

1 MARY ANN SMITH
Deputy Commissioner
2 DANIEL P. O'DONNELL
Assistant Chief Counsel
3 PAUL YEE (State Bar No. 142381)
Senior Counsel
4 Department of Business Oversight
One Sansome Street, Suite 600
5 San Francisco, California 94104-4448
Telephone: (415) 972-8544
6 Facsimile: (415) 972-8500

7 Attorneys for Complainant
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10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
11 OF THE STATE OF CALIFORNIA

12 In the Matter of:)

13 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,)

14 Complainant,)

15 v.)

16 I-TEA USA INC., I-TEA BUBBLE TEA &)
17 SMOOTHIE CORP.,)

18 Respondent.)

CITATION INCLUDNG:

1) DESIST AND REFRAIN ORDER;

2) ASSESSMENT OF ADMINISTRATIVE PENALTY; AND

3) CLAIM FOR ANCILLARY RELIEF

(CORPORATIONS CODE SECTIONS 31406 and 31408)

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20 Manuel P. Alvarez, the Commissioner of the Department of Business Oversight
21 (Department) of the State of California (Commissioner), finds the following:

22 **I.**

23 **STATEMENT OF FACTS**

24 1. The Commissioner regulates the offer and sale of franchises under the Franchise
25 Investment Law (Corporation Code § 31000 et seq.) (FIL)

26 2. I-TEA USA INC. (I-Tea USA) is a California corporation, registered on October 23,
27 2014, with a principal place of business at 3582 Arden Road, Hayward, California 94545. I-Tea
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1 USA engages in the business of offering and selling franchises under the name “I-Tea” and is in the
2 business activities related to the franchising of I-Tea restaurants, which offer tea drinks and food.

3 3. I-TEA BUBBLE TEA & SMOOTHIE CORP (I-Tea BT&S). is a California
4 corporation registered on September 19, 2013 with a principal place of business at 388 9th Street,
5 Suite 125A, Oakland, California 94607. I-Tea BT&S is an affiliated company to I-Tea USA, LLC
6 and also engages in the business of offering and selling franchises under the name “I-Tea” ” and in
7 the business activities related to the franchising of I-Tea restaurants, which offer tea drinks and food.

8 4. At all relevant times, David Yuan (aka David Ruan, David Ruen or David Yuen) and
9 Leo Gee were the owners and control persons of both I-Tea USA and I-Tea BT&S.

10 5. The Commissioner is responsible for administrating and enforcing California
11 Franchise Investment Law, and registering the offer and sale of franchises in California, pursuant to
12 Section 31000 et seq.

13 8. Pursuant to FIL sections 31111 and 31114, in order to register a franchise, a
14 franchisor must file a Uniform Franchise Disclosure Document (UFDD or Disclosure Document)
15 with the Department for review and approval. (The UFDD is a document that franchisors are
16 required to provide prospective franchisees which among other things, informs the prospective
17 franchisees of their rights and obligations before signing a franchise agreement.)

18 9. The franchisor must provide copies of the registered Disclosure Document and all
19 proposed agreements relating to the sale of the franchise to any prospective franchisee at least 14
20 days prior to executing any binding franchise or other agreement, or prior to receiving any
21 consideration, whichever occurs first, as required by Corporations Code section 31119.

22 10. The disclosure requirements of the Franchise Investment Law are intended to avoid
23 misrepresentations and to provide prospective franchisees with facts upon which to make an
24 informed decision to purchase a franchise, as stated in Corp. Code section 31001.

25 11. Beginning in 2014, I-Tea USA and I-Tea BT&S began selling franchises to residents
26 in California without first registering or filing a UFDD with the Department.
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(b) The sanctions authorized under this section shall be separate from, and in addition to, all other administrative, civil, or criminal remedies.

(c) If within 60 days from the receipt of the citation, the person cited fails to notify the commissioner that the person intends to request a hearing as described in subdivision (d), the citation shall be deemed final.

(d) Any hearing under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(e) After the exhaustion of the review procedures provided for in this section, the commissioner may apply to the appropriate superior court for a judgment in the amount of the administrative penalty and order compelling the cited person to comply with the order of the commissioner. The application shall include a certified copy of the final order of the commissioner and shall constitute a sufficient showing to warrant the issuance of the judgment and order.

