



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

DAVID GENTILE,

Plaintiff,

v.

GPB CAPITAL HOLDINGS, LLC, a Delaware limited liability company, GPB COLD STORAGE, LP, a Delaware limited partnership, GPB HOLDINGS, LP, a Delaware limited partnership, GPB HOLDINGS II, LP, a Delaware limited partnership, GPB HOLDINGS III, LP, a Delaware limited partnership, GPB AUTOMOTIVE PORTFOLIO, LP, a Delaware limited partnership, GPB WASTE MANAGEMENT, LP, a Delaware limited partnership, and GPB NYC DEVELOPMENT, LP, a Delaware limited partnership,

Defendants.

C.A. No.

VERIFIED COMPLAINT FOR ADVANCEMENT

Plaintiff David Gentile (“Mr. Gentile”), by and through his undersigned counsel, for his Verified Complaint for Advancement of fees and expenses against Defendants GPB Capital Holdings, LLC (“GPB”), GPB Cold Storage, LP (“Cold Storage”), GPB Holdings, LP (“Holdings I”), GPB Holdings II, LP (“Holdings II”), GPB Holdings III, LP (“Holdings III”), GPB Automotive Portfolio, LP (“Automotive”), GPB Waste Management, LP (“Waste Management”), and GPB

NYC Development, LP (“NYC Development”, and collectively with Cold Storage, Holdings I, Holdings II, Holdings III, Automotive, and Waste Management, the “Funds”) alleges as follows:

NATURE OF THE ACTION

1. This is a summary proceeding for advancement, pursuant to 6 *Del. C.* § 18-108, the Second Amended and Restated Limited Liability Company Agreement of GPB Capital Holdings, LLC (the “GPB Operating Agreement”)¹, and the several limited partnership agreements of the Funds (collectively, the “Fund Agreements”).² GPB has agreed that Mr. Gentile is entitled to full advancement of the fees and expenses he has incurred and continues to incur to defend against investigations and criminal actions instituted by the United States Government (the “DOJ Action”), eight separate state enforcement actions (the “State Actions”), a civil action by the

¹ A true and correct copy of the GPB Operating Agreement is attached hereto as Exhibit A.

² A true and correct copy of the Agreement of Limited Partnership of GPB Cold Storage, LP is attached hereto as Exhibit B. A true and correct copy of the Third Amended and Restated Agreement of Limited Partnership of GPB Holdings, LP is attached hereto as Exhibit C. A true and correct copy of the Fourth Amended and Restated Agreement of Limited Partnership of GPB Holdings II, LP is attached hereto as Exhibit D. A true and correct copy of Amended and Restated Agreement of Limited Partnership of GPB Holdings III, LP is attached hereto as Exhibit E. A true and correct copy of the Fifth Amended and Restated Agreement of Limited Partnership of GPB Automotive Portfolio, LP is attached hereto as Exhibit F. A true and correct copy of the Agreement of Limited Partnership of GPB Waste Management, LP is attached hereto as Exhibit G. A true and correct copy of the Agreement of Limited Partnership of GPB NYC Development, LP is attached hereto as Exhibit H.

Securities and Exchange Commission, which includes the appointment of a monitor (the “SEC Action”), and eleven separate civil actions brought by investors across the country (the “Civil Actions”, and altogether with the DOJ Action, the State Actions, and the SEC Action, the “Actions”). Notwithstanding GPB’s clear acknowledgement that Mr. Gentile has a right to advancement, and its partial payment of his fees and expenses, GPB continues to wrongfully withhold payment for months and currently owes \$755,038.98 in unpaid advancement fees and expenses for work performed by Kobre & Kim, LLP, which does not include invoices that have been submitted to GPB but are less than 30-days old.

2. The allegations in the Actions clearly demonstrate that Mr. Gentile was made a party to those Actions by reason of the fact that he was a Member and sole owner of GPB and an Officer of GPB.

3. The plain language of the GPB Operating Agreement and the Fund Agreements obligates GPB and the Funds to advance fees and expenses that Mr. Gentile has incurred, and continues to incur, in connection with the Actions. Mr. Gentile properly sought advancement for these fees and expenses. Nonetheless, for months, GPB (and, by proxy, the Funds) has withheld payment or made only partial payment, providing empty promises to come current on all outstanding fees and expenses, but never actually doing so. Mr. Gentile is facing the threat of a looming criminal trial and then multiple civil litigations. His ability to ensure he is adequately

represented by counsel is vital, and GPB and the Funds can no longer kick their advancement obligations down the road; they must come current on their advancement obligations and commit to promptly paying Mr. Gentile's advancement expenses as they are incurred each month.

