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8 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT  
9 OF THE STATE OF CALIFORNIA

11	In the Matter of:	)	FIL ORG ID: 324721
12	THE COMMISSIONER OF BUSINESS	)	CITATION INCLUDING:
13	OVERSIGHT,	)	(1) DESIST AND REFRAIN ORDER;
14	Complainant,	)	(2) ASSESSMENT OF
15	v.	)	ADMINISTRATIVE PENALTIES;
16	FORTUNE JOURNEY LLC dba	)	(3) CLAIM FOR ANCILLARY RELIEF
17	YI FANG TAIWAN FRUIT TEA; and	)	(Corp. Code §§ 31406 and 31408)
18	ROY LAM,	)	
19	Respondents.	)	

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22 The Complainant, the Commissioner of Business Oversight (Commissioner), of the  
23 Department of Business Oversight (Department), finds the following:

24 **I.**  
25 **Introduction**

26 1. At all relevant times, Fortune Journey LLC dba Yi Fang Taiwan Fruit Tea (Fortune  
27 Journey) was organized on or around January 2, 2018 as a California limited liability company with  
28 a principal place of business located at 2516 Bancroft Way, Berkeley, California 94704.



1           10.     “Item 2: Business Experience” of the 2019 Application disclosed that Lam is the  
2 founder, Chief Executive Officer, and Managing Member of Fortune Journey since its inception on  
3 January 2, 2018.

4           11.     “Item 3: Litigation” of the 2019 Application stated, “No litigation is required to be  
5 disclosed in this Item.” The 2019 Application failed to disclose the 2011 Desist and Refrain Order  
6 issued to Lam that is currently in effect.

7           12.     The “Form E – sales Agent Disclosure Form” of the 2019 Application (Form E)  
8 disclosed that Lam will offer or sell franchises in this state. Form E required Fortune Journey to  
9 disclose whether Lam “had during the ten year-period immediately before the Disclosure Document  
10 date . . . 2. Entered into or been named in a[n] . . . order . . . under federal or state franchise,  
11 securities, anti-trust, monopoly, trade practice or trade regulation law.” Fortune Journey answered,  
12 “NO.”

13           13.     The 2019 Application contained a certification by Lam as president and Chief  
14 Executive Officer of Fortune Journey, stating, “I certify under penalty of law that I have read and  
15 know the contents of this application and the documents attached as exhibits and incorporated by  
16 reference and that the statements in all these documents are true and correct.”

17           14.     While the 2019 Application was under review, on or around May 28, 2019, Fortune  
18 Journey admitted in writing that Lam, Fortune Journey’s founder, Chief Executive Officer, and  
19 Managing Member, is the subject of the 2011 Desist and Refrain Order. Yet, on May 28, 2019,  
20 Fortune Journey filed an amended FDD, which stated in “Item 3: Litigation” that “[n]o litigation is  
21 required to be disclosed in this Item.” Fortune Journey did not amend Form E to state that Lam  
22 had, during the ten year-period immediately before the 2019 Application, been named in an order  
23 under state franchise regulation law, namely the 2011 Desist and Refrain Order. Fortune Journey  
24 omitted and made an untrue statement in its 2019 Application regarding the 2011 Desist and  
25 Refrain Order that named Lam.

26           15.     As of October 1, 2019, the offer or sale of Yi Fang Taiwan Fruit Tea franchises by  
27 Fortune Journey is not yet registered and the 2019 Application is pending before the Commissioner.

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**III.**  
**Citation Including Desist and Refrain Order**

16. California Code of Regulations, title 10, section 310.111 states, in relevant part:

(a) All applications for registration under this Law shall be filed upon the Uniform Franchise Registration Application as defined in subsection (b).

