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March 25, 2025

BY ECF

The Honorable Rachel P. Kovner
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

**Re: *United States v. Gentile, et al.*,
21 Cr. 054 (RPK)(PK)**

Dear Judge Kovner:

We represent Defendant David Gentile and write in response to the Court's March 20, 2025 Order to object to the Court's consideration of the 3,900 pages of impact statements and affidavits of purported victims that have been submitted by the Government to date. Defendant Jeffrey Schneider joins in this letter and the request for relief.

The Government expressly asked this Court to give Mr. Gentile a sentence comparable to that of a defendant convicted of pre-meditated murder because of the undeniably sad and, at times, tragic stories buried within these 3,900 pages. Gov't Sent'g Memo, ECF No. 539 at 11–16. But not everyone has the right to address the Court and have their story considered in deciding Mr. Gentile's sentence. *See* 18 U.S.C. § 3771(e)(2)(A) (granting that “right” only to qualified “crime victims”). And while the Court has discretion concerning who it may hear from—whether they are qualified “crime victims” or not—that discretion is not limitless. Rather, the Court can only “receive statements or information that are relevant to what sentence the court should impose.” *United States v. Smith*, 967 F.3d 198, 216 (2d Cir. 2020). Mr. Gentile's sentence should reflect the consequences of the conduct for which he was convicted and not unrelated tragedies that happened to befall those who invested in the GPB Funds.

The Government simply dumped these statements on the Defendants and the Court, without even the most basic attempt to determine whether the statements are appropriate for the Court to consider. As a result, the statements create an unfairly prejudicial situation that is

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unrelated to the offense conduct at issue here or to the factors that are relevant to sentencing Mr. Gentile. Indeed, the manner in which these statements were submitted makes it impossible to know if the vast majority of these investors are “victims” (even under the theories articulated by the Government) or have any relevant information to give the Court. For example, the majority of the impact statements and accompanying affidavits of loss do not contain even the most basic information, such as the fund they invested in, when they made the decision to invest, or the amount of money invested. And not a single submission appears to agree with the Government’s theory of actual loss here. In fact, there is no uniform theory of loss among the submissions, and many investors have conceded that whether they have suffered any losses at all is yet to be determined, acknowledging that the court-appointed receiver overseeing the distribution of GPB Capital Holdings’ assets is sitting on over a billion dollars waiting for court approval to begin distributions and expects that many investors will recoup their entire investment. *See, e.g.*, DOJ-0003903 (stating that losses are “not yet quantified”); DOJ-0000749 (stating that “I have no idea what the damages are”); DOJ-0003704 (“My loss due to the offense of conviction is unknown at this time.”); DOJ-0002260 (“I was not exactly sure how to calculate the estimated loss, since currently the receivership is still pending.”).¹ Moreover, the statements and purported loss affidavits were often not produced together, so information about a single purported victim is dispersed throughout multiple, non-sequential documents, with no metadata to group multiple submissions by the same purported investor. And, worse, some are poor quality scans that are entirely illegible and, on others, the handwriting is such that you cannot read the individual’s name. *See, e.g.*, DOJ-0001218; DOJ-0000554.

In addition to the above issues, the Government has submitted documents that, on their face, establish that the authors do not appear to have any information relevant to Mr. Gentile’s sentencing. The following is a non-exhaustive list of categories we have identified so far via a manual review of the documents produced to date:

- **Individuals who did not invest in *any* GPB-related fund:** We have identified submissions from individuals who do not appear on what we understand to be a comprehensive investor list produced by the Government on January 17, 2025. *See, e.g.*, DOJ-0000100; DOJ-0002462.² In other words, there is no record of them investing in *any* fund affiliated with GPB or Mr. Gentile. There appears to have been no screening performed by the Government to confirm that these submissions are from actual investors.
- **Individuals who invested in a fund other than Holdings I, Holdings II, or the Automotive Portfolio:** There appear to be hundreds of submissions from individuals who invested solely in GPB-affiliated funds about which no wrongdoing was even alleged, let

¹ We have not attached copies of the cited impact statements and affidavits, as we are objecting to the Court’s review and consideration of them in their entirety until such time as they have been vetted for the issues discussed in this letter. If, however, the Court wishes to consider them in ruling on our objections, we will promptly file them under seal.

² The investor list is marked DOJ-0000003. We have not filed it as an exhibit, because converting it to a PDF would render the document, which is a large Excel file, unreadable. We will provide an electronic copy to the Court upon request.