PARTIES

4. Defendant GPB Capital Holdings, LLC (GPB) is a Delaware limited liability company and is wholly owned by Mr. Gentile. GPB is the general partner that manages several limited partner investment funds including the Defendant Funds here.

5. Defendant GPB Cold Storage, LP (Cold Storage) is a Delaware limited partnership whose general partner is GPB.

6. Defendant GPB Holdings, LP (Holdings I) is a Delaware limited partnership whose general partner is GPB.

7. Defendant GPB Holdings II, LP (Holdings II) is a Delaware limited partnership whose general partner is GPB.

8. Defendant GPB Holdings III, LP (Holdings III) is a Delaware limited partnership whose general partner is non-party GPB Holdings III GP, LLC. GPB is the Managing Member of non-party GPB Holdings III GP, LLC.

9. Defendant GPB Automotive Portfolio, LP (Automotive) is a Delaware limited partnership whose general partner is GPB.

10. Defendant GPB Waste Management, LP (Waste Management) is a Delaware limited partnership whose general partner is GPB.

11. Defendant GPB NYC Development, LP (NYC Development) is a Delaware limited partnership whose general partner is GPB.

12. Plaintiff David Gentile founded GPB in 2013 and is the sole owner of GPB. Mr. Gentile personally owns 99% of the membership interests in GPB. The other 1% is owned by GPB Capital Member, Inc., of which Mr. Gentile is the 100% shareholder. Until February 5, 2021, Mr. Gentile served as the Chief Executive Officer of GPB.

JURISDICTION

13. This Court has jurisdiction over this summary advancement proceeding pursuant to 6 *Del. C.* § 18-111, 6 *Del. C.* § 17-111, Article XVI, Section 10 of the GPB Operating Agreement, and Section 13.3 of each of the Fund Agreements.

FACTS

Gentile Founded and Grew GPB and the Funds

14. Mr. Gentile founded GPB as its sole owner in 2013 as an SEC-registered investment adviser. GPB manages the Funds, which invest in private companies and actively manages the businesses to make them profitable. Since Mr. Gentile first started GPB and the Funds, through his and his team's hard work, they

have grown to over \$1.8 billion in investor capital from approximately 17,000 investors.

The Advancement Provision in the GPB Operating Agreement

15. Article XII, Section 4 of the GPB Operating Agreement provides for indemnification rights as follows:

Indemnification. To the fullest extent permitted by applicable law, a Covered Person shall be entitled to indemnification from the Company for any loss, damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of authority conferred on such Covered Person by this Agreement, except that no Covered Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Covered Person by reason of gross negligence or willful misconduct with respect to such acts or omissions; *provided, however,* that any indemnity under this Section 4 shall be provided out of and to the extent of Company assets only, and no Covered Person shall have any personal liability on account thereof.

(Exhibit A at XII.4) (emphasis added).

16. Article XII, Section 5 of the GPB Operating Agreement provides for advancement rights as follows:

Expenses. To the fullest extent permitted by applicable law, expenses (including reasonable legal fees) incurred by a Covered Person in defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking by or on behalf of the Covered Person to repay such amount if it shall be determined that the Covered Person is not entitled to be indemnified as authorized in Article XII, Section 4 hereof.

(Exhibit A at XII.5) (emphasis added).

17. The GPB Operating Agreement defines “Covered Person” as follows:

. . . a Member, a Manager, any Affiliate of a Member or of a Manager, any officers, directors, shareholders, partners, employees, representatives or agents of a Member, a Manager or their respective Affiliates, or any officer, employee or agent of the Company or its Affiliates.

(Exhibit A at I, pg. 7).

18. Mr. Gentile is a Member and sole owner of GPB and, during all relevant times concerning the proceedings for which advancement is sought, was the CEO of GPB. As such, Mr. Gentile is a “Covered Person” under the provisions of the GPB Operating Agreement.

