

BEFORE THE
DEPARTMENT OF BUSINESS OVERSIGHT
STATE OF CALIFORNIA

In the Matter of:

THE CALIFORNIA CORPORATIONS
COMMISSIONER,

Complainant,

vs.

PHO CITI FRANCHISING COMPANY, a
California corporation,
MYONG BOK LEE aka JASON LEE, and
KYNG PARK aka SANDRA PARK

Respondents.

Case No. 993-6203

OAH No. 2012090719

DECISION

This matter came on regularly for hearing on December 18 and 19, 2012 and June 4, 5, and 6, 2013, in Los Angeles, California before Erlinda G. Shrenger, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California.

Timothy Le Bas, Senior Corporations Counsel, represented Complainant.

Seung Yang, Attorney at Law, Moon & Yang, APC, represented the respondents at the hearing on December 18-19, 2012. Mr. Yang and his law firm withdrew as counsel for the respondents on January 29, 2013. John Levine, Attorney at Law, represented the respondents at the hearing on June 4-6, 2013.

A Korean-language interpreter assisted the parties and witnesses during the hearing.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision, on June 6, 2013.

The Proposed Decision was issued by the ALJ on August 18, 2013. On November 26, 2013, all parties were served with an Order of Rejection of the Proposed Decision in accordance with Government Code Section 11517(c)(2)(E) and notified that the case would be decided by

the Commissioner of Business Oversight, Jan Lynn Owen, upon the record, and upon any written argument offered by the parties by December 27, 2013.

On December 2, 2013, Respondents' attorney, John Levine, notified the Department of Business Oversight (Department) that he had withdrawn as counsel for Respondents. He also informed the Department that Respondents had moved from the address that the Department had mailed the Order of Rejection of Proposed Decision.

The Department found additional addresses for Respondents. To ensure that all parties were provided an opportunity to submit written arguments, the Commissioner issued an Amended Order of Rejection of Proposed Decision, extending the date to submit written arguments to January 22, 2014.

Complainants submitted timely arguments. The Department did not receive a response from Respondents.

FACTUAL FINDINGS

Parties and Jurisdiction

1. On July 30, 2012, Citation No. 993-6203 (Citation) was issued against the respondents by Alan S. Weinger in his official capacity as Deputy Commissioner, Enforcement Division, Department of Corporations (Department), on behalf of Jan Lynn Owen, California Corporations Commissioner. On September 18, 2012, the respondents filed a written request for a hearing to contest the Citation. Jurisdiction in this matter was established.

2. The respondents in this case are Pho Citi Franchising Company (PCFC), Myong Bok Lee also known as Jason Lee (Lee), and Kyung Park also known as Sandra Park (Park). (PCFC, Lee and Park are referred to collectively as Respondents).

3. PCFC is a California corporation formed in 2009. PCFC is in the business of offering and selling franchises for Vietnamese-style restaurants. At all relevant times, Lee and Park were the only directors and officers of the corporation.

4. Joan Food, Inc. is a California corporation formed in 2007. At all relevant times, Lee and Park were the only directors and officers of the corporation. Joan Food, Inc. is the corporation used by Respondents for acquiring restaurants and developing them into Pho Citi restaurants. Respondents use Joan Food, Inc. to set up and operate the Pho Citi restaurant until the franchise is sold through PCFC.

Registration History

5. On July 31, 2009, the Department approved PCFC's application for a franchise registration. The 2009 registration was effective from July 31, 2009, to April 20, 2010.

6. On March 25, 2010, Respondents submitted an application to the Department to renew PCFC's franchise registration. Respondents also submitted their proposed 2010 franchise disclosure document for the Department's approval. On April 19, 2010, the Department approved the application and disclosure document. The 2010 registration was effective from April 19, 2010 to April 20, 2011.

7. On March 17, 2011, Respondents submitted an application to the Department to renew PCFC's franchise registration. Respondents' proposed 2011 franchise disclosure document was also submitted for the Department's approval. The Department did not approve the application and disclosure document. Consequently, PCFC was not registered and not authorized to offer and sell franchises in California after its franchise registration lapsed and expired on April 20, 2011.