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alone proven. While the Government argued at trial that marketing materials for Holdings I, Holdings II, and/or the Automotive Portfolio (collectively, the “GPB Funds”) may have been given to prospective investors in other GPB-affiliated funds, they ultimately offered no evidence that anyone invested in these other funds in reliance on the statements underlying Mr. Gentile’s conviction. Even more problematic, however, there appear to be more than a dozen submissions from individuals who invested in only GPB Cold Storage, LP, *see, e.g.*, DOJ-0002525; DOJ-0003256; *see also* DOJ-0000003—a fund in which, according to the court-appointed receiver, investors will recover 140–150% of their initial investment. *See* Distribution Plan at 3, *S.E.C. v. GPB Cap. Holdings*, No. 21-CV-583(MKB), ECF No. 228-1 (E.D.N.Y. Jan. 17, 2025).

- **Individuals who made the decision to invest before the offense conduct began:** The Government has also put before the Court hundreds of submissions from investors who made the decision to invest before any of the statements underlying Mr. Gentile’s conviction were even made, including individuals who invested in Automotive Portfolio prior to August 2015, Holdings I prior to September 2015, and Holdings II prior to April 2017. *See* Indictment ¶ 23. These individuals invested when distributions were indisputably covered by funds from operations (as the indictment alleges), knowing that: (i) distributions were not guaranteed; (ii) the Fund had the right to include investor capital in distribution payments; and (iii) investors had no right to redeem. *See, e.g.*, GX-4061 at 014 (May 13, 2014 H1 PPM stating that “distributions could be more, less or none at all” of the 8% target); *id.* at 084–85 (May 13, 2014 H1 LPA stating that the fund was authorized to “distribute funds to [investors] by way of cash, income, return of capital, or otherwise”); *id.* at 015 (May 13, 2014 H1 PPM stating that “Limited Partners do not have the right to redeem their Units except in limited circumstances”). In other words, had the GPB Funds either suspended distributions or announced coverage shortfalls, as the Government contends would have been proper, this would have occurred after these individuals were already invested in the Funds and had no right to redeem. Any financial hardship these individuals endured occurred regardless of the conduct for which Mr. Gentile was convicted. It is thus unclear what relevance their statements have to Mr. Gentile’s sentencing.
- **Individuals who invested for reasons other than the conduct resulting in conviction:** Investors submitted letters explicitly stating that they relied on lies told to them by their financial advisors in deciding whether to invest in the GPB Funds—lies that are completely unrelated to the conduct for which Mr. Gentile was convicted and are explicitly contradicted by the Funds’ offering documents. For example, one investor letter reads in relevant part:

This [investment] was my life savings and I requested a conservative investment. I responsibly asked questions to the broker representing the investment. He stated that I can liquidate my investment after one year at a 3% penalty, which was not true -- even knowing that I had kept the email

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as proof of the false information he had given me. I was told I would receive guaranteed dividends, and access to my funds, and this was all a lie.

DOJ-0003843 at 3845. However, the Holdings II PPM clearly stated that investments were “highly illiquid, have no public market and are generally not transferable,” that “withdrawals . . . are not permitted without GPB’s consent and are otherwise subject to the terms of the LPA,” and that “[i]nvestors cannot expect to be able to liquidate their investment in case of an emergency” (emphasis added). See GX-8127-C at -030; see also DOJ-0000003 (indicating that this investor invested in Holdings II). It further explicitly stated that distributions were not guaranteed. GX-8127-C at -032 (“there is no guarantee that [GPB] will pay any particular amount of distributions, if at all”). Mr. Gentile was not convicted of misrepresenting the liquidity of the Funds or that distributions would be guaranteed. See Trial Tr. 6874:8–10 (Government rebuttal, explaining: “No one can guarantee profits. No one can guarantee a return, and that’s not what [defendants] did. They said it was a target.”).