The Advancement Provision in the Fund Agreements

19. Section 9.3(a) of each of the Fund Agreements provides for indemnification rights as follows³:

Indemnification. To the fullest extent permitted by law, (i) the General Partner, (ii) its Affiliates and (iii) **the officers, directors, stockholders, members, managers, partners and employees of the General Partner** and its Affiliates who perform or are alleged to perform any duties, responsibilities or functions for or on behalf of the Partnership or the General Partner or its Affiliates on behalf of the Partnership or the General Partner (individually, an “Indemnitee”), **shall be indemnified and held harmless by the Partnership from and against any and all losses, claims, damages, liabilities, whether joint or several, expenses (including legal fees and expenses), judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, civil, criminal,**

³ The indemnification provisions of each of the Fund Agreements is substantially and substantively the same, although some Fund Agreements provide for indemnification for advisory committee members and others who are not relevant to the present dispute.

administrative or investigative, in which the Indemnitee may be involved, or threatened to be involved, as a party or otherwise, by reason of its status specified in clause (i) through (iii) above, if (A) such Indemnitee acted in good faith and in a manner it reasonably believed to be in, or not opposed to, the best interests of the Partnership, and, with respect to any criminal proceeding, had no reasonable cause to believe that its conduct was unlawful and (B) the conduct of such Indemnitee did not constitute fraud, gross negligence, willful misconduct or a material breach of this Agreement; provided, however, that the Partnership shall not be obligated to indemnify the General Partner, its Affiliates or their respective officers, directors, stockholders, members, managers, partners and employees (collectively, the “General Partner Indemnitees”) against losses, claims, damages, liabilities, expenses, judgments, fines, settlements and other amounts arising from. claims brought by one General Partner Indemnitee against another General Partner Indemnitee that do not involve and are not made in response to a claim brought against a General Partner Indemnitee by a third party. The termination of any action, suit or proceeding by judgment, order, settlement, or upon a plea of nolo contendere, or its equivalent, will not, of itself, create a presumption that the Indemnitee failed to meet the standards for indemnification set forth in the immediately preceding sentence.

(Exhibits B-H at 9.3(a)) (emphasis added).

20. Section 9.3(b) of the Fund Agreements provides for advancement rights as follows:

To the fullest extent permitted by law, **expenses incurred by an Indemnitee in defending any claim, demand, action, suit or proceeding subject to this Section 9.3** (other than any such claim, demand, action, suit or proceeding brought against an Indemnitee directly by a Limited Partner or by or in the right of the Partnership in accordance with applicable law in which the allegations against such Indemnitee consist exclusively of claims that such Indemnitee is subject to liability to such Limited Partner or the Partnership as a result of conduct that does not meet the standards specified in clause (A) or (B) of Section 9.3(a)) **will, from time-to-time, be advanced by the Partnership prior to the final disposition of such claim, demand,**

action, suit or proceeding, upon receipt by the Partnership of an undertaking by or on behalf of the Indemnitee to repay such amount if it is determined that such Person is not entitled to be indemnified as authorized in this Section 9.3.

(Exhibits B-H at 9.3(b)) (emphasis added).

21. Mr. Gentile is a Member and sole owner of GPB, who is (i) the General Partner of Cold Storage, Holdings I, Holdings II, Automotive, Waste Management, and NYC Development, as well as (ii) the Managing Member of non-party GPB Capital Holdings III GP, LLC, who is the General Partner of Holdings III. While at the request of counsel Mr. Gentile resigned his position as CEO of GPB on February 5, 2021, during all time periods relevant to the Actions, Mr. Gentile was the CEO of GPB. Thus, as a Member and an Officer of GPB, Mr. Gentile is an Indemnitee pursuant to Section 9.3(a) of the Fund Agreements, and he is entitled to advancement pursuant to Section 9.3(b) of the Fund Agreements.

The Actions for which Mr. Gentile Seeks Advancement

The DOJ Action

22. Various government entities have initiated investigations relating to GPB, Mr. Gentile, and other individual defendants.

23. On January 29, 2021, a grand jury from the Eastern District of New York returned an indictment (the “Indictment”) against Mr. Gentile and two other individual defendants. The United States District Court for the Eastern District of New York unsealed the Indictment on February 4, 2021. Mr. Gentile was arraigned

and entered a plea of not guilty. *United States v. David Gentile, Jeffry Schneider and Jeffrey Lash*, No. 1:21-cr-00054(DG)(PK) (E.D.N.Y.)

24. The Indictment alleges that Mr. Gentile and others “engaged in a scheme to defraud investors and prospective investors in the GPB Funds through material misrepresentations and omissions relating to, among other things: (a) the source of funds used to pay monthly distribution payments to investors in several of the GPB Funds, including Holdings I, Automotive Portfolio and Holdings II, and (b) the revenue generated by Holdings I in 2014 and Automotive Portfolio in 2015.”