17. The Commissioner, pursuant to Corporations Code section 31406 also hereby issues a citation to I-Tea USA and assesses an administrative penalty of thirty-five thousand dollars (\$35,000.00) based on violations of Corp. Code Section 31110. The penalty shall be made payable in the form of a cashier’s check or Automated Clearing House deposit to the Department of Business Oversight and transmitted to the attention of Accounting – Litigation, at the Department of Business Oversight, 1515 K Street, Suite 200, Sacramento, California 95814. Notice of the payment shall be concurrently sent to Paul Yee, Senior Counsel, Department of Business Oversight, One Sansome Street, Suite 600, San Francisco, California 94104. The penalty shall be received by the Department no later than fifteen calendar days from I-Tea USA’s receipt from the Department of this Citation with Desist and Refrain Order and Assessment of Administrative Penalty; Claim for Ancillary Relief (Order) signed by the Commissioner. The Order shall be deemed “received” when the Department emails the executed Order to I-Tea USAs counsel of record, Dawn Newton at DNewton@donahue.com.

18. The Commissioner, pursuant to Corporations Code section 31406 also hereby issues a citation to I-Tea BT&S. and assesses an administrative penalty of fifteen thousand dollars (\$15,000.00) based violations of Corp. Code Section 31110. The penalty shall be made payable in the form of a cashier’s check or Automated Clearing House deposit to the Department of Business

1 Oversight and transmitted to the attention of Accounting – Litigation, at the Department of Business
2 Oversight, 1515 K Street, Suite 200, Sacramento, California 95814. Notice of the payment shall be
3 concurrently sent to Paul Yee, Senior Counsel, Department of Business Oversight, One Sansome
4 Street, Suite 600, San Francisco, California 94104. The penalty shall be received by the Department
5 no later than fifteen calendar days from I-Tea BT&S’s receipt from the Department of this Citation
6 with Desist and Refrain Order and Assessment of Administrative Penalty; Claim for Ancillary Relief
7 (Order) signed by the Commissioner. The Order shall be deemed “received” when the Department
8 emails the executed Order to I-Tea BT&S’s counsel of record, Dawn Newton at
9 DNewton@donahue.com.

10 **IV.**

11 **ANCILLARY RELIEF**

12 19. Corporations Code section 31408 provides:

13 (a) If the commissioner determines it is in the public interest, the commissioner may include
14 in any administrative action brought under this division, including a stop order, a claim for
15 ancillary relief, including, but not limited to, a claim for rescission, restitution or
16 disgorgement or damages on behalf of the persons injured by the act or practice constituting
17 the subject matter of the action, and the administrative law judge shall have jurisdiction to
award additional relief. The person affected may be required to attend remedial education, as
directed by the commissioner.

18 (b) In an administrative action brought under this part the commissioner is entitled to recover
19 costs, which in the discretion of the administrative law judge may include any amount
20 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 Business
21 Oversight.

22 20. I-Tea USA and I-Tea BT&S are hereby ordered to comply with the provisions of
23 section 31303 and title 10 of California Code of Regulations, Rule 310.303 within sixty (60) days of
24 this order, by submitting a proposed notice of violation to the Department for review and approval to
25 Dorothy Eshelman, Corporations Counsel, Securities Regulation Division, One Sansome Street,
26 Suite 600, San Francisco, California 94104. Within 30 days of the Commissioner’s approval of the
27 notice of violation, I-Tea USA and I-Tea BT&S are hereby ordered to mail a copy of the approved
28 notice of violation to the franchisee in California.

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21. Additionally, under Corp. Code section 31408, the Commissioner may direct the franchisor to attend remedial education and may request additional ancillary relief as part of any administrative action. Within thirty (30) days from the date of I-Tea USA and I-Tea BT&S receipt from the Department of this Order signed by the Commissioner, I-Tea USA and I-Tea BT&S are hereby directed to arrange and pay for an experienced franchise attorney or attorneys to provide to Leo Guo Chief Financial Officer and David Yuan (aka David Ruan, David Ruen or David Yuen) Chief Operating Officer, as well as any other officers or employees involved in offering or selling franchises, an eight-hour, in-person training in the area of Franchise Investment Law compliance matters, including but not limited to the offering and selling of franchises (“Training”). I-Tea USA and I-Tea BT&S must obtain prior approval of the providers of the Training from the Commissioner within thirty (30) days from the date of I-Tea USA and I-Tea BT&S receipt from the Department of this Order signed by the Commissioner. Proof of the trainees’ attendance at the Training for eight (8) hours, via affidavit by the trainer(s) and each trainee, shall be received by the Department no later than 30 days from the date of receipt of this Order signed by the Commissioner by sending via traceable method to: Paul Yee, Senior Counsel, Enforcement Division, One Sansome Street, Suite 600, San Francisco, California 94104.

22. The Citation, Desist and Refrain Order, Administrative Penalty and Claim for Ancillary Relief, are necessary and in the public interest, for the protection of investors and franchisees and consistent with the purpose, policies and provisions of the Franchise Investment Law.

Dated: July 22, 2019

MANUEL P. ALVAREZ
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division