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

11 In the Matter of:

CRD NO.: 136330, 2651056, 2767010

12 THE COMMISSIONER OF FINANCIAL  
13 PROTECTION AND INNOVATION,

STATEMENT IN SUPPORT OF ORDER  
LEVYING ADMINISTRATIVE  
PENALTIES

14 Complainant,

15 v.

(Cal. Corp. Code § 25252)

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

18 Respondents.

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 **STATEMENT OF FACTS**

16 **Violations of Cal. Corp. Code § 25210**

17 **(Conducting Business as a Broker-Dealer without a Certificate)**

18 6. Corporations Code section 25210 prohibits a broker-dealer from conducting business as  
19 a broker-dealer in this state without first securing from the Commissioner a certificate, then in effect,  
20 authorizing them to do so or unless they are exempt.

21 7. Beginning in or about May 14, 2020, Wu allowed Chen to retain access to GPS’  
22 advisory platform at FMR LLC (Fidelity), despite Chen no longer being employed by GPS. This  
23 allowed Chen to use GPS’ omnibus trading account to effect securities transactions for the account of  
24 others.

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26 \_\_\_\_\_  
27 <sup>1</sup> The Central Registration Depository (CRD) and Investment Adviser Registration Depository (IARD) are databases maintained by  
28 FINRA since 2007 for all firms and individuals involved in the U.S. securities industry. It is used to store and maintain information on  
registered securities and broker firms, as well as individuals who dispense investing and financial advice.

1           8.       Beginning in or about May 14, 2020, GPS and Wu allowed Chen to retain access to  
2 GPS' advisory platform at FMR LLC (Fidelity), despite Chen no longer being employed by GPS or  
3 registered as an investment adviser representative. This allowed Chen to use GPS' omnibus trading  
4 account to effect securities transactions for the account of others.

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

7           10.      Therefore, Chen willfully conducted business as a broker-dealer in this state without  
8 first securing from the Commissioner a certificate, authorizing him to do so, in violation of  
9 Corporations Code section 25210. Moreover, GPS and Wu willfully violated Corporations Code  
10 section 25210 by knowingly providing substantial assistance to Chen to violate Corporations Code  
11 section 25210, within the meaning of Corporations Code section 25403 (b).

12                   **Violations of Cal. Corp. Code § 25216 and Cal. Code Regs. tit. 10, § 260.216**  
13 **(Manipulative, Deceptive or other Fraudulent Scheme, Device, or Contrivance)**

14           11.      Corporations Code section 25216 (b) and California Code of Regulations, title 10,  
15 section § 260.216 (a) prohibits a broker-dealer from engaging in any act, practice, or course of  
16 business which is fraudulent, deceptive, or manipulative.

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

24           13.      Chen's "cherry-picking" of profitable trades financially benefited Chen and his ex-wife  
25 and disadvantaged the California resident. From May 27, 2020, to October 15, 2021, on those trades  
26 that were profitable, Chen allocated 93% of them to his own or his ex-wife's account. This resulted in  
27 a net gain to Chen and his ex-wife of approximately \$592,478.22. On those trades that were not

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1 profitable, Chen allocated only 19% of those to his own, or his ex-wife's account, totaling a net loss of  
2 approximately \$29,092.70.

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

7 13. The cherry-picking scheme would not have been possible, but for GPS and Wu  
8 providing access to GPS' advisory platform at Fidelity. The ill-gotten gains Chen and his ex-wife  
9 received from this scheme totaled \$563,385.22.

10 14. Therefore, Chen willfully engaged in a fraudulent scheme, in violation of Corporations  
11 Code section 25216 (a) and California Code of Regulations, title 10, section § 260.216 (a). Moreover,  
12 GPS and Wu willfully violated Corporations Code section 25216 (a) and California Code of  
13 Regulations, title 10, section § 260.216 (a) by knowingly providing substantial assistance to Chen to  
14 violate Corporations Code section 25216 (a) and California Code of Regulations, title 10, section §  
15 260.216 (a), within the meaning of Corporations Code section 25403 (b).