CH Transaction

8. On or about November 17, 2010, Respondents sold a franchise and Pho Citi restaurant no. 5 (located on Sunset Boulevard) to Caleb Ha (CH), who purchased the franchise for his wife Myung Hae Kim (MK). The purchase price was \$500,000 with CH to make a \$30,000 down payment and the remaining \$470,000 balance paid through a promissory note. At a meeting with Lee and Park on November 17, 2010, CH signed MK's name on a franchise agreement and the page entitled "Item 23. Receipt" from Respondent's disclosure document (Receipt).¹ Neither the franchise agreement nor the Receipt were dated when CH signed them. CH did not date the documents. Lee and Park told him to leave the date blank. CH was not provided with Respondents' disclosure document or the franchise agreement before or after November 17, 2010. CH had another meeting with Lee and Park on November 24, 2010. During that meeting, CH signed MK's name on a franchise purchase agreement for the purchase of the restaurant, assets and inventory, and the promissory note for \$470,000. CH paid Lee and Park the \$30,000 down payment. He gave them a check for \$18,500 on November 24, 2010, and another check for \$11,500 on November 25, 2010. As instructed by Lee and Park, CH made the checks payable to Joa Food, Inc.

9. CH first learned of Pho Citi restaurants on November 15, 2010, after seeing their advertisement in a Korean-language newspaper. The advertisement included representations that the business had good income and was easy to operate. CH thought this would be a good business for his wife. CH called the number in the advertisement. He spoke by telephone with Lee and Park on November 15 and 16 and then met with them at their Glendale office on November 17 and 24. Between November 15, 2010, through November 24, 2010, Lee and Park made representations to CH about the Pho Citi restaurant business, including that he would receive training and an operations manual for the restaurant, trained employees, and an executed lease agreement with the landlord. Lee and Park also represented to CH that he would achieve monthly net income between \$10,000 and \$25,000 and the food costs would be 19 percent of gross sales. When CH asked Lee and Park to show him their business records, they told him he

¹The franchise agreement and other documents identified MK as the purchaser. CH signed MK's name on the documents. CH paid the down payment with two personal checks drawn on a bank account held solely in MK's name. CH wrote and signed MK's name on the checks.

was “stupid” for asking to see the numbers and he should just believe them. Based on the representations of Lee and Park, both orally and in the written advertisement, CH decided to purchase the Pho Citi franchise and restaurant.

10. CH operated the Pho Citi restaurant for 1½ months from December 2010 to mid-January 2011.² During the first month, the restaurant’s net income was minus \$8,981. CH testified that the actual food costs were 32 percent of gross sales, not 19 percent as Lee and Park had represented. CH testified that Respondents did not provide any training. On the first day of business, CH was introduced to the employees as the manager, and he was told not to tell the employees that he was the new owner. CH asked Lee and Park many times about training, but received no response. Lee and Park represented that they would send trained employees right away when requested. CH testified that when employees quit, he called Respondents for replacement employees, but none were provided. CH never received an operations manual for the restaurant. When he asked for it, Lee and Park told him someone else was reviewing the manual and they would give it to him when the other person returned it. CH testified that Lee and Park did not provide a new lease agreement with the landlord. CH asked for the lease agreement multiple times, but none was provided. CH testified he could not get the required business permits and licenses to run the restaurant without a new lease agreement with the landlord. CH testified that Lee and Park did not respond to his requests to provide him with the landlord’s name. CH testified that he was kicked out of the restaurant in mid-January 2011.

11. It was established that Respondents made the following material misrepresentations in relation to the offer and sale of the Pho Citi franchise to CH and MHK: promised training that was not forthcoming; promised trained employees that were not provided; promised an operations manual that was not delivered; promised an executed lease agreement that never transpired; promised monthly net income over \$10,000 that was not achieved; and promised food costs of 19 percent of gross sales when actual costs were 32 percent.

12. It was established that Respondents falsified the execution date on the Receipt page for the disclosure document and the franchise agreement. Both documents were undated when CH signed them. However, copies of the documents produced by Respondents in response to the Department’s subpoena were dated, with the Receipt showing an execution date of November 5, 2010, and the franchise agreement showing an execution date of November 30, 2010.

EK Transaction

13. On or about November 24, 2010, Respondents sold a franchise and Pho Citi restaurant no. 4 (located in West Hollywood) to Eric Kim (EK). The purchase price was \$500,000, with EK to make a \$50,000 down payment and the remaining \$450,000 balance paid through a promissory note. At a meeting with Lee and Park on November 24, 2010, EK signed the franchise agreement, the Receipt from the disclosure document, the franchise purchase agreement for the purchase of the restaurant, assets and inventory, and the promissory note for

² In his testimony, CH did not mention MK’s involvement in operating the restaurant.

