

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

**GPB CAPITAL HOLDINGS, LLC;
ASCENDANT CAPITAL, LLC;
ASCENDANT ALTERNATIVE
STRATEGIES, LLC;
DAVID GENTILE;
JEFFREY SCHNEIDER; and
JEFFREY LASH,**

Defendants.

21-cv-00583-MKB-VMS

ECF CASE

APPLICATION FOR ORDER TO SHOW CAUSE

Plaintiff Securities and Exchange Commission (“Plaintiff” or the “Commission”), hereby applies to this Court for an order directing Defendants to show cause why an order should not be entered (i) appointing the previously appointed Monitor in this case, Joseph T. Gardemal III, as receiver, and (ii) imposing a litigation injunction.

The grounds supporting this Application are set forth in the accompanying Plaintiff’s Memorandum of Law and the Declaration of Joseph T. Gardemal III filed concurrently herewith.

Good and sufficient reasons exist for bringing this matter before the Court by an application and order to show cause rather than notice of motion. As explained in greater detail in Plaintiff’s Memorandum of Law, the Chief Executive Officer of Defendant GPB Capital Holdings, LLC (“GPB CH”) has consented to the relief requested by the Commission. However,

by motion dated May 31, 2022 (Dkt. Nos. 79-83), Defendant David Gentile is seeking modification of the Amended Order Appointing Monitor (the “Monitor Order”) (Dkt. 39) to curtail the Monitor’s powers and to request that the Court retroactively approve of Gentile’s unilateral purported change to GPB CH’s management in an attempt to take control over GPB CH in violation of the Monitor Order. As explained further in Plaintiff’s Memorandum of Law, exigent circumstances exist, as GPB CH has approximately \$1 billion in investor cash, much of which is ready to be returned in short order to its over 17,000 investors, but Gentile’s actions have injected uncertainty into GPB CH’s corporate governance and decision making structure. Accordingly, the immediate appointment of a receiver is imperative to provide the certainty in corporate governance necessary to implement an efficient and transparent distribution process for the benefit of investors.

Dated: New York, NY
June 13, 2022

Respectfully submitted,

/s/Neal Jacobson
Neal Jacobson
Alistaire Bambach
David Stoelting
Kristin M. Pauley
Lindsay Moilanen
Attorneys for Plaintiff
Securities and Exchange Commission
New York Regional Office
100 Pearl Street, Suite 20-100
New York, NY 10004-2616
212-336-0095

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**LOCAL RULE 6.1 DECLARATION OF NEAL JACOBSON IN SUPPORT OF THE
SECURITIES AND EXCHANGE COMMISSION'S APPLICATION FOR
AN ORDER TO SHOW CAUSE ON ITS MOTION FOR AN ORDER
APPOINTING A RECEIVER AND IMPOSING A LITIGATION INJUNCTION**

Neal Jacobson declares under penalty of perjury as follows:

1. I am a lawyer employed by the New York Regional Office of the Securities and Exchange Commission ("Commission").
2. I make this declaration pursuant to Local Civil Rule 6.1(d) to show that good and sufficient reason exists for bringing the Commission's Application for an Order to Show Cause on its Motion for an Order Appointing a Receiver and Imposing a Litigation Injunction.
3. The grounds supporting this Application are set forth in the accompanying Plaintiff's Memorandum of Law and the Declaration of Joseph T. Gardemal III filed concurrently herewith.

4. Good and sufficient reasons exist for bringing this matter before the Court by an application and order to show cause rather than notice of motion. As explained in greater detail in Plaintiff's Memorandum of Law and the Gardemal Declaration, the Chief Executive Officer of Defendant GPB Capital Holdings, LLC ("GPB CH") has consented to the relief requested by the Commission. However, by motion dated May 31, 2022 (Dkt. Nos. 79-83), Defendant David Gentile is seeking modification of the Amended Order Appointing Monitor (the "Monitor Order") (Dkt. 39) to curtail the Monitor's powers and to request that the Court retroactively approve of Gentile's unilateral purported change to GPB CH's management in an attempt to take control over GPB CH in violation of the Monitor Order.

5. As explained further in Plaintiff's Memorandum of Law and the Gardemal Declaration, exigent circumstances exist, as GPB CH has approximately \$1 billion in investor cash, much of which is ready to be returned in short order to its over 17,000 investors, but Gentile's actions have injected uncertainty into GPB CH's corporate governance and decision making structure. Accordingly, the immediate appointment of a receiver is imperative to provide the certainty in corporate governance necessary to implement an efficient and transparent distribution process for the benefit of investors.

Dated: New York, NY
June 13, 2022

Respectfully submitted,

/s/Neal Jacobson
Neal Jacobson
Attorneys for Plaintiff
Securities and Exchange Commission
New York Regional Office
100 Pearl Street, Suite 20-100
New York, NY 10004-2616
212-336-0095

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[PROPOSED] ORDER TO SHOW CAUSE

On the Application of Plaintiff Securities and Exchange Commission for an Order directing Defendants in this action to show cause why an order should not be entered (i) appointing the previously appointed Monitor, Joseph T. Gardemal III, as receiver, and (ii) imposing a litigation injunction, the Court has considered (1) the declaration of Joseph T. Gardemal III; (2) Plaintiff's Memorandum of Law; and (3) the record in this case.

NOW, THEREFORE,

IT IS HEREBY ORDERED that Defendants show cause to this Court at .m. on the ____ day of _____, 2022, in Room ____ of the United States Courthouse, _____, Brooklyn, New York 11201, or via telephonic of videoconferencing means, why this Court should not enter an Order (i) appointing the

previously appointed Monitor, Joseph T. Gardemal III, as receiver, and (ii) imposing a litigation injunction;

IT IS HEREBY FURTHER ORDERED that any opposition papers shall be filed on or before _____, 2022, and that any reply papers shall be filed by _____; and

IT IS HEREBY FURTHER ORDERED that the Commission shall serve a copy of this Order by email, overnight mail, or personal service upon counsel for all Defendants promptly upon entry of this Order to Show Cause.

UNITED STATES DISTRICT JUDGE

Issued at:

_____: _____ .m.

_____, 2022
Brooklyn, New York