This letter is not an anomaly. Indeed, there are many submissions in which investors describe relying on lies told by their brokers in deciding to invest—lies that are unrelated to the statements that resulted in Mr. Gentile’s conviction and directly contradicted by the GPB Funds’ PPMs. Compare DOJ-0000439 at 441 (explaining that they invested in Holdings I based on their financial advisor’s representation the investment was “low risk,” noting that they explicitly told their advisor that they “were approaching retirement and . . . did not want any high risk investments”), with GX-4065 at -02, -032–47 (Holdings I PPM, dedicating over 15 pages to the “significant risks” associated with the investment, including the “substantial risk that our losses and expenses will exceed our income and gains”); compare DOJ-0001175 (explaining that they invested in the Automotive Portfolio after their financial advisor told them that “this was a sound investment guaranteed to earn 8%” (emphasis added)), with GX-4008 at -030 (Automotive Portfolio PPM, stating that there was “no guarantee that [GPB] will pay any particular amount of distributions, if at all”). See also DOJ-0000003 (indicating that these investors invested in Holdings I and the Automotive Portfolio, respectively).

Mr. Gentile’s sentence should solely reflect the consequences of the conduct for which he was convicted, not the consequences of misconduct that appears to have been committed by these investors’ fiduciaries.³

- **Individuals who lied about their financial status in order to invest:** At least one investor has acknowledged that her broker had her lie on her subscription agreement in order to invest. See DOJ-0003843 at 3845 (“I believe my application for the investments was falsified so that the broker could purchase shares on my behalf, because as I found out later, I was not a qualified / sophisticated investor.”). Specifically, the GPB Funds’

³ For most of the other individuals who submitted statements, it is not known what these individuals understood and/or relied upon at the time they invested in the GPB Funds.

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subscription agreements required investors to attest that: (i) they are an “accredited investor,” meaning that they meet certain net worth and/or income requirements; (ii) they are a “sophisticated investor,” meaning they have “knowledge and experience in financial and investment matters, and in illiquid investments in particular,” and (iii) the investment is “not excessive” in light of the investor’s “net worth and financial circumstances,” including that the investor has “has no need for liquidity in the investment in the Units and could afford the complete loss of the investment.” DX-BBBBBJ at -007. This investor admits that she did not meet these requirements, but her broker nonetheless facilitated her investment in one of the GPB Funds.

While this is the only investor we have seen to date who has confessed to lying to invest in the GPB Funds, we suspect there are others. Indeed, a significant number of submissions describe the financial hardship that individuals have endured as a result of their investment being tied up in a long-term private equity investment. Notably, the financial hardship is not due to losses sustained because, according to the court-appointed receiver, most investors are expected to recover most of if not their entire investment, but rather this hardship was caused by the illiquid nature of the investment and the suspension of monthly distribution payments. Notably, neither the illiquidity of the GPB Fund units nor the suspension of distribution payments was the subject of any of the statements underlying Mr. Gentile’s conviction. Indeed, the Government stated repeatedly at trial that suspending distribution payments was not only proper, but required. *See, e.g.*, Trial Tr. 6919:19–22 (Government rebuttal, stating that to “[c]ome clean,” defendants needed to “lower or suspend distributions”).

Mr. Gentile’s sentence should reflect the consequences of the actions for which he was convicted, not the consequences of others’ wrongdoing entirely unrelated to the offense conduct. Indeed, the GPB Funds had safeguards in place specifically to avoid the financial hardship described in many of these submissions. Every subscription agreement included a certification from the investor’s fiduciary that the investor “meets the requirements” to invest, including the minimum net worth and income requirements described above. *See, e.g.*, DX-BBBBBJ, at -005. Thus, as the Government notes in its Sentencing Memorandum, that some investors “struggled to pay for even basic expenses” due to the illiquid nature of their GPB Fund investments, Gov’t Sent’g Memo, ECF No. 539 at 13, was caused by their advisors’ misconduct in recommending the investment and falsely attesting to their eligibility, not the conduct for which Mr. Gentile was convicted.

In sum, Mr. Gentile objects to the Court’s consideration of any statement submitted by an individual who falls within any of the above bulleted categories, and respectfully requests that the Court require the Government to provide the detail necessary to confirm whether the remaining submissions meet the relevancy requirements for the Court to consider them at sentencing—at a minimum, what GPB Fund(s) they invested in and when, which is not presently before the Court. Otherwise, the Court’s consideration of thousands of pages of statements regarding the financial hardships suffered by people with no demonstrable connection to the conduct for which Mr.

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Gentile was convicted would unduly prejudice Mr. Gentile and deprive him of his due process at sentencing.

Respectfully submitted,

/s/ Adriana Riviere-Badell

Adriana Riviere-Badell (admitted *pro hac vice*)

Counsel for Defendant David Gentile

cc: All counsel of record (by ECF)