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

11 In the Matter of:

12 THE COMMISSIONER OF FINANCIAL  
13 PROTECTION AND INNOVATION,

14 Complainant,

15 v.

16 GPS CAPITAL MANAGEMENT LLC,  
17 DANIEL WU, and DENNIS CHEN

18 Respondents.

CRD NO.: 136330, 2651056, 2767010

DESIST AND REFRAIN ORDER

AND

CLAIM FOR ANCILLARY RELIEF

(Cal. Corp. Code § 25532)

19 The Commissioner of Financial Protection and Innovation (Commissioner) is informed and  
20 believes, and based upon such information and believe, alleges and charges as follows:

21 **I.**

22 **INTRODUCTION**

23 1. The Commissioner is authorized to administer and enforce the provisions of the  
24 Corporate Securities Law of 1968 (Cal. Corp. Code §§ 25000-25707) (CSL) and the regulations  
25 promulgated thereunder at title 10 of the California Code of Regulations, which includes the licensure,  
26 examination, and regulation of investment advisers.

27 2. At all relevant times herein, GPS Capital Management LLC (GPS), is and was an  
28 investment adviser licensed by the Commissioner since January 30, 2018 (Central Registration

1 Depository No. 136330)<sup>1</sup> pursuant to the CSL. GPS was at all relevant times, a California limited  
2 liability company, located at 840 Hinckley Road, Suite 246, Burlingame, CA 94010. According to the  
3 California Secretary of State's website (available at <https://bizfileonline.sos.ca.gov/search/business>),  
4 GPS' registration is terminated as of June 16, 2023.

5 3. At all relevant times, Daniel Wu (Wu) (CRD No. 2651056) is and was an officer,  
6 control person, managing member, and an owner of GPS. Since approximately May 14, 2020, Wu was  
7 the sole employee, officer, and owner of GPS.

8 4. During the period of November 21, 2005, through May 14, 2020, Dennis Chen (Chen)  
9 (CRD No. 2767010) was the chief executive officer, control person, managing member, and majority  
10 owner of GPS. On May 14, 2020, Chen left GPS, and was no longer an owner, control person, or  
11 officer. On that same day, Chen voluntarily terminated his registration as an investment adviser  
12 representative.

13 5. GPS, Wu, and Chen are collectively referred to as Respondents.

## 14 II.

### 15 FACTUAL BACKGROUND

16 6. On or about May 14, 2020, Wu filed a Form ADV<sup>2</sup> on Financial Industry Regulatory  
17 Authority (FINRA)'s Central Registration Depository (CRD), which disclosed that GPS had  
18 approximately 269 clients, located in California and elsewhere.

19 7. Beginning in or about May 14, 2020, GPS and Wu allowed Chen to retain access to  
20 GPS' advisory platform at TD Ameritrade, Inc. (TD Ameritrade), despite Chen no longer being  
21 employed by GPS or registered as an investment adviser representative. This allowed Chen to use  
22 GPS' omnibus trading account to effect securities transactions for the account of others.

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24 <sup>1</sup> The Central Registration Depository (CRD) and Investment Adviser Registration Depository (IARD) are databases  
25 maintained by the Financial Industry Regulatory Authority (FINRA) since 2007. They are used to store and maintain  
information on registered securities and broker firms, as well as individuals who dispense investing and financial advice.

26 <sup>2</sup> Form ADV is the uniform form used by investment advisers to register with both the Securities and Exchange  
27 Commission (SEC) and state securities authorities. Form ADV requires information about the investment adviser's  
28 business, ownership, clients, employees, business practices, affiliations, and any disciplinary events of the adviser or its  
employees. Investment advisers are required to update the Form ADV annually, as well as, whenever certain material  
changes occur. (See <https://www.sec.gov/about/forms/formadv-instructions.pdf>, pgs. 2 – 4.)

1           8.       However, neither GPS nor Wu told their approximately 269 clients that they had  
2 allowed an ex-employee to retain access to GPS' advisory platform at TD Ameritrade, which included  
3 access to their accounts and personal identifiable information (PII).

