement, each investor in the GPB Investment Programs was required to represent, and represented, that he or she “has received, read carefully and fully understands the Memorandum and its exhibits, including, as applicable, the LPA.”

66. The Subscription Agreement indicated that the GPB Investment Programs’ units were “offered for sale to the Subscriber in reliance upon the private offering exemption contained in the 1933 Act §4(a)(2) and Rule 506 of Regulation D thereunder” and that the respective GPB Investment Program (referred to as the “Company”) “does not intend to register the Units under the 1933 Act at any time in the future and the Company is under no obligation to register any Units”

67. The Subscription Agreement further indicated that any certificates, if issued, representing the Units purchased by the investors “will bear the following legend upon the original issuance of the Units and until the legend is no longer required under applicable requirements of the 1933 Act or applicable state securities laws:

THE UNITS REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "1933 ACT"), OR STATE SECURITIES LAWS. THE HOLDER HEREOF, BY PURCHASING THESE SECURITIES, AGREES FOR THE BENEFIT OF [THE GPB INVESTMENT PROGRAM] (THE "COMPANY") THAT THESE UNITS MAY BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY IN ACCORDANCE WITH THE COMPANY’S AGREEMENT OF LIMITED PARTNERSHIP AND IN COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS. . . .

68. The Subscription Agreement further provided that

For the Units to be acquired by Subscriber by this Agreement, Subscriber hereby irrevocably constitutes and appoints [GPB CH] the true and lawful attorney-in-fact of Subscriber in Subscriber's name, place and stead ... (ii) to take any such other action as may be necessary in connection with any aspect of the operations and activities of the Company by giving [GPB CH] full power and authority to do and perform each and every act and thing whatever required and necessary to be done in and about the foregoing as fully as the undersigned might or could do if

personally present, and hereby ratifies and confirms all that [GPB CH] will lawfully do or cause to be done by virtue thereof.

69. The Subscription Agreement contained an applicable law clause, a forum selection clause, and a jury waiver clause substantially similar to the one below:

- (a) This Agreement will be enforced, governed and construed in all respects in accordance with the laws of the State of New York, without regard to that state's conflicts of law provisions.
- (b) Venue for any litigation arising out of, under, or in connection with this Agreement will lie in the state courts having jurisdiction over such matters located in New York County, New York.
- (c) THE SUBSCRIBER KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR THE LPA OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, THE LPA OR ANY OTHER AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION THEREWITH OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR OTHER ACTIONS OF EITHER PARTY RELATED TO THIS AGREEMENT OR THE LPA. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE COMPANY TO ACCEPT THIS AGREEMENT.

70. In the PPMs, Defendants touted to investors their “unique” and extensive dealership acquisition prowess, systems, and strict criteria and parameters they had in place to carry out profitable acquisitions.

71. For instance, in the Automotive PPM distributed to prospective investors, Defendants told investors that Automotive was “formed to (i) acquire assets of or interests in income producing automobile dealerships in North America (the “Dealerships”), (ii) provide hands-on managerial and operational services to such Dealerships,” and that Automotive “will continue to focus on acquisitions of Dealerships with strong management, earnings and market position.” The other PPMs contained similar language.

72. In the Automotive PPM, Defendant further stated that Automotive's "primary focus is on the identification, acquisition and profitable operation of assets of or interests in income producing automobile Dealerships located in North America" and that GPB CH sought Dealerships that it believed to meet strict criteria including being profitable with an established track record and led by strong management. The other PPMs contained similar language focused on the various types of businesses that the GPB Investment Programs were supposed to acquire.

73. In the PPMs, Defendants further touted to investors the effectiveness of their "unique," "in-depth," "higher quality," and "extensive" due diligence skills and processes they employed when acquiring new businesses, including car dealerships, and their thorough review of the accounting of such businesses that were candidates for acquisition, before proceeding with the acquisition.

74. For instance, in the Automotive PPM Defendants stated:

GPB brings its unique perspective to each phase of the asset acquisition process. When GPB identifies an acquisition opportunity, GPB will evaluate it based on its individual merit and the potential to add strategic value to the Company. If GPB decides it is right for our portfolio, GPB will coordinate the acquisition, conduct due diligence, undertake financial and strategic analysis, and monitor and report on the Dealership on an ongoing basis. GPB will also provide hands-on management at the Dealership's executive officer level.

75. Also, in the Automotive PPM, Defendants further stated:

GPB leverages the knowledge its principals have gained through their accounting and advisory practice to conduct due diligence during the sourcing phase. ... GPB's principals' unique ability to track a client's personal growth, as well as the growth of their businesses, through numerous years of preparing personal and business financial statements and income tax returns, allows GPB to perform a more thorough due diligence process than typically seen in the private company acquisition space. This process of looking beyond a Dealership's financial statements to evaluate the integrity and growth potential of the underlying management team works best when filtered through knowledge developed via personal advisory relationships over time. GPB believes this leads to a higher quality of due diligence. Through decades of experience in the industry, GPB will endeavor to obtain from Operating Partners similar, up-close and personal levels of

due diligence on the targeted Dealerships and work side-by-side with GPB's executives.

76. In the Automotive PPM, Defendants advertised to investors their "hands-on" skill and systems to ensure appropriate oversight of the acquired dealerships so that such dealerships are profitably and efficiently operated.

77. For instance, in the Automotive PPM distributed to investors Defendants stated that "[a]fter finalizing an acquisition of a Dealership, the GPB Asset Management team takes on the operational oversight of the Dealership. The GPB Asset Management team is responsible for a systematic process of operating, maintaining and upgrading assets, and ensuring that Dealerships meet projected operating milestones and maximize overall cash flow from operations."

78. Defendants intended prospective GPB investors to rely on the Offering Documents when evaluating the GPB Investment Programs and deciding whether or not to invest. In the Subscription Agreement, the investors ("subscribers") were required to certify that

[i]n evaluating the suitability of an investment in the Units, the Subscriber has not relied upon any representations or other information (whether oral or written) other than as provided in the Memorandum and LPA, and their attachments, and independent investigations made by the Subscriber or representative(s) of the Subscriber.

79. Plaintiffs and all other investors were required to review, and reviewed, the Offering Documents at the time of their investments.

80. The GPB Investment Programs' Offering Documents contained misrepresentations and omissions, as more fully detailed below. Such misrepresentations and omissions were material – indeed, crucial – to the investors' decisions to invest, and painted a positive picture of the GPB Investment Programs that was utterly inconsistent with the reality of how Defendants operated those programs.

81. Plaintiffs and the other GPB investors were reasonable to rely on the Offering Documents, and any reasonable investigation could not have revealed the misrepresentations and omissions discussed herein at the time of their investments in the GPB Investment Programs.

82. The GPB Underwriter Defendants in particular played a key role in organizing and executing the GPB Investment Programs' securities offerings. They helped prepare the misleading Offering Documents, structure the securities offerings and marketing, and disseminate the misleading Offering Documents to prospective investors; they approached prospective investors to induce them to invest; and offered and sold GPB Investment Program securities to investors.