\$450,000. The Receipt was undated when EK signed it, and he did not date the document. EK was not provided with the disclosure document or franchise agreement prior to the meeting on November 24, 2010. EK paid Lee and Park the \$50,000 down payment. He gave them a cashier's check for \$450,000 on December 3, 2010, and a \$5,000 check on December 31, 2010. As instructed by Lee and Park, EK made the checks payable to Joa Food, Inc.

14. EK first became aware of Pho Citi restaurants in or about the beginning of November 2010, when he saw an advertisement in a Korean-language newspaper. The advertisement indicated the restaurant was easy to operate even with no experience, the business was not affected by the financial crisis, the owner just manages the money with support from the company, and net income would be between \$10,000 to \$25,000 with a down payment of \$100,000 to \$150,000.

15. Prior to November 24, 2010, EK met with Lee and Park on November 8, 12, and 15, where they made promises and representations regarding the business. EK testified that they promised to provide him with training, trained employees, and an operations manual, and arrange with the landlord for the transfer of the lease. They also made representations about net income, food costs, and that the restaurant could operate on a 24 hour basis. They represented to EK that he would earn net income between \$10,000 to \$25,000 per month.

16. EK operated the restaurant for 1½ months, from approximately December 3, 2010, until January 20, 2011. EK's actual monthly net income was between \$2,500 to \$3,000. The food costs were 28 to 38 percent of gross sales, not 15 to 19 percent as Lee and Park had represented. EK was unable to operate the restaurant 24-hours as Lee and Park had represented because the restaurant did not have the required permit from the City of West Hollywood. A hearing on the permit was scheduled for December 14, 2010, but Lee and Park told him not to attend. EK did not attend the permit hearing. He later learned the restaurant was denied the permit due to city code violations and health problems. EK testified he never received an operations manual, as promised by Lee and Park. EK also did not receive a lease agreement. Lee and Park told EK there was a problem transferring the lease to another name, it was "not the time" to transfer the lease, and they would transfer the lease to him within six months to one year. Lee and Park instructed EK not to tell anyone he was the owner of the restaurant, and he should identify himself to the landlord and the employees as the manager. EK testified he was kicked out of the restaurant on January 20, 2011.

17. It was established that Respondents made the following misrepresentations and omissions in relation to the offer and sale of the Pho Citi franchise to EK: promised an operations manual that was not delivered; promised an executed lease agreement that never transpired; promised monthly net income of more than \$10,000 that was not achieved; promised food costs of 15 to 19 percent of gross sales when actual costs were 28 percent; and promised the restaurant could operate 24-hours but, in actuality, did not have the required permit to do so. It was alleged, but not established by sufficient evidence, that Respondents

made misrepresentations and omissions to EK by promising training that was not forthcoming and by promising trained employees that were not provided.³

18. It was established that Respondents falsified the execution date on the Receipt page for the disclosure document. The Receipt was undated when EK signed it. However, a copy of the Receipt produced by Respondents pursuant to the Department's subpoena shows an execution date of November 3, 2010. It was alleged, but not established, that Respondents falsified the execution date on the franchise agreement signed by EK.

SK Transaction

19. On or about May 24, 2011, Respondents sold a franchise and Pho Citi restaurant no. 1 (located in Burbank) to Seung Kim (SK). The purchase price was \$500,000, with SK to make a \$200,000 down payment and the remaining \$300,000 balance paid through an installment note. On May 24, 2011, SK met Lee and Park, for the first time, at the offices of Bee Investment, Inc. Prior to that date, she had spoken to their agent, John Yi. SK opened an escrow for the purchase of the restaurant. Lee and Park provided SK with a document entitled "Transfer Disclosure Statement for Business Opportunity Sales," which contained questions to be answered by Respondents, as sellers. Answers to the questions were given as of May 24, 2011. Question 4 asked, "Have you been sued for your current business or is there any lawsuit pending involving your business?" The box for the answer "No" was checked. On May 25, 2011, SK signed an installment note and security agreement. An escrow amendment dated May 26, 2011, includes the statement, "Seller has delivered and Buyer has received a copy of franchise agreement." SK paid the down payment with two deposits into escrow. She deposited \$150,000 into escrow on May 26 and \$50,000 on May 31.

