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9
10 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
OF THE STATE OF CALIFORNIA

<p>11 In the Matter of:</p> <p>12 THE COMMISSIONER OF FINANCIAL 13 PROTECTION AND INNOVATION, 14 Complainant, 15 v. 16 PERMANENT VALUE, INC; BRUCE 17 DOOLE; and BRUCE W AND SUSAN L 18 DOOLE LIVING TRUST 2000, Respondents.</p>	<p>CRD NO.: 118024</p> <p>STATEMENT IN SUPPORT OF ORDER TO DISCONTINUE VIOLATIONS PURSUANT TO CORPORATIONS CODE SECTION 25249</p>
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19 The Commissioner of Financial Protection and Innovation (Commissioner) alleges and
20 charges as follows:

21 1. Permanent Value, Inc. (PVI) is, or was, at all relevant times, an investment adviser
22 licensed by the Commissioner since December 6, 2012, (Central Registration Depository No.
23 118024) pursuant to the Corporate Securities Law of 1968 (CSL). PVI is, or was, at all relevant
24 times, a Delaware corporation registered with the California Secretary of State on July 28, 1998.
25 PVI's principal place of business is located at 2221 Camino Del Rio South, Suite 308, San Diego,
26 California 92108. According to the California Secretary of State's business search website (available
27 at <https://bizfileonline.sos.ca.gov/search/business>), PVI's registration is forfeited by the Franchise
28 Tax Board as of December 1, 2015.

1 2. Bruce Doole (Doole) is, or was, at all relevant times, the sole officer and investment
2 adviser representative of PVI. PVI has been licensed by the Commissioner since December 6, 2012,
3 as an investment adviser representative (CRD No. 2322136).

4 3. Bruce W and Susan L Doole Living Trust 2000 (Trust) is the sole owner of PVI.

5 4. PVI, Doole, and Trust are collectively referred to as Respondents.

6 5. In or about May 2022 until April 28, 2023, the Commissioner conducted a regulatory
7 examination of the books and records of Respondents (2022 Examination).

8 6. On or about April 28, 2023, the Commissioner mailed a regulatory letter by certified
9 mail return receipt and electronic mail identifying various violations of laws and regulations relating
10 to investment advisers. The Commissioner instructed PVI to submit a written response no later than
11 30 days after April 28, 2023, the date of the letter.

12 7. On or about July 17, 2023, the Commissioner received a response, but PVI failed to
13 address all deficiencies and failed to provide all records requested. Respondents provided the
14 remaining requested items by September 8, 2023.

15 8. Corporations Code section (Corp.) 25404 provides, in pertinent part:

16 (a) It is unlawful for any person to knowingly alter, destroy, mutilate, conceal, cover
17 up, falsify, or make a false entry in any record, document, or tangible object with
18 the intent to impede, obstruct, or influence the administration or enforcement of
this division.

19 (b) It is unlawful for any person to knowingly make an untrue statement to the
20 commissioner during the course of licensing, investigation, or examination, with
21 the intent to impede, obstruct, or influence the administration or enforcement of
any provision of this division.

22 (Corp. 25404 (a) and (b).)

23 9. Corp. 25238 provides in pertinent part:

24 No investment adviser licensed under this chapter and no natural person associated
25 with the investment adviser shall engage in investment advisory activities, or attempt
26 to engage in investment advisory activities, in this state in contradiction of such rules
as the commissioner may prescribe designed to promote fair, equitable and ethical
principles.

27 (Corp. 25238.)

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10. Title 10 of the California Code of Regulations section (CCR) 260.238 provides in pertinent part:

The following activities do not promote "fair, equitable or ethical principles," as that phrase is used in Section 25238 of the Code:

...

- (o) Making any untrue statement of a material fact or omitting a statement of material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading in the solicitation of advisory clients.

(CCR 260.238 (h) and (o).)