The GPB Investors Depended on the GPB Defendants' Skill and Ability, to Discretionarily Manage, Safeguard, and Invest Their Money.

83. As stated above, the GPB Defendants banked heavily in the Offering Documents on their skill and ability to select profitable business opportunities, diligently invest the GPB investors' money, and oversee and safeguard such investors' money once invested.

84. The GPB investors were fully dependent upon the GPB Defendants' ability, skill, knowledge, and goodwill to invest their money appropriately and thereafter diligently oversee and manage that money.

85. Indeed, the GPB Offering Documents disclosed to investors that the GPB Investment Programs were "particularly dependent upon the efforts, experience, contacts and skills of the individual members of GPB, the Acquisition Committee and certain of their affiliates and principals ...," that "GPB will have the exclusive right and power to manage our business and affairs" and that "GPB has broad discretion to expand, revise or contract our business without the consent of the Limited Partners."

86. By virtue of their superior skill and knowledge, their discretion on how to invest the investors' money, their exclusive oversight over the investors' money, the fact that they had

been entrusted by the GPB investors with such investors' money, GPB CH and the GPB Individual Defendants were the investors' fiduciaries.

The Truth Comes to Light as an Acrimonious Disagreements Among GPB's Senior Officers and Control Persons Erupt in Full-Blown Litigation

87. A significant, material dispute arose over time among certain GPB senior executives, starting no later than 2015, and eventually resulted in acrimonious disagreements and ultimately full-blown litigation in 2017, as more fully detailed below.

88. The discord among the GPB senior executives was extremely disruptive to GPB's operations and was material to the investors.

89. GPB failed to timely and accurately disclose the existence of this material dispute among senior management, to investors' extreme detriment.

90. On July 10, 2017, GPB CH and several of the GPB Investment Programs including Automotive, all at the direction of the GPB Individual Defendants, filed a Verified Complaint against a former GPB senior executive and control person who had recently parted ways with GPB, Patrick DiBre ("DiBre") in the Supreme Court of the State of New York, County of Nassau, Index No. 606417/2017, titled GPB Capital Holdings, LLC et al. v. DiBre (the "DiBre Lawsuit")¹. GPB's communications with investors downplayed the nature of the action, describing it as an action to force DiBre to comply with the terms of an Agreement executed during the fourth quarter of 2016 according to which the Partnership was to exchange interests in one underperforming dealership for an interest in another dealership deemed to have greater value and provide increased diversification and stability to the Partnership.

¹ The parties' pleadings in the DiBre Lawsuit are incorporated herein.

91. The Verified Complaint was followed by an Amended Verified Complaint filed on or about February 12, 2018 by the same plaintiffs against DiBre. The Amended Verified Complaint included a Verification executed under oath by a senior executive of GPB CH, who stated that “he has read the foregoing AMENDED VERIFIED COMPLAINT and knows the contents thereof” and that “the same is true to the knowledge of deponent except as to those matters therein stated to be alleged upon information and belief, and as to those matters deponent believes them to be true.”

92. In the DiBre Lawsuit, the GPB Defendants alleged that DiBre was an experienced automotive dealership owner and operator, was a senior executive of Holdings, Automotive, and GBP CH from 2013 to 2016, a member of GPB’s Executive Management Team, and the “party principally responsible for obtaining manufacturer approvals and identifying opportunities for GPB to acquire automotive dealerships.”

93. In the DiBre Lawsuit, the GPB Defendants made a number of crucial admissions about DiBre’s conduct but also about their own operations, including the due diligence they employed when acquiring new businesses and their accounting and operational oversight and controls that had not been previously disclosed to the GPB investors.

94. In the DiBre Lawsuit, the GPB Plaintiffs admitted to the serious dispute with DiBre, which started as early as 2015, in connection with the “significant” drop in the performance of certain dealerships they acquired from DiBre.

95. Unbeknownst to the investors who trusted these individuals with their money and expected them to work cooperatively to safeguard and adequately invest their savings, the dispute between the GPB senior executives worsened over a period of approximately two years, during which the parties resorted to preparing legal documents to memorialize it, making threats of

litigation against each other, undermining GPB's activities, and ultimately parting ways, suing each other, and disclosing very serious misconduct by all parties, in the DiBre Lawsuit.

96. In the DiBre Lawsuit, the GPB Plaintiffs alleged that DiBre engaged in "manipulat[ing] ... transactions to sell GPB certain of his wholly owned dealerships, fraudulently inflating store values and, after the sale occurred, diverting the profits, sales, funds, and corporate opportunities of the dealerships to his own benefit, while driving down the dealerships [*sic*] value to cause GPB to lose those dealership or sell them back to DiBre at significantly lower prices."

97. In the DiBre Lawsuit, the GPB Defendants claimed that DiBre sabotaged deals that he entered into with GPB and its funds to help build out a portfolio of car dealerships.

98. For instance, the GPB Defendants admitted that –

After GPB advanced in excess of \$80 million towards the acquisition of [several DiBre-owned] dealerships, the performance of those dealerships dropped significantly, as compared with the historical results that DiBre had represented. In an effort to improve performance, GPB repeatedly conferred with DiBre who was managing the dealerships as to the reasons for these results. These performance declines, combined with DiBre's continual failure to take the steps necessary to close the sales of the other dealerships, caused discord between the parties.

99. The GPB Defendants further admitted their knowledge that DiBre – a key senior officer upon which the GPB Defendants relied for the critical task of pursuing dealership acquisitions – was neglecting his obligations and was abusing his fiduciary positions and engaged in a "plethora of bad acts towards GPB."

100. The GPB Defendants further admitted that DiBre, in its capacity of senior officer and control person of the GPB Corporate Defendants –

- a. Overstated the earnings of the dealerships to be sold to GPB, thereby greatly inflating the sale price paid by GPB.

- b. Mismanaged and/or intentionally deteriorated the value of the dealerships during the period after GPB advanced the purchase price but prior to the closing of the dealerships.
- c. Misappropriated and diverted assets, opportunities, and other value from the dealerships, thereby greatly decreasing the profits owed to GPB from the dealerships.

101. The GPB Defendants further disclosed that their former senior officer, DiBre, implemented improper and illegal business practices which inflated the historic earnings of the dealerships he sold to GPB prior to GPB's advance of purchase ("blue sky") prices and that DiBre's actions in this regard were to GPB's detriment because GPB's purchase price was a multiple of these inflated earnings. For example:

- a. DiBre booked manufacturer income, bonuses, and incentives from other, non-GPB related stores he owned to said dealerships to overstate sales figures;
- b. DiBre regularly overstated to manufacturers the sales at the GPB dealerships to increase the manufacturer incentives received by those dealerships even though the sales were effectuated at other DiBre's dealerships in which GPB had no interest.
- c. DiBre booked as income money received from illegal products sold to customers, including but not limited to the "Credit It Forget It" product. These sales inflated store profits by millions of dollars per year. Indeed, the Attorney General of New York has investigated DiBre in connection with this program, which investigation DiBre hid from GPB until the announcement of the Attorney General's sanctions.