20. On June 1, 2011, SK had a meeting with Lee and Park where she signed a franchise agreement, the Receipt page from Respondents' disclosure document, and a "State Law Addenda" document. According to SK, she signed the documents on June 1, 2011, but they were undated. Lee and Park dated the documents as of April 15, 2011. Lee and Park told SK that they needed the backdated documents for their file. SK testified she never received a franchise disclosure document from Lee and Park.

21. SK learned of the Pho Citi restaurant business from Respondents' agents, John Yi and Sue Ahn. SK first met John Yi in March 2011, when she contacted him about purchasing a business generally, not any specific kind of business. In early May 2011, SK saw Respondents' advertisement in a Korean-language newspaper. The advertisement included representations that it was for a famous, mega-sized Vietnamese restaurant next to a theater, completely run by the employees, current gross sales of \$84,000 and income of

³ For example, EK gave conflicting testimony regarding training. On direct examination, EK testified Respondents provided no training. On cross-examination, EK testified that he received 14 days' training from Park when she came to the restaurant over a two-week period.

\$26,000, and possible owner-carry financing. SK's testimony established that Lee and Park, directly and through their agents John Yi and Sue Ahn, made oral representations to her. They guaranteed she would have monthly net income of \$20,000 for the first year, and they would pay her the difference when her actual net income was below \$20,000. They represented she would achieve net income between \$25,000 to \$30,000, total employee salaries of \$16,000, and food costs of 18 percent of gross sales. SK testified that Lee and Park represented that they would transfer the lease agreement with the landlord to her, and not interfere with her running of the restaurant.

22. SK began operating the restaurant on June 1, 2011, and is still operating the restaurant up to the present time. SK testified she was never provided with an executed lease agreement for the restaurant by Respondents, and they never informed the landlord she was the new owner. SK filled out the credit reports and other documents for the transfer of the lease provided to her by Lee and Park and their agents, returned the completed documents to them, and was told she would get the lease in one to two weeks. SK testified that, for the first month running the restaurant, her actual net income was \$4,000. Respondents did not reimburse her for the income shortfall below \$20,000. SK testified that her actual food costs were 30 percent of gross sales, and have never been 18 percent as Respondents represented. SK testified that her actual total employee salaries were \$26,000. SK also testified that Lee and Park interfered with her operation of the restaurant. They came to the restaurant when SK was not there and stole food. They told SK to pay the employees in cash and not to pay the taxes. SK testified that Lee and Park and their agents made oral representations to her, but she did not think a writing was necessary because she trusted them. SK testified she filed a civil lawsuit against Respondents on or about July 14, 2011, in response to Respondents' attempt to evict her from the restaurant.

23. It was established that Respondents made the following misrepresentations and omissions in relation to the offer and sale of the Pho Citi franchise to SK: represented there were no on-going lawsuits when there were three (see Findings 26 and 27 below); promised an executed lease agreement that never transpired; promised monthly net income of \$20,000 that was not achieved; promised to reimburse for monthly income shortfalls below \$20,000 that was not received; promised food costs of 18 percent of gross sales when actual costs were 30 percent; promised employee wages of \$16,000 when actual wages were \$26,000; and promised no interference from Lee and Park, which was not the case.

24. It was further established that Respondents arranged a falsified execution date on the Receipt page for the disclosure document and on the franchise agreement. SK did not write the date on these documents when she signed them. Copies of the documents produced by Respondents in response to the Department's subpoena were dated, with the Receipt and franchise agreement showing an execution date of April 15, 2011. SK testified credibly that Lee and Park backdated the documents to April 15 and told her they needed the backdated documents for their files.

Disclosure Document

25. For the 2010 and 2011 registration applications, Item 3 of the disclosure document required Respondents to disclose any pending litigation against them. Respondents disclosed, "No litigation is required to be disclosed in this disclosure document."

26. During the effective period of the 2010 registration, and at the time Respondents filed the 2011 registration application, Respondents were defendants in two civil lawsuits filed by their franchisees. On January 26, 2011, Kook Hwan Kim filed a civil lawsuit against Respondents in Los Angeles Superior Court case number BC453729; the lawsuit was served on February 5, 2011. On March 11, 2011, plaintiff Myung Hae Kim (CH's wife) filed a civil lawsuit against Respondents in Los Angeles Superior Court case number BC457143; the lawsuit was served on March 23, 2011.