16 **Violations of Cal. Corp. Code § 25238 and Cal. Code Regs. tit. 10, § 260.238**

17 **(Failure to Adhere to Fair, Equitable, and Ethical Principles, including omitting a statement of**  
18 **material fact)**

19 15. Corporations Code section 25238 provides, in part, that a licensed investment adviser is  
20 prohibited from engaging in investment advisory activities, in this state in contradiction of such rules,  
21 designed to promote fair, equitable and ethical principles.

22 16. California Code of Regulations, title 10, section § 260.238 (h) provides, in part, that  
23 omitting a statement of material fact regarding the investment adviser's services does not promote fair,  
24 equitable or ethical principles, as that phrase is used in Corporations Code section 25238.

25 17. California Code of Regulations, title 10, section § 260.238 (m) provides, in part, that  
26 disclosing the identity, affairs, or investments of any client to a third party unless required by law to do  
27 so, or unless consented to by the client, does not promote fair, equitable or ethical principles, as that  
28 phrase is used in Corporations Code section 25238.

1 18. Beginning in or about May 14, 2020, GPS and Wu allowed Chen to retain access to  
2 GPS' advisory platform at Fidelity, despite Chen no longer being employed by GPS. The access  
3 included the ability to use GPS' omnibus trading account, so Chen could effect securities transactions  
4 for the account of others.

5 19. However, neither GPS nor Wu told their approximately 269 clients that they had  
6 allowed an ex-employee to retain access to GPS' advisory platform at Fidelity, which included access  
7 to their accounts and personal identifiable information (PII).

8 20. Therefore, GPS and Wu willfully omitted statements of material fact, regarding the  
9 investment adviser's services and willfully provided a third-party, access to client accounts and PII, in  
10 violation of Corporations Code section 25238 and California Code of Regulations, title 10, section §  
11 260.238 (h) and (m).

12 **Cal. Corp. Code § 25403**

13 **(Inducement or Substantial Assistance in Violation of the CSL)**

14 21. From May 27, 2020, through October 15, 2021, GPS and Wu allowed Chen to retain  
15 access to GPS' advisory platform at Fidelity, despite Chen no longer being employed by GPS, which  
16 included access to at least 269 client accounts and PII. The access also included the ability to use GPS'  
17 omnibus trading account, so Chen could effect securities transactions for the account of others.

18 22. Pursuant to Corporations Code section 25403, any person who controls or induces  
19 another person to violate a provision of the CSL, or any person who provides substantial assistance to  
20 another person in violation of the CSL, shall be liable for the violations.

21 **III.**

22 **ORDER LEVYING ADMINISTRATIVE PENALTIES**

23 23. The Commissioner re-alleges and incorporates by reference paragraphs 1-27 of this  
24 Statement in Support, also contained in the Commissioner's Desist and Refrain Orders and Order to  
25 Discontinue Violations, as though fully set forth herein.

26 24. Corporations Code section 25252 authorizes the Commissioner to issue an order  
27 levying administrative penalties against any person for willful violations of any provisions of the CSL  
28 and any rules promulgated thereunder.

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2 25. Based on the foregoing findings, the Commissioner finds that Respondents willfully  
3 violated Corporations Code sections 25210, 25216, and 25238, and the regulations promulgated in  
4 California Code of Regulations, title 10, section § 260.238.

5 26. Based on the foregoing findings, the Commissioner finds that Chen conducted business  
6 as a broker-dealer in this state without first securing from the Commissioner a certificate, authorizing  
7 them to do so, in violation of Corporations Code section 25210. Moreover, the Commissioner finds  
8 that GPS and Wu violated Corporations Code section 25210 by knowingly providing substantial  
9 assistance to Chen to violate Corporations Code section 25210, within the meaning of Corporations  
10 Code section 25403 (b).

