

1 MARY ANN SMITH  
Deputy Commissioner  
2 SEAN M. ROONEY  
Assistant Chief Counsel  
3 SOPHIA C. KIM (State Bar No. 265649)  
Senior Counsel  
4 Department of Business Oversight  
320 West 4<sup>th</sup> Street, Suite 750  
5 Los Angeles, California 90013  
Telephone: (213) 576-7594  
6 Facsimile: (213) 576-7181

7 Attorneys for Complainant

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

11 In the Matter of:	)	OAH CASE NO.: 2020040686
	)	AGENCY CASE NO.: 337007; 348451; and
12 THE COMMISSIONER OF BUSINESS	)	332593
13 OVERSIGHT,	)	
	)	SETTLEMENT AGREEMENT
14 Complainant,	)	
	)	TRIAL DATES: August 10-14, 2020
15 v.	)	TIME: 9:00 a.m.
	)	PLACE: 320 West Fourth Street,
16 OYO HOTELS LLC; OYO HOTELS INC.; and	)	Suite 630
17 OYO ROOMS AND TECHNOLOGY LLC,	)	Los Angeles, California
	)	90013
18 Respondents.	)	ASSIGNED TO: Hon. Jennifer M. Russell
19	)	

20 This Settlement Agreement is entered into between the Complainant, the Commissioner of  
21 Business Oversight (Commissioner) as head of the Department of Business Oversight  
22 (Department), and the Respondents, OYO Hotels LLC, OYO Hotels Inc., and OYO Rooms and  
23 Technology LLC (collectively, the Parties), and is made with respect to the following:

24 **I.**  
25 **Recitals**

26 A. The Commissioner is authorized to administer and enforce the provisions of the  
27 Franchise Investment Law (Corp. Code § 31000 *et seq.*) (FIL) and the rules and regulations  
28 promulgated thereunder which control the registration, offer and sale of franchises in California.

1           B.       The Commissioner brings this action pursuant to the provisions of the FIL, and the  
2 rules and regulations promulgated thereunder, including Corporations Code sections 31402, 31406,  
3 and 31408.

4           C.       Pursuant to Corporations Code sections 31111, 31112, and 31114 of the FIL, an  
5 application for registration of an offer of a franchise shall be accompanied by a Uniform Franchise  
6 Disclosure Document (FDD) that contains the material information set forth in the application for  
7 registration and shall be filed with the Commissioner.

8           D.       As stated in Corporations Code section 31001, it is the intent of the FIL to provide  
9 each prospective franchisee with the information necessary to make an intelligent decision  
10 regarding the franchise being offered.

11          E.       OYO Hotels LLC (OYO Hotels) was a Delaware limited liability company formed  
12 on or around November 29, 2018 with a principal place of business located at 3232 McKinney  
13 Avenue, Dallas, Texas 75201.

14          F.       In or around May 2019, OYO Hotels converted from a limited liability company to a  
15 Delaware corporation with its formal name changed to OYO Hotels, Inc. OYO Hotels Inc.’s  
16 website is located at [www.oyorooms.com](http://www.oyorooms.com).

17          G.       At all relevant times herein, OYO Rooms and Technology LLC is a Delaware  
18 limited liability company formed on or around December 4, 2018 with a principal place of business  
19 located at 1920 McKinney Avenue, 7<sup>th</sup> Floor, Dallas, Texas 75201.

20          H.       From in or around May 2019 through in or around January 2020, OYO Hotels LLC,  
21 OYO Hotels Inc., and OYO Rooms and Technology LLC (collectively, OYO) offered an “OYO  
22 Marketing, Consulting and Revenue Management Agreement, Exclusive and Limited Time Only –  
23 Promotional and Investment Guarantee Offer” (OYO Offering) to approximately 64 individuals or  
24 entities in California.

25          I.       From in or around July 2019 through in or around January 2020 OYO offered and  
26 sold the OYO Offering to approximately 20 individuals or entities in California (CA OYO  
27 Hotel(s)), including: (1) OYO Hotel Banning I-10; (2) OYO Townhouse Lake Arrowhead; (3)  
28 OYO Hotel Whittier, CA I-605; (4) OYO Hotel Pomona CA - I-10 & Hwy 71; (5) OYO Hotel

1 Corona CA - Hwy 91 (6) OYO Hotel Ridgecrest CA – W. Upjohn Ave.; (7) OYO Hotel Ridgecrest  
2 CA – South China Lake (8) OYO Hotel Kernville CA East; (9) Hotel Victorville Mojave Dr.; (10)  
3 Hotel Palmdale – Antelope Valley; (11) OYO Hotel Fairfield CA – Suisun Valley; (12) OYO Hotel  
4 San Francisco Elite; (13) OYO Hotel North Bay at Petaluma; (14) OYO Hotel Dunnigan I-5 West;  
5 (15) OYO Hotel Ridgecrest; (16) Hotel Casa Grande Madera; (17) Hotel Paso Robles Wine  
6 Country; (18) OYO Hotel Coalinga Hwy 33 East; (19) Infusion Beach Club by OYO; and (20)  
7 Hotel Crestline Sleepy Hollow.