27. In addition, Respondents were defendants in a third lawsuit filed on April 14, 2011, by franchisee EK in Los Angeles Superior Court case number BC459689. This lawsuit was served on May 2, 2011.

28. Respondents did not notify the Department of the pending lawsuits until they filed a pre-effective amendment on August 10, 2011. Respondents failed to notify the Department in writing of two of the lawsuits that were pending prior to the expiration of the 2010 registration. Respondents' notification to the Department of the three lawsuits on August 10, 2011 was not prompt notification, given that the lawsuits were known to Respondents when they were served in February, March, and May 2011.

29. For the 2010 and 2011 registration applications, Item 19 of the disclosure document required disclosure of any financial performance representations. For Item 19, Respondents disclosed: "We do not make any representations about a franchisee's future financial performance or the past financial performance of Company-owned or franchised outlets. We also do not authorize Our employees or representatives to make any such representation either orally or in writing." This disclosure was untrue, as it did not disclose the earnings and performance claims Respondents made to CH, EK, and SK, respectively, in offering and selling Pho Citi franchises to each of them.

Other Findings

30. The Receipt page from Respondents' disclosure document includes the following statement above the space for the prospective franchisee's signature: "I received a disclosure document dated March 30, 2010 that included the following Exhibits: [followed by a list of Exhibits A through F]." Because of the falsified execution dates on the Receipt pages for CH, EK, and SK, the Receipt pages were given little weight in proving Respondents' compliance with Corporations Code section 31119.

31. The franchise agreements signed by CH, EK, and SK included section 16.13, which required the franchisee to acknowledge that he or she received the franchise agreement seven days prior, and the disclosure document 14 days prior, to signing the franchise agreement. CH, EK, and SK each initialed and signed their franchise agreement, including the acknowledgements in section 16.13. Each testified credibly, however, that they felt pressured, pushed, and rushed by Lee and Park to do so. CH was told he could not get a franchise application unless he signed. EK was told he had to sign if he wanted to get a franchise ahead of other interested people. SK was rushed to sign and initial documents, which were taken away as soon as she did so. The acknowledgement provisions of the franchise agreements were given little weight in proving Respondents' compliance with Corporations Code section 31119.

32. In May 2011, Respondents offered and sold a Pho Citi franchise to SK after PCFC's franchise registration had expired and lapsed on April 20, 2011, in violation of Corporations Code section 31110.

33. As of July 16, 2012, Respondents continue to advertise franchise opportunities on the Pho Citi website, although there is no current franchise registration in effect for PCFC. This is a violation of Corporations Code section 31110.

34. Respondent Park is the only witness who testified on behalf of Respondents. Regarding Items 3 and 19 of the disclosure document, Park testified that Respondents' attorney prepared the disclosure documents and all other franchise documents filed with the Department. Respondent Park also testified that she told her accountant about the three pending lawsuits filed by their franchisees. Park's explanations do not excuse Respondents from their responsibility, as the franchisor, to ensure the disclosure document contained all required information. Further, Lee signed the 2010 and 2011 applications and thereby certified under penalty of perjury that the information contained in the applications and the exhibits attached thereto, including the disclosure documents, was true and correct.

35. Park testified that she and Lee provided CH, EK, and SK with all the training, trained employees, and manuals necessary to run the Pho Citi restaurants. Park denied falsifying dates on the franchise documents for CH, EK, and SK. According to Park, the leases for CH and EK were not transferred due to problems with their credit history. No documentary evidence was presented to support Park's testimony regarding the leases. Park denied making promises and representations to CH, EK, and SK about their future financial performance. Park testified that she operated the Pho Citi restaurant in Burbank for 1½ years before it was sold to SK. Park testified she operated the Pho Citi restaurants 24-hours and was successful. Park testified that in May 2011, for the Burbank location, the food costs were 18 percent of gross sales, employee salaries were \$16,000, and monthly net income was between \$15,000 and \$25,000. Park provided no documentary evidence to corroborate those figures. According to Park, her agent, John Yi, provide SK with the franchise disclosure document and other agreements, and John Yi obtained SK's signature on the documents.

Cost Recovery

36. The Department incurred reasonable attorney's fees in this matter in the total amount of \$27,405, established by the Declaration of Timothy L. LeBas. (Exhibit 38.)

LEGAL CONCLUSIONS

1. This case is governed by the Franchise Investment Law (Corp. Code, § 31000 et seq.), and the implementing regulations set forth at California Code of Regulations, title 10, section 310.002 et seq.