11. Corp. 25237 provides, in pertinent part:

The commissioner shall prescribe rules with respect to investment advisers licensed under this chapter who have custody of their clients' securities or funds or who have any power of attorney from their clients to execute transactions as he or she finds to be necessary or appropriate in the public interest or for the protection of investors. The rules may require a minimum capital for those investment advisers or prescribe a minimum ratio between net capital and aggregate indebtedness or both, and may require a fidelity bond.

12. CCR 260.237.2 provides in pertinent part:

- (a) Every investment adviser who has custody of client funds or securities shall maintain at all times a minimum net worth of \$35,000, and every investment adviser who has discretionary authority over client funds or securities but does not have custody of client funds or securities, shall maintain at all times a minimum net worth of \$10,000.

...

- (c) Unless otherwise exempted, as a condition of the right to continue to transact business in this state, every investment adviser shall, by the close of business on the next business day following the discovery that the investment adviser's net worth is less than the minimum required, notify the Commissioner that the investment adviser's net worth is less than the minimum required. After transmitting such notice, by the close of business on the next business day each investment adviser shall file a report with the Commissioner of its financial condition....

...

- (e) For purposes of this rule, a person will be deemed to have custody if said person directly or indirectly holds client funds or securities, has any authority to obtain possession of them, or has the ability to appropriate them.

...

1 (j) For purposes of subsection(c) this rule, if the failure to discover that an
2 investment adviser’s net worth is less than the minimum required is the result of
3 the investment adviser’s failure to keep true, accurate and current the books and
4 records required under Section 260.241.3, the investment adviser will be deemed
to have discovered that the investment adviser’s net worth is less than the
minimum required by this section.

5 (CCR 260.237.2 (a),(c), (e), and (j).)

6 13. Corporations Code section (Corp.) 25235 provides, in pertinent part:

7 It is unlawful for any investment adviser, directly or indirectly, in this state:

8 ...

9 (d) To engage in any act, practice, or course of business which is fraudulent,
10 deceptive, or manipulative. The commissioner shall, for the purpose of this
11 subdivision, by rule define and prescribe means reasonably designed to prevent
such acts, practices, and courses of business as are fraudulent, deceptive, or
manipulative.

12 (Corp. 25235 (d).)

13 14. Title 10 of the California Code of Regulations section (CCR) 260.235.4. provides in
14 pertinent part:

15 (a) It shall constitute a fraudulent, deceptive, or manipulative act, practice or course
16 of business within the meaning of Section 25235 of the Code for any investment
17 adviser to fail to disclose to any client or prospective client all material facts with
respect to:

18 (1) A financial condition of the adviser that is reasonably likely to impair the
19 ability of the adviser to meet contractual commitments to clients if (A) the
20 adviser has discretionary authority (express or implied) or custody over such
client's funds or securities, or (B) requires prepayment of advisory fees from
such client 6 months or more in advance; or

21 (CCR 260.235.4 (a)(1).)

22 15. Corp. 25241 provides, in pertinent part:

23 (a) Every... investment adviser licensed under Section 25230 shall make and keep
24 accounts, correspondence, memorandums, papers, books, and other records and
shall file financial and other reports as the commissioner by rule requires.

25 (Corp. 25241 (a).)

26 16. CCR 260.241.2 provides in pertinent part:

27 (a) General Rule. Subject to the provisions of subd (c) of this section, every licensed
28 broker-dealer, and every licensed investment adviser subject to the provisions of

1 Section 260.237.2 of these rules, shall file an annual financial report, as
2 follows....

3 ...

3 (3) The financial statements included in the annual report shall be prepared in
4 accordance with generally accepted accounting principles and shall be
5 audited by either an independent certified public accountant or independent
6 public accountant; provided, however, the financial statements need not be
7 audited if:

6 The broker-dealer or investment adviser has not held or accepted custody of
7 funds and securities for or owed money or securities to customers or clients
8 during the period covered by the report; and

8 ...