25. The Indictment further alleges that, while the Funds were struggling financially, GPB and individuals repeatedly misled investors, including by distributing monthly account statements that “reaffirmed the false depiction created by the defendants David Gentile, Jeffry Schneider and Jeffrey Lash, that distribution payments were fully covered by cash flow from operations.”

26. The Indictment further alleges that Mr. Gentile and other individual defendants “fraudulently inflated the income that the GPB Funds received from certain of their assets” through the use of fraudulent guarantees. It alleges a series of transactions in which “Gentile primarily used his own money [and] money he and the defendant Jeffry Schneider had contributed,” ultimately overstating Automotive’s income.

27. Mr. Gentile has pled not guilty to, and is vigorously defending against, all of the allegations made in the Indictment and underlying the DOJ Action.

28. The DOJ Action is currently ongoing, and a trial date will soon be set.

The State Actions⁴

29. Eight other state entities have initiated proceedings against GPB, Mr. Gentile, and other individual defendants, all arising out of the same conduct as alleged in the DOJ Action. Those matters include:

- a. *State of N.Y. v. GPB Capital Holdings, LLC, et al.*, No. 450287/2021 (N.Y. Sup. Ct. Feb. 4, 2021).
- b. *GPB Capital Holdings, LLC, et al.*, No. ENSC-200879 (Ga. Comm'r of Sec. Feb. 4, 2021).
- c. *GPB Capital Holdings, LLC, et al.*, No. AP-21-01 (Mo. Comm'r of Sec. Feb. 4, 2021).
- d. *GPB Capital Holdings, LLC, et al.*, No. 20202719 (S. C. Sec. Comm'r Feb. 4, 2021).
- e. *GPB Capital Holdings, LLC, et al.*, No. 2000838 (Ill. Sec'y. of State Feb. 4, 2021).
- f. *Grewal v. GPB Capital Holdings, LLC, et al.*, No. ESX-C-000019-21 (N.J. Sup. Ct. Feb. 4, 2021).
- g. *Ala. Sec. Comm'n. v. GPB Capital Holdings, LLC, et al.*, No. 47-cv-2021-900169.00 (Ala. Cir. Ct. Mad. Co. Feb. 4, 2021).
- h. *In re Jeffry Schneider*, CRD No. 2089051 (N.J. Bureau of Sec. Feb. 4, 2021).

⁴ Counsel at Kobre & Kim do not represent Mr. Gentile in the State Actions. However, we are including these actions in Mr. Gentile's demand for advancement so that his defense in those actions is also assured.

30. The State Actions are presently stayed pending the outcome of the DOJ Action.

The SEC Action

31. On February 4, 2021, the SEC filed a civil complaint against GPB, Mr. Gentile, and other individual defendants, alleging violations of the Exchange Act relating to the same conduct and business practices at issue in the DOJ Action. *S.E.C v. GPB Capital Holdings, LLC, et al.*, No. 1:21-cv-00583 (MKB) (VMS) (E.D.N.Y. Feb. 4, 2021).

32. While the SEC action has been stayed pending the outcome of the DOJ Action, U.S. District Court Judge Brodie has appointed a monitor with limited abilities to oversee GPB's operations (the "Monitor").

The Civil Actions

33. Eleven separate investor litigations have been filed against GPB, Mr. Gentile, and other individual defendants in various jurisdictions across the country, all arising out of the same conduct as alleged in the DOJ Action. Those matters include:

- a. *Barasch v. GPB Capital Holdings, LLC, et al.*, No. 19-cv-01079 (W.D. Tex.).
- b. *Kinnie Ma v. Ascendant Capital, LLC, et al.*, No. 1:19-cv-01050 (W. D. Tex.).
- c. *Purcell v. GPB Holdings II, LP, et al.*, No. 30-2019-01115653-CU-FR-CJC (Cal. Super. Ct.).