102. The GPB Defendants further disclosed that DiBre intentionally manipulated the financials of the GPB-related dealerships to overstate their value, causing GPB to pay inflated blue

sky prices, with the detriment compounded by the acquisition multiple for the dealerships and that, after GPB paid to DiBre in excess of \$80 million dollars towards acquiring the dealerships, based on improperly inflated earnings and profit figures that DiBre had hidden from GPB, and entered into various agreements with DiBre, DiBre (i) failed to seek manufacturer approval for the dealership transfer and (ii) engaged in self-dealing to GPB's detriment.

103. The GPB Defendants further disclosed that, contrary to the duties DiBre owed to GPB, he:

- a. Depressed the profits earned by his dealerships after GPB advanced the purchase prices. These profits were payable to GPB on a monthly basis until the final transfer of the dealerships to GPB.
- b. Decreased the value of the dealerships that were to be transferred to GPB, and
- c. exposed said dealerships to liability and expense from his improper and illegal business practices at the dealerships.

104. The GPB Defendants also admitted that DiBre engaged in "power-booking" at the GPB-related dealerships. Power-booking is a fraudulent business practice in which an automobile dealership submits false applications to lending banks or finance companies that contain misrepresentations to inflate the value of an automobile to be financed (e.g., adding in non-existent equipment to the vehicle description in the loan application, etc.), so as to increase the loan amount approved and receive more favorable loan terms.

105. The GPB Defendants also admitted that DiBre intentionally engaged in widespread manipulation of the financials of the GPB-related dealerships to GPB's detriment by, among others:

- a. manipulating the value of GPB's used and ground vehicle sales,

- b. using the GPB-related dealerships' personnel and resources for improper purposes,
- c. concealing customer care program rebates,
- d. manipulating reinsurance product sales,
- e. diverting extended warranty dividends.

106. The GPB Defendants admitted that DiBre's undisclosed conduct while a senior officer and control person of the GPB Corporate Defendants harmed GPB and its investors and caused damages of tens of millions of dollars.

107. The GPB Defendants' examples of detailed, documented misconduct by DiBre, both before and after his sales of his dealerships to GPB, paints a clear picture of lack of adequate – if any – due diligence conducted by GPB as to the dealership businesses it evaluated purchasing, and lack of adequate – if any – oversight and control over such businesses after their acquisition.

108. The evidence of widespread misconduct at numerous dealership businesses, both before and after their acquisition by GPB, fatally undermines GPB's representations to prospective investors in the GPB Investment Programs' Offering Documents about the thoroughness, effectiveness, and extensiveness of GPB's pre-acquisition due diligence and post-acquisition controls over such businesses.

109. In his Verified Answer to the complaint, DiBre also asserted claims of his own against GPB and its controlling executives, Gentile and Schneider, and claimed that the GPB Defendants' motivation in bringing the lawsuit was "to divert attention away from the fact that the losses occasioned by GPB were in fact caused by a very complicated and manipulative Ponzi scheme."

110. In his Verification under oath, enclosed with his Verified Answer, DiBre – who was a former senior officer and control person of Holdings, Automotive, and GBP CH and had

learned of the facts he alleged in that capacity, stated that he had “read the foregoing ANSWER and knows the contents thereof; that the same is true to deponent’s own knowledge, except as to the matters stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.”

111. In its Verified Answer, DiBre claimed that GPB, Gentile, and Schneider:

- a. Recorded the “purchase price of the dealerships that they purchased from DiBre at several million dollars more than the combined actual purchase prices, closing expenses, and working capital investment,” and then “directed those additional monies back to themselves”;
- b. Received improper stipends from subsidiaries of Holdings and Automotive;
- c. Improperly directed funds belonging to Holdings and Automotive, resulting from reinsurance funds and manufacturer rebates, to an entity that Gentile and Schneider controlled;
- d. Improperly “expensed significant personal expenses such as luxury cars, vacations, and private jets to GPB and the dealerships”;
- e. Caused Holdings and Automotive to pay selling commissions at the rate of nearly 20% of the proceeds from these entities’ securities offerings, a portion of which was paid to Ascendant, a securities broker-dealer firm affiliated with GPB CH.

112. DiBre also alleged that GPB CG, Gentile and Schneider falsified Holdings’ and Automotive’s financial statements by, among other things, misrepresenting the purchase prices paid by the Partnerships for automotive dealerships; concealing from investors the amount of selling commissions that the Partnerships paid to broker-dealer firms; and reporting falsely inflated net cash flows that failed to account for expenses incurred through the Partnerships’ debt service.

113. In addition, Dibre alleged that Holdings and GPB CH made improper payments to an accounting firm controlled by Gentile's father, and that the funds were subsequently funneled from this accounting firm to Gentile's family trust.

114. DiBre claimed that GPB was unable to fund the purchase of car dealerships that DiBre owned or identified, not because of any action that DiBre took, but rather because the funds GPB should have had in place to complete the purchase had been diverted, Ponzi scheme style, to pay the returns of earlier investors.

115. DiBre also alleged an even broader scheme perpetrated by GPB. DiBre claimed that GPB set up the structure of having individual funds issue non-public securities, because it was "designed from inception to generate brokerage fees to GPB and its related, but undisclosed, captive broker-dealer, Ascendant Alternative Strategies, LLC." He then claimed that the plan was siphon off profits from any car dealerships it actually did buy, and finally to use "new investor funds to pay for the promised returns to the earlier investors" in Ponzi fashion, because the profits had already been siphoned off for other uses.

116. More specifically, DiBre alleged that GPB mislead investors in its affiliated funds by charging undisclosed upfront fees of nearly 20%, promising an 8% annual yield on the remaining 80% of the investors' funds, promising them also that they would start receiving their returns within two months of making their investment.

117. The process of purchasing a car dealership, however, takes much longer than two months. So, to generate a near immediate return on investment, GPB tried to contract with the dealerships to loan them the purchase price while the acquisition of the dealership was pending at a very low interest rate. GPB would then operate the dealership as if it owned it, receiving a certain return for its efforts, as alleged by DiBre.