(b) Until June 30, 2008, the term “Uniform Franchise Registration Application” means information required from the applicant in accordance with either (1) the Uniform Franchise Offering Circular (“UFOC”) Guidelines, as amended by the North American Securities Administrators Association, Inc. on April 25, 1993; or (2) the Uniform Franchise Disclosure Document (“UFDD”) Guidelines, as adopted by the North American Securities Administrators Association, Inc. on June 22, 2007 and effective July 1, 2007. On or after July 1, 2008, the term “Uniform Franchise Registration Application” means information required from the applicant in accordance with the Uniform Franchise Disclosure Document (“UFDD”) Guidelines, as adopted by the North American Securities Administrators Association, Inc. on June 22, 2007 and effective July 1, 2007 . . . .

17. The North American Securities Administrators Association, Inc. 2008 Franchise Registration and Disclosure Guidelines states, in relevant part:

**Item 2: Business Experience.** Disclose by name and position the franchisor’s directors, trustees, general partners, principal officers, and any other individuals who will have management responsibility relating to the sale or operation of franchises offered by this document . . . **Item 3: Litigation.** . . . Disclose whether the franchisor . . . and any person identified in Item 2 . . . is subject to a currently effective injunctive or restrictive order or decree resulting from a pending or concluded action brought by a public agency and relating to the franchise or to a Federal, State, or Canadian franchise . . . . (Emphasis in original.)<sup>1</sup>

18. Corporations Code section 31200 states:

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. (Emphasis applied.)

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<sup>1</sup> The North American Securities Administrators Association, Inc. 2008 Franchise Registration and Disclosure Guidelines can be viewed at <https://www.nasaa.org/industry-resources/uniform-forms/franchise-registration-and-disclosure-guidelines/>; and <https://www.nasaa.org/wp-content/uploads/2011/07/2-2008UFOC.pdf>.

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19. Corporations Code section 31406 states:

(a) If, upon inspection or investigation, based upon a complaint or otherwise, the commissioner has cause to believe that a person is violating any provision of this division or any rule or order promulgated pursuant to this division, the commissioner may issue a citation to that person in writing describing with particularity the basis of the citation. Each citation may contain an order to desist and refrain and an assessment of an administrative penalty not to exceed two thousand five hundred dollars (\$2,500) per violation and shall contain reference to this section, including the provisions of subdivision (c). All penalties collected under this section shall be deposited in the State Corporations Fund.

(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.

20. Based upon the foregoing findings, the Commissioner is of the opinion that Fortune Journey LLC dba Yi Fang Taiwan Fruit Tea and Roy Lam willfully made an untrue statement of a material fact and omitted to state in an application, notice, or report a material fact which is required to be stated therein, in violation of Corporations Code section 31200 and California Code of Regulations, title 10, section 310.111. Pursuant to Corporations Code sections 31402, Fortune Journey LLC dba Yi Fang Taiwan Fruit Tea and Roy Lam are hereby cited and ordered to desist and refrain from further violating Corporations Code section 31200 and California Code of Regulations, title 10, section 310.111.



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constituting 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 . . . .

Pursuant to Corporations Code section 31408, subdivision (a), Fortune Journey LLC dba Yi Fang Taiwan Fruit Tea and Roy Lam, and all persons employed thereby who assist in preparing franchise registrations or who assist in franchise selling, are hereby required to attend remedial education, which shall consist of eight hours of franchise law training courses per person and offered by instructors or providers that are acceptable to the Commissioner (Remedial Education). Fortune Journey LLC dba Yi Fang Taiwan Fruit Tea and Roy Lam must obtain prior approval of the instructors or providers of Remedial Training within 30 days of receipt of this order. Proof of attendance of the Remedial Education shall be submitted to Sophia C. Kim, Senior Counsel, Enforcement Division, Department of Business Oversight, 320 West 4<sup>th</sup> Street, Suite 750, Los Angeles, California 90013-2344, within 90 days of the date of this order.

This order is necessary, in the public interest, for the protection of investors and franchisees and consistent with the purposes, policies, and provisions of the Franchise Investment Law.

Dated: October 11, 2019  
Los Angeles, California

MANUEL P. ALVAREZ  
Commissioner of Business Oversight

By \_\_\_\_\_  
MARY ANN SMITH  
Deputy Commissioner  
Enforcement Division