4           9.       From May 27, 2020, through October 15, 2021, Chen performed block trading<sup>3</sup>  
5 transactions, via GPS' omnibus trading account, for Chen's personal and family accounts, and an  
6 account for one California resident.

7           10.      At all relevant times, neither the Department nor the United States Securities and  
8 Exchange Commission have issued a broker-dealer certificate to any of the respondents.

9           11.      From May 27, 2020, through October 15, 2021, Chen engaged in a scheme whereby he  
10 would buy securities in GPS' omnibus trading account in the morning. Then we would wait until later  
11 in the day, generally just before the market closed. If the price of the securities had gone up before the  
12 market close, Chen would generally allocate that trade to himself or his ex-wife. If, however, the price  
13 went down, Chen generally allocated that trade to one California resident. In many instances, Chen  
14 would actually sell the security near the close of trading, thereby capturing the profit in his own or his  
15 ex-wife's account.

16          12.      Chen's "cherry-picking" of profitable trades financially benefited Chen and his ex-wife  
17 and disadvantaged the California resident. From May 27, 2020, to October 15, 2021, on those trades  
18 that were profitable, Chen allocated 93% of them to his own or his ex-wife's account. This resulted in  
19 a net gain to Chen and his ex-wife of approximately \$592,478.22. On those trades that were not  
20 profitable, Chen allocated only 19% of those to his own, or his ex-wife's account, totaling a net loss of  
21 approximately \$29,092.70.

22          13.      Conversely, during the same time period, Chen allocated only 7% of the profitable  
23 trades to the California resident's accounts, which netted them approximately \$46,315.10. And Chen  
24 allocated 81% of the losing trades to the California resident's accounts, resulting in a net loss of  
25 approximately \$124,276.77.

26 \_\_\_\_\_  
27 <sup>3</sup> Block Trades are orders for the sale or purchase of a large number of securities that is subsequently allocated to multiple  
28 accounts. Block trading allows portfolio managers to purchase or sell a large quantity of securities executed as a single  
trade and then allocate those securities to multiple clients. This tool can create cost savings and operational efficiencies.

1 14. The cherry-picking scheme would not have been possible, but for GPS and Wu  
2 providing access to GPS' advisory platform at TD Ameritrade. The ill-gotten gains Chen and his ex-  
3 wife received from this scheme totaled \$563,385.22.

4 **III.**

5 **DESIST AND REFRAIN ORDER**

6 **A. Cal. Corp. Code § 25210**

7 15. Based on the foregoing findings, the Commissioner is of the opinion Chen conducted  
8 business as a broker-dealer in this state without first securing from the Commissioner a certificate,  
9 authorizing them to do so, in violation of Corporations Code section 25210.

10 16. Moreover, the Commissioner is of the opinion that GPS and Wu violated Corporations  
11 Code section 25210 by knowingly providing substantial assistance to Chen to violate Corporations  
12 Code section 25210, within the meaning of Corporations Code section 25403(b).

13 17. Pursuant to Corporations Code section 25532, GPS Capital Management LLC, Daniel  
14 Wu, and Dennis Chen are hereby ordered to desist and refrain from acting as a broker-dealer in the  
15 State of California unless and until he has first applied for and secured from the Commissioner a  
16 certificate, authorizing them to act as a broker-dealer, or unless exempt.

17 **B. Cal Corp. Code § 25216 and Cal. Code Regs. tit. 10, § 260.216**

18 18. Further, the Commissioner is of the opinion that Chen engaged in a fraudulent,  
19 deceptive, or manipulative act, practice or course of business, including engaging in a "Cherry-  
20 picking" scheme, in violation of Corporations Code section 25216(b) and California Code of  
21 Regulations, title 10, section 260.216(a).

22 19. Moreover, the Commissioner is of the opinion that GPS and Wu violated Corporations  
23 Code section 25216 (b) and California Code of Regulations, title 10, section 260.216(a) by knowingly  
24 providing substantial assistance to Chen to violate Corporations Code section 25216(a) and California  
25 Code of Regulations, title 10, section 260.216(a), within the meaning of Corporations Code section  
26 25403(b).