118. None of this was disclosed to investors.

119. DiBre alleged that once they took control of a dealership, GPB through its control persons Gentile and Schneider manipulated the dealership's financial statements to hide their activities. For example:

a. Gentile and Schneider, through an entity they separately controlled, agreed to purchase from DiBre *the property* upon which DiBre's Nissan of Richmond dealership was located. The dealership then agreed to pay rent to this entity, for their personal gain. This was not disclosed to investors.

b. Gentile and Schneider had the dealerships they acquired pay them stipends, reducing the dealerships' profitability. This too was not disclosed to investors.

c. Even though the dealerships GPB acquired were only supposed to distribute revenue from their net cash flow to GPB, in 2014 alone GPB caused them to over-distribute more than \$1.8 million to GPB. This was designed to entice new investors with greater returns, or special distributions attributable to the dealerships' supposed exceptional performance.

d. When this 2014 over-distribution was discovered as part of a year-end review, GPB put the money back into the dealerships as funding for alleged capital improvements rather than re-state the fraudulent financial statements.

e. GPB caused said dealerships to engage in the same over-distribution fraud in 2015.

f. Gentile and Schneider created an entity they called LSG to which they directed more than \$4 million from reinsurance funds and manufacturer rebates, funds that should have gone to the dealerships and ultimately GPB investors, but which was not.

g. Gentile engaged his father's accounting firm to perform \$100,000 of work each month; bills which were paid and then funneled back to Gentile's family trust.

h. Gentile and Schneider also expensed significant personal expenses to GPB or dealerships, including vacations, luxury cars, and private jets. In August 2017 alone, the expensed \$550,000 for use of a private airplane. These expenses also reduced the dealerships' profitability.

i. Gentile and Schneider manipulated the stated purchase price paid for dealerships purchased from DiBre – at several million dollars more than the combined actual purchase price, closing expenses and working capital investment. Gentile and Schneider then directed these additional monies back to them, or entities they controlled, as acquisition fees.

j. Due to poor performance by the acquired dealerships, Gentile and Schneider had to redirect some of these "acquisition fees" to make the promised payments to investors, while telling the investors that the dealerships were actually over-performing.

k. Whenever there was a cash shortfall for payments to existing investors, and records indicated that the car dealerships never generated enough cash to meet those payments, cash from new investors or from borrowing was used to pay off the older investors.

l. To hide these issues, Gentile and Schneider would do things like:

- i. Transfer funds from GPB Holdings One Fund to Automotive Portfolio Fund, and vice versa, to bolster returns if a fund was lagging behind;
- ii. Have new dealerships GPB was acquiring increase the purchase price by the dollar amount needed to pay off the older investors

- iii. In 2015, GPB fraudulently obtained personal guarantees, backdated to 2014, in the amounts of \$810,462 and \$325,739 so that financial records did not reveal actual losses;
- iv. Inflate the value of car dealerships it had only recently purchased or had a contract to purchase.

Defendants Fail to Disclose to Plaintiffs and Other GPB Investors Defendant Schneider's Role as Control Person of the GPB Corporate Defendants, and His Tainted Background

120. Unbeknownst to Plaintiffs and the other GPB investors, the GPB Corporate Defendants had an additional control person, Defendant Schneider, whose existence had not been disclosed to the investors.

121. Defendant Schneider was a co-founder of GPB and, together with Defendant Gentile, played a crucial role in the GPB Investment Programs' growth. In an interview, Schneider boasted that he was the one who had the idea of the GPB Investment Programs and convinced Defendant Gentile to launch GPB.

122. Defendant Schneider's primary focus was in helping organize the GPB Investment Programs' securities offerings and raising money from the investing public.

123. Indeed, without Defendant Schneider's key role in organizing and overseeing the GPB Investment Programs' fundraising, it is likely that the Programs would have never taken off and raised over \$1.5 billion from investors.

124. GPB co-founders Gentile and Schneider met years before launching the GPB Investment Programs. In 2012, they co-founded Defendant Ascendant, which became the exclusive, in-house underwriter for the GPB Investment Programs and played a key role in orchestrating and executing the GPB Investment Programs' securities offering, selling securities in the Programs to investors, and raising money for the Programs from investors.

125. To avoid disclosing him as a control person to prospective GPB investors, the GPB Defendants and Defendant Schneider agreed that his title would be Strategic Advisor.

126. Upon information and belief, Defendants' motive for avoiding to disclose to prospective GPB investors that Defendant Schneider was a control person was that his professional background as a licensed investment advisor included numerous incidents and occurrences that were clearly material and would have had to be disclosed to investors.

127. Specifically, Defendant Schneider (1) was the subject of at least eight disclosed customer disputes seeking nearly \$1,000,000 in damages, most of which were settled in exchange for significant amounts of money; (2) was the subject of two instances of employment separation after allegations of misconduct; and (3) was the subject of two regulatory actions, by federal and Illinois state securities regulators, respectively, one of which resulted in a \$15,000 fine and suspension and the other one in a 2-year ban from being licensed in Illinois.

The GPB Scheme Falters

128. In April 2018, it became known that GPB CH and the GPB Individual Defendants failed to produce audited financial statements for the GPB funds that required them.

129. Specifically, once a securities issuer has than 2,000 securities holders, including more than 500 unaccredited investors, or has total assets exceeding \$10 million, SEC Regulation 12g-1 requires that issuer to register its shares with the SEC.

130. By May 2017, Automotive had exceeded those levels, but had still failed to comply with its registration obligations.

131. In July 2018, GPB CH and the GPB Individual Defendants that "material weaknesses in [the GPB Corporate Defendants'] internal controls exist."

132. In August 2018, GPB Capital also announced that it was suspending Automotive's securities offering, as well as investor redemptions, until Automotive filed a registration statement and audited financial statements with the SEC.

133. Also in August 2018, GPB CH and the GPB Individual Defendants announced that they would take a break from raising new money to *straighten out the accounting and financial statements* at their two largest funds, Automotive and Holdings II.

134. Also in August 2018, GPB CH and the GPB Individual Defendants also announced that they were overhauling and restating the 2015 and 2016 financial statements of certain GPB funds including Holdings II and Automotive as part of an accounting review, and that those statements should no longer be relied upon, according to media releases.

135. In August 2018, GPB CH and the GPB Individual Defendants also announced that the GPB's accountant, Crowe LLP ("Crowe"), had previously suspended its work related to an audit to give GPB CH and the GPB Individual Defendants time to complete the GPB Investment Programs' 2017 financial statements, according to media releases.

136. In September 2018, the Massachusetts Secretary of the Commonwealth, William Gavin, announced a sweeping investigation into the broker-dealer firms selling private placements in the GPB funds, including the GPB Investment Programs.

137. Then on or about November 9, 2018, GPB's CEO Gentile disclosed that the GPB Corporate Defendants' accounting firm, Crowe, "notified GPB Capital that it elected to resign as the auditor for the partnership ... due to perceived risks that Crowe determined fell outside of their internal risk tolerance parameters." Gentile did not disclose at that time when the funds' audited financial statements would be completed, but also stated, "[w]hile GPB Capital was, and

remains, extremely disappointed in Crowe's decision, we have identified and engaged a replacement auditor, EisnerAmper LLP."

138. In December 2018, financial industry publication Investment News reported that FINRA and the SEC launched investigations into broker-dealers that sold GPB funds, including the GPB Investment Programs. The focus of the SEC's inquiry was the accuracy of disclosures made by GPB to investors, the performance of various funds and the distribution of capital to investors.

139. On February 28, 2019, the FBI, along with officials from the New York City Business Integrity Commission, raided GPB's New York office and the office of one of its holdings, Five Star Carting, a private waste management company. It is not yet clear what the focus of the raids was, although some commentators speculated the probe focused on questions aimed at determining whether GPB was operating as a Ponzi scheme, as alleged by DiBre and more fully detailed *supra*.

