



DIVISION OF  
ENFORCEMENT

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
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NEW YORK, NY 10004-2616

June 2, 2022

By ECF

The Honorable Margo K. Brodie  
Chief United States District Judge  
United States District Court for the Eastern District of New York  
United States Courthouse  
225 Cadman Plaza East  
Brooklyn, NY 11201

**Re: *SEC v. GPB Capital Holdings, LLC, et al.*, 21-cv-00583-MKB-VMS/Request for Conference**

Dear Chief Judge Brodie:

Plaintiff Securities and Exchange Commission (“Commission”), writes in response to Defendant David Gentile’s (“Gentile”) Motion filed May 31, 2022 (Dkt. Nos. 79-83).

In the Commission’s view, the Motion and the events preceding the filing of the Motion constitute an emergency because investor assets to be safeguarded by the Monitor are potentially at risk. Through his actions of recent days, Gentile appears intent on seizing the controls of GPB Capital Holdings, LLC (“GPB CH”) and its investment funds, including their respective bank accounts which hold nearly \$1 billion that is earmarked for the victims of his fraud. We therefore respectfully request that the Court convene an emergency conference to address this crisis and ensure that the Court’s authority pursuant to the Amended Order Appointing Monitor (the “Monitor Order”) is preserved. The conference could also address the Commission’s planned motion for conversion of the monitorship to a receivership in light of Gentile’s actions described below and the current status of the monitorship.

Gentile’s Motion seeks to curtail the authority and powers of the Court-appointed Monitor and to have the Court retroactively approve Gentile’s installation, over the Memorial Day holiday, of himself and his hand-picked team as new management over GPB CH. Gentile’s maneuver is in direct violation of the Monitor Order (Dkt. 39), and seeks to usurp the Court’s authority over the monitorship. Gentile is already attempting to assert management control over GPB CH even before the Court rules on his Motion. The Monitor has informed the Commission staff that Gentile has sent a notice to GPB CH’s current CEO stating that, “[a]lthough you retain your role as CEO, you should

immediately cease any and all actions taken or to be taken in the capacity of a Manager, and you should seek consensus with [the newly appointed managers] regarding the course of GPB and any actions to be taken by the Managers.” In addition, the Monitor has informed the Commission staff that one of the new managers has already requested a meeting with GPB CH’s CEO, and has asserted that an official meeting should be held on June 6.<sup>1</sup>

The Monitor Order provides that the monitorship can be converted to a receivership in the event of material uncured breaches of the Monitor Order. (Dkt. 39, Par. 20-21) As a result, the Monitor has served a written notice of material breach and the Commission intends to seek to convert the monitorship to a receivership in short order in light of Gentile’s attempt to assert control over GPB CH; and Gentile’s violation of the Monitor Order by seeking to make material changes to executive retention and compensation without Monitor approval. In addition, the vast majority of GPB CH’s assets have been liquidated, GPB CH has approximately \$1 billion in cash, and a receivership will provide the most efficient, transparent, and cost-effective means of returning funds to defrauded investors.

Gentile triggered the current situation on or about May 27, 2022, when he, acting as the holder of all membership interests in GPB CH, purported to take action by written consent expanding the size of GPB CH’s board of managers from one to four seats, and immediately filling the three newly-created seats with hand-picked appointees. These purported appointees immediately joined with Gentile to sign a purported amendment to GPB CH’s operating agreement. This purported amendment would grant Gentile greater rights in his membership capacity than he previously possessed. The purported amendment also seeks to grant the three newly-appointed managers with binding entitlements to compensation (as well as indemnification and fee advancement rights). Specifically, the purported amendment would bind GPB CH to pay each of the new managers between \$10,000 and \$35,000 per month, which could result in payment to each of them of over \$400,000 per year.

In the Commission’s view, these actions are a direct violation of the Monitor Order. Paragraph 6 of the Monitor Order provides, among other things, that “[t]he Monitor will have the authority to approve or disapprove the following actions: ... d. any material change to compensation of any executive officer, affiliate, or related party of GPB, Highline, the GPB Funds, or the Portfolio Companies; [and] e. any retention by GPB, Highline, the GPB Funds, or the Portfolio Companies of any management-level professional or person....”). (Dkt. 39 at 2 & 3) Here, the engagement of three new managers to direct GPB CH at compensation of up to \$400,000 per year without Monitor approval is a direct violation of the Monitor Order.

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<sup>1</sup> In an email dated May 31, 2022, the purported new Manager advised the current CEO that he had “officially been appointed as additional manager[] for GBP [*sic*] Capital Holdings,” and further stated that “[w]e need to reconvene next Monday June 6<sup>th</sup> hold [*sic*] an official meeting of the Managers. [*sic*] as an official meeting need [*sic*] 5-days’ notice, as this is required per operating agreement.”

On May 31, 2022, the Monitor provided notice of the material non-compliance to GPB CH and to Gentile in accordance with paragraph 20 of the Monitor Order. Pursuant to paragraph 21 of the Monitor Order, failure to cure this material non-compliance is in and of itself a basis for conversion of the monitorship to a receivership upon motion by the Commission and a Court order.

The reasons given by Gentile in his brief for taking control of GPB CH are simply pretexts. The thrust of Gentile's Motion is to complain that the Monitor and current management of GPB CH is engaging in a liquidation strategy, rather than continuing to operate GPB CH and the investment funds' portfolio companies as going concerns with a long term investment operational outlook, as purportedly contemplated by the Monitor Order, and now that GPB CH's automotive assets have been liquidated, the Monitor's role is substantially complete.

However, GPB CH's current management, hired by Gentile himself, has been engaged in an orderly liquidation to maximize value to investors. Gentile admits as much in his memorandum in support of his Motion. (Dkt. 80) GPB CH, under Gentile's control, "formed Highline Management, Inc. ("Highline") to provide professional management and operational services to GPB and its funds and portfolio companies." (Dkt. 80 at 4) Gentile also contends that the interim CEO-- whom Gentile himself appointed in November 2019--"lacks[] the requisite experience to manage and oversee an investment advisory company such as GPB." (Dkt. 80 at 12-13). Irrespective of Gentile's personal views of his current hand-picked management team, the notion that GPB CH, which is under Court supervision in this civil enforcement action, should continue to engage in the investment advisory business with a long term outlook borders on the absurd. Indeed, as noted above, the vast majority of GPB CH's investments, all of which belong to investors defrauded by Gentile, have already been liquidated. It is time to get money back to investors. In the Commission's view, the most effective, transparent, and cost effective way to accomplish that goal is to convert the monitorship to a receivership.

As the Commission alleges, Gentile defrauded investors in the limited liability investment funds managed by GPB CH, and is facing serious charges from both the Commission and the criminal authorities.<sup>2</sup> To state the obvious, he should not now be permitted to exercise control over the approximately \$1 billion of cash belonging to the victims of his fraud.

Respectfully submitted,

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<sup>2</sup> *United States v. David Gentile, et al.*, 21-cr-00054 (DG)(PK) (E.D.N.Y.)

Cc: all counsel of record by ECF