27 20. Pursuant to Corporations Code section 25532, GPS Capital Management LLC, Daniel  
28 Wu, and Dennis Chen are hereby ordered to desist and refrain from offering or selling or buying or

1 offering to buy any security in the State of California, by means of any written or oral communication  
2 which includes an untrue statement of a material fact or omits to state a material fact necessary in  
3 order to make the statements made, in the light of the circumstances under which they were made, not  
4 misleading.

5 **C. Cal. Corp. Code § 25238 and Cal. Code Regs. tit. 10, § 260.238**

6 21. Further, the Commissioner is of the opinion that GPS and Wu willfully omitted  
7 statements of material fact, regarding the investment adviser’s services and willfully provided a third-  
8 party, access to client accounts and PII, in violation of Corporations Code section 25238 and  
9 California Code of Regulations, title 10, section 260.238(h)(m).

10 22. Pursuant to Corporations Code section 25532, GPS Capital Management LLC and  
11 Daniel Wu are hereby ordered to desist and refrain from failing to adhere to fair, equitable, and ethical  
12 principles, as a licensed investment adviser, including omitting a statement of material fact.

13 Pursuant to Corporations Code section 25403, any person who controls or induces another  
14 person to violate a provision of the Corporate Securities Law of 1968, or any person who provides  
15 substantial assistance to another person in violation of the Corporate Securities Law of 1968, shall be  
16 liable for the violations.

17 **IV.**

18 **CLAIM FOR ANCILLARY RELIEF IN THE FORM OF DISGORGEMENT**

19 23. Complainant re-alleges and reincorporates by reference, as set forth fully above in  
20 paragraphs 1 to 22.

21 24. Corporations Code section 25532 authorizes the Commissioner to seek ancillary relief  
22 on behalf of any person injured by violations of any provision of the CSL and any rules promulgated  
23 thereunder.

24 25. Based on the foregoing findings, the Commissioner finds that Chen collected  
25 \$563,385.22 in ill-gotten gains, as a result of engaging in a fraudulent, deceptive, or manipulative act,  
26 practice or course of business, including engaging in a “Cherry-picking” scheme, in violation of  
27 Corporations Code section 25216(b) and California Code of Regulations, title 10, section 260.216(a).

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1 26. Moreover, the Commissioner is of the opinion that GPS and Wu violated Corporations  
2 Code section 25216(b) and California Code of Regulations, title 10, section 260.216(a) by knowingly  
3 providing substantial assistance to Chen to violate Corporations Code section 25216(b) and California  
4 Code of Regulations, title 10, section 260.216(a), within the meaning of Corporations Code section  
5 25403(b).

6 WHEREFORE, IT IS PRAYED, for an order of ancillary relief pursuant to Corporations Code  
7 section 25532, individually, jointly and severally against GPS Capital Management LLC, Daniel Wu,  
8 and Dennis Chen as follows:

- 9 a. Full Disgorgement, consisting of the total ill-gotten gains collected by Chen,  
10 totaling \$563,385.22, or according to proof.

11 V.

12 CONCLUSION

13 Based upon the foregoing, the Commissioner finds that grounds exist, and that it is in the  
14 public interest, to issue the following orders: (1) Desist and refrain orders against GPS Capital  
15 Management LLC, Daniel Wu, and Dennis Chen; and (2) Claim for ancillary relief against GPS  
16 Capital Management LLC, Daniel Wu, and Dennis Chen, in the form of disgorgement, totaling  
17 \$563,385.22. The Commissioner hereby notifies GPS Capital Management LLC, Daniel Wu, and  
18 Dennis Chen of her intention to make such orders final.

19 These Orders are necessary, in the public interest, for the protection of investors, and consistent  
20 with the purposes, policies, and provisions of the CSL.

21 DATED: July 24, 2024  
22 Sacramento, California

CLOTHILDE V. HEWLETT  
Commissioner of Financial Protection and Innovation



23 By: \_\_\_\_\_  
24 MARY ANN SMITH  
25 Deputy Commissioner  
26 Enforcement Division  
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