140. As of the date of this filing, GPB CH and the GPB Individual Defendants suspended redemptions from the following funds:

- GPB Automotive Portfolio
- GPB Holdings II
- GPB Holdings III
- GPB Holdings Qualified
- GPB Cold Storage
- GPB NYC Development
- GPB Waste Management Fund

141. On June 21, 2019, GPB CH and the GPB Individual Defendants reported significant losses in the value of two of its investment funds, Holdings (25%) and Automotive (39%). The GPB Defendants still hasn't revealed the current value of the two funds. According to a notice sent to investors by the GPB Defendants, an investor who invested \$50,000 in Holdings II has

seen that investment trimmed to \$37,300. An investor who purchased \$50,000 of securities in Automotive had an investment worth \$30,460.

142. On July 19, 2019, one of GPB CH's business partners filed a lawsuit alleging that GPB CH engaged in "serious financial misconduct" and tried to push him out after he complained to the Securities and Exchange Commission.

143. Specifically, in a complaint filed in Norfolk Superior Court in Massachusetts, David Rosenberg, chief executive of Prime Automotive Group, accused GPB CH of running a Ponzi-like scheme, in which it used money from investors to prop up the performance of auto dealerships it owns, as well as to finance payments to other investors. The complaint is pending as of the date of this Complaint, and is incorporated herein by reference.²

The GPB Investment Programs' False and Misleading Statements

144. Throughout the Class Period, the GPB Investment Programs, at the direction of Defendants, prepared, issued, and distributed Offering Documents to Plaintiffs and the members of the proposed class.

145. Said Offering Documents were false and misleading for the following reasons, *inter alia*:

- They misrepresented the GPB Defendants' skill and expertise in conducting due diligence as to the businesses they purported to acquire with investor money, as well as the extent and effectiveness of their due diligence as to such businesses;

² *Rosernberg et al. v. GPB Prime Holdings, LLC et al.*, Case No. 19-0925 (Commonwealth of Massachusetts, Norfolk S.S., Superior Court Department, Jul. 19, 2019).

- They omitted to disclose that the GPB Defendants failed to conduct adequate or reasonable due diligence as to the businesses they purported to acquire with investor money;
- They omitted to disclose that the GPB Defendants failed to design and implement adequate controls as to their financials and operations to prevent the misuse and misappropriation of investor money;
- They omitted to disclose that the GPB Defendants failed to design and implement adequate controls as to their financials and operations to ensure that the financial statements prepared for and distributed to investors were accurate and faithfully described the GPB Defendants' operations;
- They omitted to disclose that the 2015 and 2016 financial statements for the GPB Defendants' two largest funds, Automotive and Holdings II contained misrepresentations and/or omissions and should not have been relied upon by investors;
- They omitted to disclose that Defendant Schneider was a control person of the GPB Corporate Defendants and had a tainted background;
- They omitted to disclose the material disputes and conflicts between the GPB entities' control persons, which had a substantial impact on the GPB Investment Programs' operations.

146. Such misrepresentations and omissions were material, indeed crucial to Plaintiffs and the other GPB investors' evaluation of the GPB Investment Programs, and decision to invest in such Programs.

147. Defendants knew that the prospective GPB investors, including Plaintiffs, would rely to their detriment upon such misrepresentations and omissions in the Offering Documents, and indeed intended such investors and Plaintiffs to rely on those misrepresentations and omissions in order to invest in the GPB Investment Programs.

148. Plaintiffs and the other investors were reasonable in relying upon the misrepresentations and omissions in the Offering Documents.

CLASS ACTION ALLEGATIONS

149. This action is brought by Plaintiffs, for themselves and on behalf of all others similarly situated, as a class action pursuant to NY CLS CPLR § 901 et seq.

CLASS DEFINITION

150. The Proposed Class is defined as follows: All persons and entities that purchased or otherwise acquired GPB Investment Program securities in or pursuant to those Programs' securities offerings.

151. Excluded from the class are: (1) Any of the Defendants, their agents or employees; (2) any judge or judicial officer who may hear any aspect of this case and his or her law clerks; and (3) any person, firm, trust, corporation, or other entity related to or affiliated with any of the Defendants.

NUMEROSITY

152. The members of the Proposed Class are so numerous and geographically dispersed that joinder of all members is impracticable. While the exact number of Proposed Class members remains unknown at this time, reports published by GPB indicate there are thousands of members of the proposed class. The exact number of GPB investors is within the knowledge of Defendants.

TYPICALITY

153. The claims of Plaintiffs are typical of the claims of all Class members. Plaintiffs are situated identically to all members of the Class with respect to the issues presented in this case, as Plaintiffs and all members of the Class were investors in the GPB programs and suffered the exact same loss (in proportion to the amount of their investment). The claims of Plaintiffs are based on the same fundamental factual allegations and legal theories as the claims of all other members of the Class.

154. All investors in the GPB Investment Programs have been adversely affected by the wrongdoing of Defendants as described herein.

COMMONALITY

155. There are common questions of law or fact in this class action that relate to and affect the rights of each member of the Class and that predominate over any questions affecting only individual class members, including, *inter alia*:

- a. Whether Defendants orchestrated securities offerings for the GPB Investment Programs;
- b. Whether the Offering Documents for the GPB Investment Programs contained misrepresentations and omissions;
- c. Whether the Offering Documents for the GPB Investment Programs misrepresented the GPB Defendants' skill and expertise in conducting due diligence as to the businesses they purported to acquire with investor money, as well as the extent and effectiveness of their due diligence as to such businesses;

- d. Whether the Offering Documents for the GPB Investment Programs omitted to disclose that the GPB Defendants failed to conduct adequate or reasonable due diligence as to the businesses they purported to acquire with investor money;
- e. Whether the Offering Documents for the GPB Investment Programs omitted to disclose that the GPB Defendants failed to design and implement adequate controls as to their financials and operations to prevent the misuse and misappropriation of investor money;
- f. Whether the Offering Documents for the GPB Investment Programs omitted to disclose that the GPB Defendants failed to design and implement adequate controls as to their financials and operations to ensure that the financial statements prepared for and distributed to investors were accurate and faithfully described the GPB Defendants' operations;
- g. Whether the Offering Documents for the GPB Investment Programs omitted to disclose that the 2015 and 2016 financial statements for the GPB Defendants' two largest funds, Automotive and Holdings II contained misrepresentations and/or omissions and should not have been relied upon by investors;
- h. Whether the Offering Documents for the GPB Investment Programs omitted to disclose that Defendant Schneider was a control person of the GPB Corporate Defendants and had a tainted background;