2. Pursuant to Corporations Code section 31406, subdivision (a), the Commissioner may issue a citation to any person she has cause to believe is violating any provision of this division or any rule or order promulgated pursuant to this division. The citation may contain an order to desist and refrain and an assessment of an administrative penalty not to exceed \$2,500 per violation. (Corp. Code, § 31406, subd. (a).) The person cited must request a hearing within 60 days of receipt of the citation; otherwise the citation shall be deemed final. (Corp. Code, § 31406, subd. (c).) Any hearing shall be conducted pursuant to the Administrative Procedure Act (Gov. Code, § 11500 et seq.). (Corp. Code, § 31406, subd. (d).)

3. (A) Corporations Code section 31200 provides: "It is unlawful for any person willfully to make any untrue statement of a material fact in any application, notice or report filed with the commissioner under this law, or willfully to omit to state in any such application, notice, or report any material fact which is required to be stated therein, or fail to notify the commissioner of any material change as required by Section 31123."

(B) Corporations Code section 31123 provides, in pertinent part: "A franchisor shall promptly notify the commissioner in writing, by an application to amend the registration, of any material change in the information contained in the application as originally submitted, amended or renewed."

(C) In connection with the 2010 and 2011 registration applications, Respondents violated Corporations Code section 31200 and 31123 by failing to disclose civil lawsuits and financial performance claims, resulting in the willful omission of material facts in the applications, and a failure to provide prompt notification to the Commissioner of material changes in the applications, based on Factual Findings 25-29.

4. (A) Corporations Code section 31119, subdivision (a), provides: "It is unlawful to sell any franchise in this state that is subject to registration under this law without first providing to the prospective franchisee, at least 14 days prior to the execution by the prospective franchisee of any binding franchise or other agreement, or at least 14 days prior to the receipt of any consideration, whichever occurs first, a copy of the

offering circular, together with a copy of all proposed agreements relating to the sale of the franchise."

(B) Respondents violated Corporations Code section 31119, subdivision (a), by selling franchises to CH, EK, and SK, respectively, without first providing them with the disclosure document and franchise agreements at least 14 days prior to the execution of any binding franchise or other agreement, based on Factual Findings 8, 9, 12, 13-15, 18, 19-21, and 24.

5. (A) Corporations Code section 31201 provides: "It is unlawful for any person to offer or sell a franchise in this state by means of any written or oral communication not enumerated in Section 31200 which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading."

(B) Respondents violated Corporations Code section 31201, in that they offered and sold franchises to CH, EK, and SK, respectively, by means of oral and written communications containing untrue statements or omissions of material fact, based on Factual Findings 8-11, 13-17, and 19-23.

6. (A) Corporations Code section 31110 provides, in pertinent part: "[I]t shall be unlawful for any person to offer or sell any franchise in this state unless the offer of the franchise has been registered under this part"

(B) Respondents violated Corporations Code section 31110, in that Respondents offered and sold a franchise to SK after PCFC's 2010 registration had expired and lapsed and its 2011 renewal application was never approved by the Department, and, as of July 16, 2012, they continue to offer and sell Pho Citi franchises on their website, based on Factual Findings 6, 7, 19, 20, 24, 32, and 33.

Cease and Desist Order

7. Grounds exist, pursuant to Corporations Code section 31406, for the issuance of an order that Respondents desist and refrain from:

(A) Filing registration applications that result in willful omissions of material fact and from failing to provide prompt notification of material changes in such applications. (Corp. Code, §§ 31200 and 31123.)

(B) The further offer or sale of any and all franchises in the State of California without first providing prospective franchisees with a disclosure document and a franchise agreement. (Corp. Code, § 31119.)

(C) The further offer or sale of any and all franchises in the State of California by means of oral or written statements containing misrepresentations or omissions of material fact. (Corp. Code, § 31201.)

(D) The further offer or sale of any and all franchises in the State of California that are not registered under the Franchise Investment Law or are otherwise not exempt from registration. (Corp. Code, § 31110.)

Administrative Penalties

8. Grounds exist, pursuant to Corporations Code section 31406, for the assessment of administrative penalties against Respondents for the following violations of the Corporations Code:

(A) Sections 31200 and 31123: \$10,000 for four violations, based on Legal Conclusion 3 (C), above.

(B) Section 31119: \$7,500 for three violations, based on Legal Conclusion 4(B), above.