- d. *DeLuca v. GPB Automotive Portfolio, LP, et al.*, No. 19-CV-10498 (S.D.N.Y.).
- e. *In re GPB Capital Holdings LLP Litigation*, No. 157679/2019 (N.Y. Supr. Ct.).
- f. *Miller v. GPB Capital Holdings, LLC, et al.*, No. 656982/2019 (N.Y. Supr. Ct.).
- g. *Ortiz v. GPB Capital Holdings, LLC, et al.*, No. 604918/2020 (N.Y. Supr. Ct.).
- h. *Peirce v. GPB Capital Holdings, LLC, et al.*, No. 652858/2020 (N.Y. Supr. Ct.).
- i. *Ranssi v. GPB Capital Holdings, LLC, et al.*, No. 654059/2020 (N.Y. Supr. Ct.).
- j. *Cadez v. GPB Capital Holdings, LLC et al.*, No. 2020-0402 (Del. Ch.).
- k. *Lipman v. GPB Capital Holdings, LLC, et al.*, No. 2020-0054 (Del. Ch.).

34. Apart from the *Purcell*, *Barasch*, and *Kinnie Ma* matters, the Civil Actions are all presently stayed until the resolution of the DOJ Action. The parties in *Purcell* have agreed to a stay and are preparing a stipulation to be filed with Court to that effect. Mr. Gentile is seeking a stay in the *Barasch* and *Kinnie Ma* actions and filed his motions to stay on October 21, 2021. The motions to stay are currently pending.

Mr. Gentile Demands Advancement, which GPB Acknowledged is Due and Owing, but GPB Withholds Payment for Months and Refuses to Come Current

35. On February 19, 2021, Mr. Gentile provided signed undertakings to GPB and the Funds. A true and correct copy of Mr. Gentile’s signed undertakings is attached hereto as Exhibit I.

36. Throughout Mr. Gentile’s representation, counsel has provided GPB with requested budgets and promptly provided invoices for reimbursement. Not once has GPB complained of or objected to Mr. Gentile’s right to advancement, the work performed, or counsel’s invoices.

GPB Refuses to Pay Fees Related in Some Way to the Monitor⁵

37. GPB has refused to pay invoices 461464 and 461728 because GPB contends that the work reflected in those invoices is not subject to advancement. True and correct copies of invoices 461464 and 461728 are attached hereto as Exhibits J and K, respectively. GPB claims these fees are not subject to advancement because they relate in some way to actions taken by the Monitor—a fact wholly unrelated to whether they fall within GPB’s broad indemnification and advancement obligations. The disputed fees regarding the Monitor currently total **\$75,394.50** (the “Monitor Dispute Fees”).

⁵ In addition to Kobre & Kim, Mr. Gentile is represented by other law firms for which indemnifiable and advanceable work is being performed.

38. Work related to the Monitor is subject to advancement because it arises from alleged acts or omissions performed in good faith by Mr. Gentile while he was a Member of GPB and employed as its CEO. The SEC named Mr. Gentile as a party in its action because his conduct as an officer and a Member and sole owner of GPB is the basis for the allegations in the complaint in the SEC Action. After the SEC sued Mr. Gentile and he voluntarily resigned as CEO, GPB consented to the appointment of the Monitor to oversee GPB transactions.

39. Work related to the Monitor is also subject to advancement because the order appointing the Monitor contains a dispute clause permitting GPB—a company that Mr. Gentile wholly owns—to bring disputes with the Monitor to a magistrate for mediation and ultimately to a U.S. District Court Judge. Counsel for Mr. Gentile in the SEC Action necessarily counseled him on issues related to the powers of and actions taken by the Monitor.

40. Work pertaining to the Monitor's actions is also directly related to Mr. Gentile's defense against the DOJ Action, which is also based on his conduct as CEO and a Member and sole owner of GPB. The Monitor has taken certain actions that have limited Mr. Gentile's ability to prepare a defense to the criminal charges, necessitating review and guidance from counsel.

41. For example, Mr. Gentile has been denied full access to GPB's books and records—including distributions, assets, and sale/transactional documents—

which affects his ability to prepare a defense against the allegations of harm to GPB's investors. Thus, because of the Monitor's decisions, whether and how Mr. Gentile is able to obtain information for use in his defense is of strategic concern in the DOJ Action and the SEC Action and is, therefore, related to an advanceable proceeding.

42. Because the Monitor Dispute Fees concern legal counsel that directly impacts and relates to Mr. Gentile's defense of the allegations against him in the SEC Action and the DOJ Action, which in turn relate to his position as a Member and a former officer of GPB, these fees are advanceable under the GPB Operating Agreement, the LP Agreements, and Delaware law. The Monitor Dispute Fees are due and owing to Mr. Gentile.