- i. Whether the Offering Documents for the GPB Investment Programs omitted to disclose the material disputes and conflicts between the GPB entities' control persons;
- j. Whether such disputes as referenced immediately above had a substantial impact on the GPB Investment Programs' operations;
- k. Whether the alleged misrepresentations and omissions in the Offering Documents were material;
- l. Whether the Underwriter Defendants acted recklessly or negligently in connection with their role as broker/dealer and underwriter of the GPB offerings;
- m. Whether the GPB Defendants failed to conduct adequate or reasonable due diligence as to the businesses they purported to acquire with investor money;
- n. Whether the GPB Defendants failed to design and implement adequate controls as to their financials and operations to prevent the misuse and misappropriation of investor money;
- o. Whether the GPB Defendants failed to design and implement adequate controls as to their financials and operations to ensure that the financial statements prepared for and distributed to investors were accurate and faithfully described the GPB Defendants' operations;
- p. Whether Defendant Schneider was a control person of the GPB Corporate Defendants;

- q. Whether GPB CH and the GPB Individual Defendants were fiduciaries of Plaintiffs and the class members;
- r. Whether GPB CH and the GPB Individual Defendants breached their fiduciary duties to the GPB investors;
- s. Whether Defendants acted recklessly or negligently in connection with their role in orchestrating the GPB Investment Programs' securities offerings;
- t. Whether Defendants' breaches of duty proximately caused Plaintiffs' and the class members' damages.

ADEQUACY

156. The representative parties and undersigned counsel will fairly and adequately protect the interests of the proposed class.

SUPERIORITY

157. Plaintiffs also satisfy Rule 901 of the New York Civil Practice Rules because a class action here is superior to other available methods for the fair and efficient adjudication of this controversy.

COUNT I

NEGLIGENCE AGAINST ALL DEFENDANTS

158. Plaintiffs repeat and re-allege each of the allegations in this lawsuit.

159. For purposes of this count, and in the alternative, Plaintiffs specifically disclaim any allegations of fraud, and allege only negligence.

160. Each of the Defendants had a duty, as a result of a special relationship, *i.e.*, the offering of securities to investors across the country in the form of partnership units, to give accurate information.

161. GPB CH, as the general partner, control person, manager and majority owner of Holdings, Holdings II, Automotive, and Cold Storage, and in that capacity, orchestrated the securities offerings of the GPB Investment Programs, and offered and sold securities issued by the GPB Investment Programs to Plaintiffs and other investors, owed a duty to Plaintiffs and the members of the Class. In addition, as set forth below, GPB CH's duty arises because it was a fiduciary of Plaintiffs and the members of the Class. Based on the above, CPB CH owed Plaintiffs a duty of candor.

162. Defendants Holdings, Holdings II, Automotive, and Cold Storage were each securities issuers that offered and sold securities in the form of partnership units to investors including Plaintiffs. As such, Defendants Holdings, Holdings II, Automotive, and Cold Storage each owed Plaintiffs a duty of candor.

163. Each of the GPB Individual Defendants held positions with the GPB Corporate Defendants as either director, officer, manager, and control person, and who orchestrated, directed, executed and oversaw the GPB Investment Programs securities offerings, and/or offered and sold to investors securities issued by the GPB Investment Programs. As such, the GPB Individual Defendants owed Plaintiffs a duty of candor. In addition, as set forth below, GPB CH's duty arises because it was a fiduciary of Plaintiffs and the members of the Class.

164. The GPB Underwriter Defendants, because of their key role in structuring and overseeing the GPB Investment Programs' securities offerings, preparing the offering materials distributed to investors, overseeing the distribution of such offering materials to investors, and/or offering and selling GPB Investment Program securities to investors, owed Plaintiffs a duty of candor.

165. The GPB Individual Defendants, because of their positions with the GPB Corporate Defendants, as well as their senior positions with other GPB affiliates, possessed the power and authority to control and did control the content and form of the GPB Investment Programs' prospectuses, reports, press releases and other materials provided to investors. Similarly, the GPB Underwriter Defendants, along with Axiom (together, the "GPB Underwriters") possessed the power and authority to control and did control the content and form of the GPB Investment Programs' prospectuses, periodic reports, press releases and other materials provided to investors.

166. Because of their positions with the GPB Corporate Defendants, as well as their senior positions with other GPB affiliates, the GPB Individual Defendants had access to material non-public information concerning GPB, and they knew the adverse facts specified herein.

167. Because of their close relationship – and, in the case of the Ascendant Defendants, common control – with the GPB Corporate Defendants, the GPB Underwriter Defendants had access to material non-public information concerning GPB, and they knew the adverse facts specified herein.

168. Defendants, because of their positions with the GPB, or role as underwriter, possessed unique and specialized expertise and information concerning GPB, including the material non-public information specified herein. Such information was available to Plaintiffs only when Defendants chose to reveal it.

169. Defendants were negligent and breached their duties to Plaintiffs and the members of the Class by:

- Failing to disclose that GPB did not employ adequate processes or controls to determine whether the dealerships it was acquiring with investor money had strong management, or whether the earnings of those dealerships were accurately stated;

- Failing to disclose that GPB was significantly overpaying for the dealerships it was acquiring;
- Failing to disclose that GPB did not either possess or employ “unique,” “in-depth,” “higher quality,” and “extensive” due diligence skills and processes when acquiring new businesses, including car dealerships, as described in the PPMs;
- Failing to disclose that GPB did not conduct a thorough review of the accounting of such businesses that were candidates for acquisition, and in fact, GPB did not possess those skills and processes for evaluating such accounting notwithstanding affirmative statements in the PPMs to the contrary;
- Failing to disclose that GPB’s principals did not have a unique advantage based on knowledge from their accounting and advisory practice to conduct due diligence during the sourcing phase of an acquisition, notwithstanding affirmative statements in the PPMs to the contrary;
- Failing to disclose that GPB’s principals did not have a unique ability to track a client’s personal growth, as well as the growth of their businesses, purportedly gained through numerous years of preparing personal and business financial statements and income tax returns, thus allowing GPB to perform a more thorough due diligence process than typically seen in the private company acquisition space, notwithstanding affirmative statements in the PPMs to the contrary;
- Failing to disclose that GPB did not have “decades of experience in the industry” that led to “a higher quality” of “up-close and personal levels of due diligence on the targeted Dealerships” and did not “evaluate the integrity and growth potential of the underlying management team” notwithstanding affirmative statements in the PPMs to the contrary;
- Failing to disclose that GPB was not properly overseeing and managing the businesses GPB acquired with investor money, which oversight and management would have prohibited, or at least stopped in a timely manner the serious misconduct alleged; and

170. Plaintiffs and members of the Class who invested in the GPB Investment Programs were injured as a proximate result of Defendants’ negligence and seek to recover damages as a result thereof in an amount to be determined at trial.

COUNT II

NEGLIGENT MISREPRESENTATION: AGAINST ALL DEFENDANTS

171. Plaintiffs repeat and re-allege each of the allegations in this lawsuit.

172. For purposes of this count, in the alternative, Plaintiffs specifically disclaim any allegations of fraud, and allege only negligence.

173. As set forth herein, each of the Defendants had a duty, as a result of a special relationship, *i.e.*, the offering of securities to investors across the country in the form of partnership units, to give accurate information.