(C) Section 31201: \$45,000 for eighteen violations, based on Legal Conclusion 5(B), above.

(D) Section 31110: \$5,000 for two violations, based on Legal Conclusion 6(B), above.

9. Under Corporations Code section 31406, subdivision (a), a citation may contain an order assessing an administrative penalty not to exceed \$2,500 per violation. An administrative penalty may be assessed for each separate and actionable misrepresentation. Complainant established 18 separate and actionable misrepresentations with penalties assessed at \$2,500 per misrepresentation as indicated in 8(C).

Ancillary Relief

10. Corporations Code section 31408, subdivision (a), provides, in pertinent part: "If the commissioner determines it is in the public interest, the commissioner may include in any administrative action brought under this division, ...a claim for ancillary relief, including, but not limited to, a claim for rescission, restitution or disgorgement or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action, and the administrative law judge shall have jurisdiction to award additional relief."

11. (A) Grounds do not exist, pursuant to Corporations Code section 31408, subdivision (a), to award ancillary relief in the form of rescission of the franchise agreements

for the CH/MK, EK, and SK transactions. In addition, grounds do not exist to award restitution of \$30,000 to CH and MK, \$50,000 to EK, and \$200,000 to SK. The evidence was insufficient to establish claims for rescission and restitution.

(B) Regarding the CH/MK transaction, the documentation for this transaction is problematic. CH signed his wife's name to the franchise agreements and documents, and paid the \$30,000 amount at issue by signing his wife's name on personal checks drawn from an account held solely in his wife's name. MK did not sign any of the franchise documents at issue. Nor did MK testify at the hearing. No evidence was presented establishing a legal marital relationship that would entitle CH to receive the restitution. No evidence was presented that MK authorized CH to sign her name to franchise agreements and write checks from her account. The evidence is insufficient to support an order for rescission and restitution regarding the CH/MK transaction.

(C) Regarding the EK and SK transactions, both of these franchisees have pending civil lawsuits against Respondents regarding their transactions. The complaint from EK's civil lawsuit includes a claim for rescission of contract. (Exh. G.) SK also has a pending civil lawsuit against Respondents for her transaction. The attorney representing SK in her civil lawsuit, Ronald Kim, was present at the hearing during SK's testimony. An order of rescission and restitution is not necessary in this administrative hearing. The documentary evidence did not clearly establish the nature and conditions of the \$50,000 payment made by EK, and the \$200,000 deposit into escrow by SK. The civil lawsuits are the appropriate venue for EK and SK to adjudicate any claims for rescission and restitution. The purpose of this administrative hearing is public protection.

12. Grounds exist, pursuant to Corporations Code section 31408, subdivision (b), to award the Department reasonable attorney's fees in the amount of \$27,405. (Factual Finding 36.) Corporations Code section 31408, subdivision (b), provides: "In an administrative action brought under this part the commissioner is entitled to recover costs, which in the discretion of the administrative law judge may include any amount representing reasonable attorney's fees and investigative expenses for the services rendered, for deposit into the State Corporations Fund for the use of the Department of Corporations."

ORDER

Citation No. 993-6203, issued to Respondents Pho Citi Franchising Company, Myong Bok Lee aka Jason Lee, and Kyung Park aka Sandra Park (collectively, Respondents), is affirmed in part and modified in part as follows:

1. Respondents, and each of them, shall desist and refrain from the following:

(A) Filing registration applications that result in willful omissions of material fact and from failing to provide prompt notification of material changes in such applications.

(B) The further offer or sale of any and all franchises in the State of California without first providing prospective franchisees with a disclosure document and a franchise agreement.

(C) The further offer or sale of any and all franchises in the State of California by means of oral or written statements containing misrepresentations or omissions of material fact.

(D) The further offer or sale of any and all franchises in the State of California that are not registered under the Franchise Investment Law or are otherwise not exempt from registration.

2. Respondents, jointly and severally, shall pay an administrative penalty in the total amount of \$67,500, no later than 60 days from the date of the final order in this matter.

3. Respondents, jointly and severally, shall pay \$27,405 to the Department for the reasonable attorney's fees incurred by the Department in this matter. Respondents shall pay this amount no later than 60 days from the date of the final order in this matter.

This Decision shall become effective on March 3, 2014.

IT IS SO ORDERED.

DATED: January 31, 2014

/s/

JAN LYNN OWEN
Commissioner of Business Oversight
California Department of Business Oversight