GPB Fails to Pay July and August 2020 Deferred Fees

43. In approximately May 2020, GPB's Chief Financial Officer, Rob Chmiel, informed counsel for Mr. Gentile that GPB's insurance funds were running low. Mr. Chmiel informed counsel that the remaining insurance funds would be allocated *pro rata* across all of GPB's legal matters, which would result in a temporary partial payment of summer 2020 invoices. GPB assured counsel for Mr. Gentile that the GPB Funds would assume the obligation to indemnify Mr. Gentile and advance his legal fees, but that GPB needed additional lead time as it transitioned from insurance coverage to direct payment. Based on these circumstances, Mr.

Chmiel asked that counsel defer collecting portions of their summer 2020 invoices to bridge over to the period when the GPB Funds could pay, which he suggested was a matter of a few months.

44. To accommodate GPB, counsel for Mr. Gentile agreed to defer collection on the unpaid fees from July and August 2020. True and correct copies of Mr. Chmiel's email correspondence with Mr. Gentile's counsel regarding the Deferred Fees is attached hereto as Exhibits L and M. Counsel tracked the deferred and unpaid fees in emails to GPB and on their invoices. True and correct copies of Kobre & Kim's June 9, 2020, July 31, 2020, and August 6, 2020 invoices are attached hereto as Exhibits N-U.

45. GPB made only partial payment on invoices from March, June, July, and August 2020 (the "Deferred Fees"). At no time did counsel for Mr. Gentile agree to waive, write-off, or otherwise forego these Deferred Fees. GPB understood that the Deferred Fees would be payable once GPB and the GPB Funds assumed payment for the advancement of Mr. Gentile's legal fees.

46. GPB now disclaims, without explanation, any responsibility to pay for the Deferred Fees. The Deferred Fees total **\$338,520.72**. The Deferred Fees are due and owing to Mr. Gentile.

GPB Refuses to Timely Pay Fees and Expenses, Necessitating the Entry of a *Fitracks* Order

47. By August 1, 2021, despite repeated inquiries by Mr. Gentile's counsel as to payment, neither GPB nor the Funds had paid for any invoices incurred since January 2021 and were still delinquent on the Deferred Fees and the Monitor Dispute Fees.

48. On August 19, 2021, counsel for Mr. Gentile inquired of GPB, "[j]ust checking back following our last call. Had understood payment would be made this week." GPB assured Mr. Gentile's counsel that same day "[a]mounts have been approved. We have an A/P meeting this AM and I will provide you an update afterwards." A true and correct copy of counsel's correspondence with GPB is attached hereto as Exhibit V. Notwithstanding this promise, GPB remained severely behind on its advancement payments for invoiced work.

49. On September 1, 2021, after promising to come current for months, GPB made only a partial payment to Mr. Gentile, which was still more than \$500,000 short of what was due and owing to Mr. Gentile.

50. On September 20, 2021, counsel for Mr. Gentile notified GPB that, while some payments had been received to-date, GPB still owed more than \$500,000 in overdue advancement payments, some of which dated back to the Deferred Fees from 2020. Mr. Gentile's counsel also informed GPB that it had "failed to pay costs for the electronic discovery database required for Mr. Gentile's legal representation

despite GPB entering into a contract with the company hosting the database.” A true and correct copy of counsel’s September 20, 2021, email is attached hereto as Exhibit W.

51. In response to Mr. Gentile’s counsel’s September 20, 2021 email, GPB assured that the outstanding invoices would be processed. GPB did not raise any objection or dispute with the amounts in the unpaid invoices.

52. While GPB has advanced some of Mr. Gentile’s fees and expenses incurred in defending the Actions, payment is routinely made several months after invoices are submitted and, in some cases, remain unpaid. As a result, a *Fitracks* Order setting forth procedures for payment of invoices and resolution of disputes is necessary here. *See Danenberg v. Fitracks, Inc.*, 58 A.3d 991, 1003 (Del. Ch. 2012).

53. At present, Mr. Gentile is owed \$755,038.98 in unpaid advancement fees and expenses—not including invoices that have been submitted to GPB but are less than 30 days old—and he continues to incur significant fees and expenses defending against the Actions. A true and correct copy of the unpaid advancement fees and expenses balance sheet as of December 18, 2021 is attached hereto as Exhibit X.