9 (B) if the licensee is an investment adviser, the investment adviser only
10 has discretionary authority over client funds or securities, the
11 investment adviser has taken only limited powers of attorney to
12 execute transactions on behalf of its clients, or the investment adviser
13 does not accept prepayment of more than \$500 per client for more than
14 six months in advance; or

12 ...

13 (4) The report shall be filed not more than 90 days after the investment adviser or
14 broker-dealer's fiscal year end....

14 (CCR 260.241.2 (a)(3)(B) and (a)(4).)

15 17. CCR 260.241.3. provides in pertinent part:

16 (a) Every licensed investment adviser shall make and keep true, accurate and current
17 the following books and records relating to such person's investment advisory
18 business:

19 (1) A journal or journals, including cash receipts and disbursements records, and
20 any other records of original entry forming the basis of entries in any ledger.

21 (2) General and auxiliary ledgers (or other comparable records) reflecting asset,
22 liability, reserve, capital, income and expense accounts.

22 ...

23 (4) All check books, bank statements, cancelled checks and cash reconciliations of
24 the investment adviser.

25 (5) All bills or statements (or copies thereof), paid or unpaid, relating to the
26 business of the investment adviser as such.

27 (6) All trial balances, financial statements, worksheets that contain computations
28 of minimum financial requirements required under Section 260.237.2, of
these rules, and internal audit working papers relating to the business of such
investment adviser.

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...
(9) All powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser, or copies thereof.

(10) All written agreements (or copies thereof) entered into by the investment adviser with any client or otherwise relating to the business of such investment adviser as such.

...
(c) Every licensed investment adviser who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:

(1) Records showing separately for each such client the securities purchased and sold, and the date, amount and price of each such purchase or sale.

(2) For each security in which any such client has a current position, information from which the investment adviser can promptly furnish the name of each such client, and the current amount of the interest of such client.

...
(j) Any investment adviser who is subject to the minimum financial requirements of Section 260.237.2 shall, in addition to the records otherwise required under this section, maintain a record of the proof of money balances of all ledger accounts in the form of trial balances and a record of the computations of minimum net worth pursuant to Section 230.237.2 of these rules (as of the trial balance date). The trial balances and computations shall be prepared currently at least once a month.

(CCR 260.241.3 (a)(1)(2)(4)-(6),(9)(10), (c), and (j).)

18. CCR 260.236.1 provides in pertinent part:

(a) The procedures set forth in this subsection are applicable to investment advisers licensed pursuant to Section 25230 of the Code. References to an investment adviser representative shall mean both an investment adviser representative and an associated person of an investment adviser, as those terms are defined in Section 25009.5(a) of the Code.

...
(3) Within thirty (30) days of any changes to the information contained in Form U4, an amendment to Form U4 shall be filed with CRD. If Form U4 is being amended due to a disciplinary occurrence, a copy of the amendment shall be filed with the Commissioner upon request.

(CCR 260.236.1 (a)(3).)

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19. CCR 260.241.4 provides, in pertinent part:

(d) A licensed investment adviser shall file changed information contained in its Form ADV with the Investment Adviser Registration Depository (“IARD”) in accordance with its procedures for transmission to the Commissioner.

(e) A licensed investment adviser shall file an annual updating amendment, in accordance with the instruction in Form ADV, with IARD in accordance with its procedures for transmission to the Commissioner within ninety (90) days of the end of the investment adviser's fiscal year.

(CCR 260.241.4 (a), (d), and (e).)

20. Corp. 25404 prohibits investment advisers from making false statements to the Commissioner. On or about January 1, 2012, a California resident initiated civil litigation by filing a civil complaint against PVI and Doole. On October 3, 2012, Respondents filed an application with the Commissioner for an investment adviser license. Respondents submitted a Doole’s Form U4 and PVI’s Form ADV. However, Respondents answered “No” to disclosure questions related to pending civil litigation, on Doole’s Form U4 and PIV’s Form ADV, in violation of Corp. 25404 (b). In submitting Form U4 and Form ADV, Doole attested and certified, under the penalty of perjury, that the answers were true and correct. Respondents continued to make false statements to the Commissioner within Part 1 of PVI’s Form ADV, filed on an annual basis, for fiscal years 2012 through 2021, by answering “No” to disclosure questions related to civil judgements, on PIV’s Form ADV, in violation of Corp. 25404 (a).