174. GPB CH was the general partner, control person, manager and majority owner of Holdings, Holdings II, Automotive, and Cold Storage, and in that capacity, orchestrated the securities offerings of the GPB Investment Programs, and offered and sold securities issued by the GPB Investment Programs to Plaintiffs and other investors. As such, CPB CH owed Plaintiffs a duty of candor.

175. Defendants Holdings, Holdings II, Automotive, and Cold Storage were each securities issuers that offered and sold securities in the form of partnership units to investors including Plaintiffs. As such, Defendants Holdings, Holdings II, Automotive, and Cold Storage each owed Plaintiffs a duty of candor.

176. Each of the GPB Individual Defendants, because of their positions with the GPB Corporate Defendants as either director, officer, manager, and control person, and who orchestrated, directed, executed and oversaw the GPB Investment Programs securities offerings, and/or offered and sold to investors securities issued by the GPB Investment Programs, owed Plaintiffs a duty of candor.

177. The GPB Underwriter Defendants, because of their key role in structuring and overseeing the GPB Investment Programs' securities offerings, preparing the offering materials

distributed to investors, overseeing the distribution of such offering materials to investors, and/or offering and selling GPB Investment Program securities to investors, owed Plaintiffs a duty of candor.

178. The GPB Individual Defendants, because of their positions with the GPB Corporate Defendants, as well as their senior positions with other GPB affiliates, possessed the power and authority to control and did control the content and form of the GPB Investment Programs' prospectuses, reports, press releases and other materials provided to investors. Similarly, the GPB Underwriter Defendants, along with Axiom (together, the "GPB Underwriters") possessed the power and authority to control and did control the content and form of the GPB Investment Programs' prospectuses, periodic reports, press releases and other materials provided to investors.

179. Because of their positions with the GPB Corporate Defendants, as well as their senior positions with other GPB affiliates, the GPB Individual Defendants had access to material non-public information concerning GPB, and they knew the adverse facts specified herein.

180. Because of their close relationship – and, in the case of the Ascendant Defendants, common control – with the GPB Corporate Defendants, the GPB Underwriter Defendants had access to material non-public information concerning GPB, and they knew the adverse facts specified herein.

181. Defendants, because of their positions with the GPB, or role as underwriter, possessed unique and specialized expertise and information concerning GPB, including the material non-public information specified herein. Such information was available to Plaintiffs only when Defendants chose to reveal it.

182. Defendants occupied a special position of confidence and trust such that Plaintiffs' reliance on their statements in the GPB Investment Programs' prospectuses, periodic reports, press

releases and other materials provided to investors was justified. Put another way, Defendants had a duty to speak with care in these circumstances, where the relationship is such that in morals and good conscience Plaintiffs had the right to rely on Defendants for information.

183. Defendants made multiple false and misleading representations that they should have known were incorrect. Defendants' false and misleading statements included:

- Statements in the PPMs that GPB "will continue to focus on acquisitions of Dealerships with strong management, earnings and market position" when, in fact, GPB did not employ adequate processes or controls to determine whether the dealerships it was acquiring with investor money had strong management, or whether the earnings of those dealerships were even accurately stated, let alone strong;
- Statements in the PPMs touting GPB's "unique," "in-depth," "higher quality," and "extensive" due diligence skills and processes they employed when acquiring new businesses, including car dealerships, when, in fact, GPB did not either possess or employ those skills or processes;
- Statements in the PPMs regarding GPB's thorough review of the accounting of such businesses that were candidates for acquisition, when, in fact, those skills and processes for evaluating such accounting did not exist;
- Statements in the PPMs that "GPB leverages the knowledge its principals have gained through their accounting and advisory practice to conduct due diligence during the sourcing phase," that "GPB's principals' unique ability to track a client's personal growth, as well as the growth of their businesses, through numerous years of preparing personal and business financial statements and income tax returns, allows GPB to perform a more thorough due diligence process than typically seen in the private company acquisition space," that GPB's "process of looking beyond a Dealership's financial statements to evaluate the integrity and growth potential of the underlying management team works best when filtered through knowledge developed via personal advisory relationships over time" "leads to a higher quality of due diligence," and through "decades of experience in the industry, GPB will endeavor to obtain from Operating Partners similar, up-close and personal levels of due diligence on the targeted Dealerships and work side-by-side with GPB's executives," when, in fact, GPB did not either possess or employ those skills or processes, or have the described-experience; and
- Statements in the PPMs that "[a]fter finalizing an acquisition of a Dealership, the GPB Asset Management team takes on the operational oversight of the Dealership. The GPB Asset Management team is

responsible for a systematic process of operating, maintaining and upgrading assets, and ensuring that Dealerships meet projected operating milestones and maximize overall cash flow from operations,” when, in fact, little if any such systematic process to ensure that Dealerships meet projected operating milestones and maximized overall cash flow from operations was employed, and if so, it was wholly inadequate.

184. Defendants knew that Plaintiffs desired the information supplied in the representations for a serious purpose, *i.e.*, to decide whether to invest in the GPB Investment Programs.

185. Plaintiffs intended to rely and act upon the information provided by Defendants. Plaintiffs reasonably relied on Defendants’ misrepresentations and omissions to their detriment, namely, they decided to invest in the GPB Investment Programs, and as a result of their reliance, suffered damages.

COUNT III

BREACH OF FIDUCIARY DUTY AS TO THE GBP DEFENDANTS

186. Plaintiffs repeat and re-allege each of the allegations in this lawsuit.

187. GPB CH was the general partner, control person, manager and majority owner of Holdings, Holdings II, Automotive, and Cold Storage.

188. The GPD Individual Defendants were control persons of GPB CH, and exercised control over the partnership’s property, *i.e.*, the investors’ money.

189. The GPB investors were fully dependent upon the GPB Defendants’ ability, skill, knowledge, and goodwill to invest their money appropriately and thereafter diligently oversee and manage that money.

190. Moreover, by virtue of their superior skill and knowledge, their discretion on how to invest the investors’ money, their exclusive oversight over the investors’ money, the fact that

they had been entrusted by the GPB investors with such investors' money, GPB CH and the GPB Individual Defendants were the investors' fiduciaries.

191. The GPB Defendants breached their fiduciary duties to Plaintiffs and other members of the proposed class by failing to safeguard the investors' money and diligently invest it by, among other things:

- Failing to conduct adequate, if, in fact, any, due diligence before deploying investor money to purchase new car dealerships, which adequate due diligence would have revealed that DiBre, himself a control person and senior executive of GPB, implemented improper and illegal business practices which inflated the historic earnings of the dealerships he sold to GPB prior to GPB's advance of "blue sky" prices, and that DiBre's actions in this regard were to GPB's detriment because GPB's purchase price was a multiple of those inflated earnings;
- Failing to properly oversee and manage the businesses GPB acquired with investor money, which oversight and management would have prohibited, or at least stopped in a timely manner the serious misconduct including the diversion and misappropriation of assets, opportunities and other value from the dealerships, thereby greatly decreasing the profits owed to GPB from the dealerships; and
- Failing to disclose to the GPB investors the ongoing deficiencies in the GPB Corporate Defendants' accounting and corporate control systems as well as in their due diligence of new dealership acquisitions the profitability of the dealerships GPB was purchasing with investor money was artificially inflated prior to GPB's purchase, thus resulting in Failing to conduct adequate due diligence.