COUNT I

(Advancement of Fees and Expenses Against GPB and the Funds)

54. Mr. Gentile incorporates the allegations of the foregoing paragraphs as if fully set forth herein.

55. Article XII, Section 5 of the GPB Operating Agreement provides a right to advanced payment of Mr. Gentile's fees and expenses incurred in defending any claim, demand, action, suit or proceeding arising by reason of the fact that he is or was a Member or an Officer of GPB. The Actions are all suits and proceedings as defined in the GPB Operating Agreement. Mr. Gentile is a "Covered Person" under the provisions of the GPB Operating Agreement.

56. Section 9.3(b) of each of the Fund Agreements provides a right to advanced payment of Mr. Gentile's fees and expenses incurred in defending any claims, demands, actions, suits or proceedings, civil, criminal, administrative or investigative, arising by reason of the fact that he is or was a Member or an Officer of GPB. The Actions are all suits and proceedings as defined in the Fund Agreements. Mr. Gentile is an Indemnitee pursuant to Section 9.3(a) of the Fund Agreements.

57. Mr. Gentile has incurred fees and expenses in defending against the Actions, which were instituted by reason of the fact that he is a Member of GPB and a former Officer of GPB.

58. Thus, under the GPB Operating Agreement and the Fund Agreements, Mr. Gentile is entitled to the legal fees and other expenses incurred in defense of the Actions.

59. The Deferred Fees and the Monitor Dispute Fees fall within Mr. Gentile's entitlement to advancement of his legal fees and other expenses incurred in defense of the Actions.

60. Mr. Gentile provided a written undertaking agreeing to repay any amounts advanced to him if it is later determined he is not entitled to be indemnified. GPB and the Funds have nonetheless failed to come current on Mr. Gentile's outstanding advanceable expenses and remain woefully delinquent in payment of Mr. Gentile's advancement rights.

61. Mr. Gentile, therefore, seeks advancement of the fees and expenses he has reasonably incurred defending against the Actions. Mr. Gentile is entitled to a declaration that GPB and the Funds have breached and continue to breach their advancement obligations set forth in the GPB Operating Agreement and the Fund Agreements, as well as an Order mandating that GPB and the Funds advance the legal fees and other expenses incurred and to be incurred by Mr. Gentile in defending against the Actions, including an award of pre-judgment and post-judgment interest.

62. Mr. Gentile has no adequate remedy at law.

COUNT II
(Award of Fees and Expenses Incurred in Connection with Preparing and Prosecuting this Advancement Action)

63. Mr. Gentile incorporates the allegations of the foregoing paragraphs as if fully set forth herein.

64. As a result of GPB's and the Funds' refusal to honor their advancement obligations, Mr. Gentile was forced to engage counsel and initiate this action to enforce his rights to advancement.

65. Applicable law, as well as Article XII, Section 5 of the GPB Operating Agreement and Section 9.3(b) of each of the Fund Agreements, entitle Mr. Gentile to an award of expenses incurred in enforcing his rights to advancement, including those expenses incurred in the preparation and prosecution of this action. GPB and the Funds are therefore liable for those fees and expenses.

PRAYER FOR RELIEF

WHEREFORE, Mr. Gentile hereby requests that this Court enter a judgment and order in his favor:

A. Declaring that GPB and the Funds have breached their advancement obligations;

B. Declaring that Mr. Gentile is entitled to advancement of reasonable attorneys' fees and other expenses incurred in, and to be incurred in, defending against the Actions;

C. Declaring that the Deferred Fees and the Monitor Dispute Fees are due and owing under Mr. Gentile's right to advancement of reasonable attorneys' fees and other expenses incurred in defending against the Actions.

D. Ordering GPB and the Funds to advance to Mr. Gentile the full amount of the fees and expenses (including attorneys' fees), and pre-judgment and post-judgment interest on such fees and expenses, incurred by Mr. Gentile in connection with defending the Actions through the date of the Court's judgment in this advancement action;

E. Ordering GPB and the Funds to advance to Mr. Gentile the full amount of the fees and expenses (including attorneys' fees) to be incurred by Mr. Gentile in defending against the Actions from the date of this Court's judgment in this advancement action until the final disposition of the Actions;

F. Ordering GPB and the Funds to pay Mr. Gentile the full amount of the fees and expenses (including attorneys' fees) incurred and to be incurred by Mr. Gentile in connection with this advancement action, and post-judgment interest on such expenses; and

G. Granting such other and further relief as this Court deems just and proper.

KOBRE & KIM LLP

OF COUNSEL:

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Dated: December 20, 2021

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