21. Corp. 25238 and CCR 260.238 (o), prohibits investment advisers from engaging in investment advisory practices, in contradiction to fair, equitable, and ethical practices, including omitting a statement of material fact during the solicitation of advisory clients. From January 1, 2012, to June 9, 2022, Respondents failed to disclose the 2012 Civil Judgement, to its prospective clients, as required by law. From May 20, 2019, to June 9, 2022, Respondents failed to disclose the 2019 Arbitration, to its prospective clients, as required by law. On June 9, 2022, only after the Commissioner required told the Respondents to amend Part 2 of PVI’s Form ADV, Respondents began disclosing the 2012 Civil Judgement and the 2019 Arbitration.

22. Corp. 25237 and CCR 260.237.2 (a), requires investment advisers who have discretionary authority over client funds or securities but do not have custody of client funds or

1 securities to maintain a required minimum net worth of \$10,000.00. Furthermore, CCR 260.237.2
2 (c) prohibits an investment adviser from transacting business in this state if its net worth is less than
3 the minimum required. From at least January 1, 2019, through December 31, 2022, Respondents
4 had discretionary authority over client funds or securities, and therefore PVI is required to always
5 maintain a minimum net worth of \$10,000.00. From at least January 1, 2019, to at least April 30,
6 2022, PVI's net worth failed to exceed a net deficit of \$72,314.57, in violation of CCR 260.237.2
7 (a). In addition, pursuant to CCR 260.237.2 (j), PVI is deemed to have discovered that its net worth
8 is less than the minimum net worth requirement since at least January 1, 2019. In addition, since at
9 least January 1, 2019, PVI failed to notify the Commissioner that its net worth was less than the
10 minimum financial requirement, as required by law. Furthermore, PVI does not meet the conditions
11 to transact business in this state, based upon its continued failure to meet the minimum net worth
12 conditions, pursuant to CCR 260.237.2 (c).

13 23. Corp. 25235 prohibits investment advisers from engaging in any act, practice, or
14 course of business which is fraudulent, deceptive, or manipulative. Furthermore, CCR 260.235.4
15 provides that it is fraudulent, manipulative, or deceptive, if an investment adviser fails to disclose to
16 clients all material facts with respect to a financial condition of the adviser that is reasonably likely
17 to impair the ability of the adviser to meet contractual commitments to clients. From at least
18 January 1, 2019, through November 30, 2023, PVI was deficient of its minimum financial
19 requirement and has not met the conditions to transact business in this state. However, PVI never
20 disclosed to its clients that its financial condition is likely to impair its ability to meet its contractual
21 commitments, as required by law.

22 24. Corp. 25241 and CCR 260.241.2 requires every licensed investment adviser subject
23 to the provisions of CCR 260.237.2 to file an annual financial report. Since at least December 6,
24 2012, through December 31, 2022, PVI was required to file annual financial reports, prepared in
25 accordance with generally accepted accounting principles (GAAP), due to PVI having discretionary
26 authority over client funds and securities. Respondents failed to file PVI's annual financial reports
27 for fiscal years 2012 through 2022, within 90 days after PVI's fiscal year end, as required by law.

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1 25. Corp. 25241 and CCR 260.241.2 requires every licensed investment adviser to file
2 an interim financial report. From at least January 1, 2019, to November 30, 2023, PVI was required
3 to file interim financial reports, prepared in accordance with GAAP, due to PVI's net capital was
4 below 120% of its requirement minimum net capital. Respondents failed to file PVI's interim
5 financial reports, between January 1, 2019, through November 30, 2023, as required by law.