192. As a direct and proximate consequence of the GPB Defendants' conduct as described in the foregoing and throughout this complaint, Plaintiffs and other investors have lost a significant portion of money they invested in the GPB Investment Programs. As a result of the GPB Defendants' breach of fiduciary duty, Plaintiffs and the proposed class have suffered damages in an amount to be determined at trial.

COUNT IV

COMMON LAW FRAUD

193. Plaintiffs repeat and re-allege each of the allegations in this lawsuit.

194. Plaintiffs were defrauded by Defendants, as that cause of action is delineated by the common law in the State of New York.

195. Plaintiffs were the recipients of multiple misrepresentations and omissions of material fact. Those false and misleading statements include:

- Statements in the PPMs that GPB “will continue to focus on acquisitions of Dealerships with strong management, earnings and market position”;
- Statements in the PPMs touting GPB’s “unique,” “in-depth,” “higher quality,” and “extensive” due diligence skills and processes they employed when acquiring new businesses, including car dealerships;
- Statements in the PPMs regarding GPB’s thorough review of the accounting of such businesses that were candidates for acquisition;
- Statements in the PPMs that “GPB leverages the knowledge its principals have gained through their accounting and advisory practice to conduct due diligence during the sourcing phase,” that “GPB’s principals’ unique ability to track a client’s personal growth, as well as the growth of their businesses, through numerous years of preparing personal and business financial statements and income tax returns, allows GPB to perform a more thorough due diligence process than typically seen in the private company acquisition space,” that GPB’s “process of looking beyond a Dealership’s financial statements to evaluate the integrity and growth potential of the underlying management team works best when filtered through knowledge developed via personal advisory relationships over time” “leads to a higher quality of due diligence,” and through “decades of experience in the industry, GPB will endeavor to obtain from Operating Partners similar, up-close and personal levels of due diligence on the targeted Dealerships and work side-by-side with GPB’s executives”; and
- Statements in the PPMs that “[a]fter finalizing an acquisition of a Dealership, the GPB Asset Management team takes on the operational oversight of the Dealership. The GPB Asset Management team is responsible for a systematic process of operating, maintaining and upgrading assets, and ensuring that Dealerships meet projected operating milestones and maximize overall cash flow from operations.”

196. Defendants knew their statements to Plaintiffs concerning GPB’s “unique,” “in-depth,” “higher quality,” and “extensive” due diligence skills and processes they employed when

acquiring new businesses, GPB's thorough review of the accounting of such businesses, the GPB principals' knowledge of accounting and advisory practice uniquely positions GPB to conduct a higher quality due diligence on potential acquisitions, that and GPB's operational oversight and systemic process for operating, maintaining and upgrading assets, and ensuring that Dealerships meet projected operating milestones and maximize overall cash flow from operations were false when made and/or omitted material information required to make the statements made not misleading.

197. Based on their positions as control persons, officers, directors, managers, majority owners and/or underwriters, each of whom offered and sold securities in the form of partnership units to investors including Plaintiffs, Defendants were uniquely knowledgeable about GPB's true due diligence practices and procedures, and its financial condition. Armed with that knowledge, the Defendants had a full understanding of the truth and yet disseminated falsehoods to create a misleading and "rosy" picture of GPB's current state and future prospects.

198. Defendants made those false statements for the purpose of inducing Plaintiffs to invest in the GPB Investment Programs, which they in fact did.

199. Plaintiffs' specific reliance on Defendants' misrepresentations and omissions was reasonable in that Defendants were issuers of securities under strict legal and regulatory obligations to be truthful in their statements to investors.

200. And as a direct result of Defendants' fraudulent statements and Plaintiffs' reliance thereon, Plaintiffs suffered damages in an amount to be determined at trial.

COUNT V

DECLARATORY JUDGEMENT – JURY TRIAL

201. Plaintiffs repeat and re-allege each of the allegations in this lawsuit.

202. By this Count, Plaintiffs seek a Declaratory Judgment that the provision set forth in the Subscription Agreement that provides for a waiver of a trial by jury that applies to actions arising out of the Subscription Agreement or the LPA, by its terms, does not apply to 1) the Individual Defendants, 2) the Underwriter Defendants, or 3) to Defendants' post-sale conduct.

203. The provision in question states:

THE SUBSCRIBER KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR THE LPA OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, THE LPA OR ANY OTHER AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION THEREWITH OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR OTHER ACTIONS OF EITHER PARTY RELATED TO THIS AGREEMENT OR THE LPA. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE COMPANY TO ACCEPT THIS AGREEMENT.

204. Neither the Individual Defendants, nor the Underwriter Defendants are parties to the Subscription Agreement or LPA, nor are they named as third-party beneficiaries. Therefore, the terms of the Agreement or LPA should not apply as to them.

205. Moreover, much of the wrongdoing complained of herein involves post-sale conduct. Plaintiffs seek a Declaration that any such post-sale conduct is not "related to this Agreement or the LPA" and therefore, Plaintiffs should be permitted to seek a trial by jury as to those claims.

DEMAND FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the other members of the Class, pray for judgment as follows:

(a) Determining that this action is a proper class action under NY CLS CPLR § 901 et seq;

- (b) Awarding compensatory damages in favor of Plaintiffs and the other Class members for all damages sustained as a result of Defendant's wrongdoing in an amount to be proven at trial, including interest thereon;
- (c) Awarding Plaintiffs and the Class members their reasonable costs and expenses incurred in this action, including counsel fees and expert fees;
- (d) Issuing a Declaratory Judgment stating that the provision set forth in the Subscription Agreement that provides for a waiver of a trial by jury does not apply to the Individual Defendants, the Underwriter Defendants, or to Defendants' post-sale conduct, and
- (e) Such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury of all issues so triable.

August 6, 2019

By: /s/ Brian D. Penny

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ATTORNEY'S VERIFICATION BY AFFIRMATION

BRIAN D. PENNY, an attorney duly admitted to practice before the Courts of the State of New York, affirms the following to be true under the penalties of perjury:

I am an attorney at GOLDMAN SCARLATO & PENNY, P.C., attorneys of record for Plaintiffs, ADAM YOUNKER, DENNIS AND CHERYL SCHNEIDER, AND PLAZA PROFESSIONAL CENTER INC PFT SHARING. I have read the annexed **COMPLAINT** and know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon facts, records, and other pertinent information contained in my files.

I make the foregoing affirmation because Plaintiff(s) is/are not presently in the county wherein I maintain my offices.

DATED: Conshohocken, Pennsylvania

August 6, 2019

/s/Brian D. Penny
BRIAN D. PENNY, ESQ.