11 27. Further, the Commissioner finds that Chen engaged in a fraudulent, deceptive, or  
12 manipulative act, practice or course of business, including engaging in a “Cherry-picking” scheme, in  
13 violation of Corporations Code section 25216 (b) and California Code of Regulations, title 10, section  
14 § 260.216 (a). Moreover, the Commissioner finds that GPS and Wu violated Corporations Code  
15 section 25216 (b) and California Code of Regulations, title 10, section § 260.216 (a) by knowingly  
16 providing substantial assistance to Chen to violate Corporations Code section 25216 (a) and California  
17 Code of Regulations, title 10, section § 260.216 (a), within the meaning of Corporations Code section  
18 25403 (b).

19 28. Further, the Commissioner finds that GPS and Wu willfully omitted statements of  
20 material fact, regarding the investment adviser’s services and willfully provided a third-party, access  
21 to client accounts and PII, in violation of Corporations Code section 25238 and California Code of  
22 Regulations, title 10, section § 260.238 (h) and (m).

23 29. Pursuant to Corporations Code section 25252(b), the Commissioner hereby provides  
24 notice of intent to levy administrative penalties against GPS Capital Management LLC, Daniel Wu,  
25 and Dennis Chen, for the statutory amount of not more than five thousand dollars (\$5,000.00) for the  
26 first violation, not more than ten thousand dollars (\$10,000.00) for the second violation, and not more  
27 than fifteen thousand dollars (\$15,000.00) for each subsequent violation, or according to proof, for  
28 Respondents’ willful violations of the CSL.

1           WHEREFORE, good cause showing, and pursuant to Corporations Code section 25252(b), the  
2 Commissioner prays for an order levying administrative penalties, individually, jointly and severally,  
3 against GPS, Wu, and Chen, as follows:

4           a.       That pursuant to Corporations Code section 25252(a), the Commissioner levy  
5 administrative penalties of \$5,000.00 for the first violation of Corporations Code section 25210, for a  
6 total amount of \$5,000.00, or according to proof:

7                   i.   First violation: \$5,000.00 for the first violation of Corporations Code section  
8                           25210.

9           b.       That pursuant to Corporations Code section 25252(b), the Commissioner levy  
10 administrative penalties of \$15,000.00 for each violation of Corporations Code section 25216 and  
11 California Code of Regulations, title 10, section § 260.216 (a), for a total amount of \$10,000.00, or  
12 according to proof:

13                   i.   Second violation: \$10,000.00 for the first violation of Corporations Code  
14                           section 25216 and California Code of Regulations, title 10, section §  
15                           260.216 (a).

16           WHEREFORE, good cause showing, and pursuant to Corporations Code section 25252(b), the  
17 Commissioner prays for an order levying administrative penalties, individually, jointly and severally,  
18 against GPS and Wu, as follows:

19           a.       That pursuant to Corporations Code section 25252(b), the Commissioner levy  
20 administrative penalties of \$15,000.00 for each violation of Corporations Code section 25238 and  
21 California Code of Regulations, title 10, section § 260.238 (h) and (m), for a total amount of  
22 \$4,035,000.00, or according to proof:

23                   i.   \$15,000.00 for the omission in paragraph 19, made to 269 clients.

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**IV.**

**CONCLUSION**

30. Based on the foregoing, the Commissioner finds that grounds exist, and that it is in the public interest to enter an order levying administrative penalties against GPS Capital Management, LLC, Daniel Wu, and Dennis Chen for violations of Corporations Code sections 25210 and 25216, is \$15,000.00, or according to proof.

31. Further, the Commissioner finds that grounds exist, and that it is in the public interest to enter an order levying administrative penalties against GPS Capital Management LLC and Daniel Wu for violations of Corporations Code section 25328, is \$4,035,000.00, or according to proof.

DATED: July 24, 2024  
Sacramento, California

CLOTHILDE V. HEWLETT  
Commissioner of Financial Protection and Innovation

By \_\_\_\_\_  
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Counsel  
Enforcement Division