6 26. Corp. 25241 and CCR 260.241.3 (a)(1) requires every licensed investment adviser to
7 prepare and maintain cash receipt and disbursement journals. During the 2022 Examination, PVI
8 failed to maintain and provide cash receipt and disbursement journals, as required by law.

9 27. Corp. 25241 and CCR 260.241.3 (a)(2) requires every licensed investment adviser to
10 prepare and maintain a general ledger. During the 2022 Examination, PVI failed to maintain and
11 provide a general ledger, as required by law.

12 28. Corp. 25241 and CCR 260.241.3 (a)(4) requires every licensed investment adviser to
13 prepare and maintain a cash reconciliation. During the 2022 Examination, PVI failed to maintain
14 and provide cash reconciliations, as required by law.

15 29. Corp. 25241 and CCR 260.241.3 (a)(5) requires every licensed investment adviser to
16 prepare and maintain all bills and statements. During the 2022 Examination, PVI failed to maintain
17 and provide all bills and statements, as required by law.

18 30. Corp. 25241 and CCR 260.241.3 (a)(6) requires every licensed investment adviser to
19 prepare and maintain monthly trial balances and computations of minimum financial requirements.
20 During the 2022 Examination, PVI failed to maintain and provide monthly trial balances and
21 computations of minimum financial requirements, as required by law.

22 31. Corp. 25241 and CCR 260.241.3 (a)(9) requires every licensed investment adviser to
23 maintain powers of attorney for authorization to trade on behalf of the client. During the 2022
24 Examination, PVI failed to maintain copies of its powers of attorney for authorization to trade on
25 behalf of the client, for nine of the 11 sampled clients, as required by law.

26 32. Corp. 25241 and CCR 260.241.3 (a)(10) requires every licensed investment adviser
27 to maintain written agreements related to the business of the investment adviser. During the 2022

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1 Examination, PVI failed to maintain trust documents for four of the six sampled trust clients, as
2 required by law.

3 33. Corp. 25241 and CCR 260.241.3 (c) requires every licensed investment adviser to
4 maintain records of the securities purchased and sold for clients. During the 2022 Examination, PVI
5 failed to maintain records of the securities purchased and sold for at least five sampled clients, as
6 required by law.

7 34. CCR 260.236.1 (a)(3) requires every licensed investment adviser to maintain
8 updated information on its investment adviser representative's Form U4 on the Investment Adviser
9 Registration Depository (IARD). On or about January 1, 2012, a California resident filed a civil
10 complaint against PVI and Doole. On November 8, 2012, the parties stipulated that the judgement
11 be ruled in favor of the California resident, against PVI and Doole, totaling \$400,000.00 (2012
12 Civil Judgement). On or about May 20, 2019, a California resident filed a statement of claim to
13 initiate arbitration against Doole. On January 21, 2021, the arbitrator rendered a decision in favor of
14 a California resident, against Doole, totaling \$175,000.00 (2019 Arbitration). Respondents failed to
15 amend Doole's Form U4, until after the Commissioner requested that the Respondents amend
16 Doole's Form U4, on June 9, 2022.

17 35. Corp. 25241 and CCR 260.241.4 (d) requires every licensed investment adviser to
18 maintain updated information with the IARD. During the 2022 Examination, the Commissioner
19 received the most current copy of PVI's Form ADV, dated March 21, 2022. However, Respondents
20 failed to disclose the following, as required by law: (1) The 2012 Civil Judgement; (2) That
21 Respondents provided a service of selection of third-party advisers; (3) That Respondents' total
22 regulatory assets under management were managed on a non-discretionary basis; and (4) That
23 Respondents' regulatory assets under management were held by Charles Schwab & Co. Inc. As of
24 November 30, 2023, Respondents continue to fail to disclose the 2012 Civil Judgement on PVI's
25 Form ADV, as required by law.

26 36. Corp. 25241 and CCR 260.241.4 (e) requires every licensed investment adviser to
27 timely file annual updating amendments with the IARD. PVI failed to file annual updating

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1 amendments for Part 2 of PVI’s Form ADV, with the IARD, for fiscal years 2012 through 2021, as
2 required by law.

3 37. Corp. 25249 authorizes the Commissioner to issue an order directing any investment
4 adviser to discontinue any violation of the Financial Code, Corporations Code, or any rules
5 promulgated thereunder. Specifically, Corp. 25249 provides, in pertinent part, that:

6 If, after examination or investigation, the commissioner has reasonable
7 grounds to believe that any...investment adviser is violating or has
8 violated any law or rule binding upon it, the commissioner shall, by
9 written order addressed to the...investment adviser, direct the
10 discontinuance of the violation. The order shall be effective immediately,
11 but shall not become final except in accordance with the provisions of
12 Section 25251.

13 38. Corp. 25251 provides, in relevant part, that:

14 (a) No order issued pursuant to Section 25249...may become final
15 except after notice to the affected...investment adviser of the
16 commissioner’s intention to make the order final and of the reasons
17 for the finding. The commissioner shall also notify the...investment
18 adviser that upon receiving a request the matter shall be set for
19 hearing to commence within 15 business days after receipt of the
20 request. The...investment adviser may consent to have the hearing
21 commence at a later date. If no hearing is requested within 30 days
22 after the mailing or service of the required notice, and none is ordered
23 by the commissioner, the order may become final without a hearing
24 and the...investment adviser shall immediately discontinue practices
25 named in the order. If a hearing is requested...it shall be held in
26 accordance with the provisions of the Administrative Procedure
27 Act...If, upon the conclusion of the hearing, it appears to the
28 commissioner that the...investment adviser is conducting business in
an unsafe and injurious manner or is violating any law of this state,
or any rule binding upon it, the commissioner shall make the order of
discontinuance final and the...investment adviser shall immediately
discontinue the practices named in the order.

(b) The...investment adviser may within 10 days after an order is made
final commence an action to restrain enforcement of that order. If the
enforcement of that order is not enjoined within 10 days by the court
in which the action is brought, the...investment adviser shall comply
with the order.

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1 39. By reason of the foregoing, PVI violated the following: (1) Corp. 25404 (a)(b); (2)
2 Corp. 25238; (3) CCR 260.238 (o); (4) CCR 260.237.2 (a) and (c); (5) Corp. 25235 (d); (6) CCR
3 260.235.4 (a)(1); (7) Corp. 25241(a); (8) CCR 260.241.2 (a)(3)-(4); (9) CCR 260.241.3 (a)(1)-
4 (2),(4)-(6),(9),(10), and (j); (10) CCR 260.236 (a)(1); and (11) CCR 260.241.4 (d) and (e). The
5 aforementioned violations justify the issuance of an Order to Discontinue Violations. PVI, as a
6 licensed investment adviser, was obligated to have knowledge of, and to comply with, the
7 provisions of the Corporations Code and regulations promulgated thereunder.

8 40. Therefore, pursuant to Corp. 25249, the Commissioner has issued an order directing
9 PVI to discontinue violating the following: (1) Corp. 25404 (a)(b); (2) Corp. 25238; (3) CCR
10 260.238 (o); (4) CCR 260.237.2 (a) and (c); (5) Corp. 25235 (d); (6) CCR 260.235.4 (a)(1); (7)
11 Corp. 25241(a); (8) CCR 260.241.2 (a)(3)-(4); (9) CCR 260.241.3 (a)(1)-(2),(4)-(6),(9),(10), and
12 (j); (10) CCR 260.236 (a)(1); and (11) CCR 260.241.4 (d) and (e).

13 WHEREFORE, good cause showing, and pursuant to Corp. 25251, the Commissioner the
14 Commissioner finds this action is appropriate, in the public interest, for the protection of investors,
15 and consistent with the purposes fairly intended by the policies and procedures of the CSL.

16 Dated: April 5, 2024

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

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18 By _____
19 Ryan M. Cassidy
20 Counsel
21 Enforcement Division
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