8 J. The Commissioner finds that the OYO Offering constituted a franchise within the  
9 meaning of Corporations Code section 31005.

10 K. The Commissioner finds that OYO offered the OYO Offering without registration or  
11 exemption from the registration requirement, in violation of Corporations Code section 31110.

12 L. The Commissioner finds that OYO did not first provide a copy of an FDD to any of  
13 the CA OYO Hotels at least 14 days prior to the execution of any binding franchise or other  
14 agreement, or prior to the receipt of any consideration, whichever occurs first, in violation of  
15 Corporations Code section 31119, subdivision (a).

16 M. On March 5, 2020, the Commissioner issued to OYO a Citation Including: (1) Desist  
17 and Refrain Order; (2) Assessment of Administrative Penalties; and (3) Claim for Ancillary Relief  
18 pursuant to Corporations Code section 31402, 31406, and 31408 (Citation). The Citation is  
19 incorporated herein by this reference.

20 N. On or around April 6, 2020, OYO submitted to the Commissioner the Respondents’  
21 Request for Hearing to contest the allegations in the Citation.

22 O. On or around April 13, 2020, a request to set the matter for hearing was filed with  
23 the Office of Administrative Hearings (OAH) and the matter was assigned hearing dates of June 8,  
24 2020 through June 12, 2020, at the Los Angeles regional office of OAH (OAH Case No.  
25 2020040686).

26 P. OYO neither admits nor denies the Commissioner’s findings of facts and  
27 conclusions of law herein except as to the jurisdiction of the Commissioner in this matter for the  
28 purposes of enforcing this Settlement Agreement.

1 Q. It is the intention and desire of the parties to resolve the matter of the Citation  
2 amicably without the necessity of a hearing and/or other litigation.

3 R. The Commissioner finds that this Settlement Agreement is appropriate, in the public  
4 interest, and consistent with the purposes fairly intended by the policy and provisions of the FIL.

5 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set  
6 forth herein, the Parties agree as follows:

7 **II**  
8 **Terms and Conditions**

9 1. Purpose. This Settlement Agreement resolves the issues before the Commissioner  
10 set forth in paragraphs A through R above in a manner that avoids the expense of a hearing and  
11 other possible court proceedings, protects consumers, is in the public interest, and is consistent with  
12 the purposes, policies, and provisions of the FIL.

13 2. Final Desist and Refrain Order. OYO hereby stipulates that, in accordance with  
14 Corporations Code section 31402, OYO shall desist and refrain from future violations of  
15 Corporations Code sections 31110 and 31119.

16 3. Penalties. OYO agrees to pay penalties totaling \$75,000.00 as follows:  
17 a. \$25,000.00 within 30 days of the of the effective date of this Settlement Agreement,  
18 as such date is defined in Paragraph 24 (Effective Date);  
19 b. \$25,000.00 by no later than October 1, 2020;  
20 c. \$25,000.00 by no later than January 15, 2021;  
21 d. Each payment shall be made payable to the Commissioner in the form of a cashier's  
22 check or Automated Clearing House deposit to the "Department of Business Oversight," and  
23 transmitted to: Accounting – Enforcement Division, Department of Business Oversight, 1515 K  
24 Street, Suite 200, Sacramento, California 95814, contemporaneously with notice of transmittal to  
25 Sophia C. Kim at Sophia.Kim@dbo.ca.gov.

26 4. Ancillary Relief.  
27 a. OYO has submitted to the Commissioner offers of rescission and supporting  
28 documentation for each of the CA OYO Hotels who were offered and sold an OYO Offering

1 (Rescission Offer(s)). The Commissioner has reviewed the Rescission Offers and deemed them to  
2 be satisfactory.

3 b. Within 30 days of the Effective Date, OYO shall submit to the Commissioner  
4 proof(s) of service of (i) the Rescission Offer and (ii) a copy of this Settlement Agreement to each  
5 of the CA OYO Hotels. The Proof(s) of Service shall be sent to the attention of: Sophia C. Kim,  
6 Senior Counsel, Enforcement Division, Department of Business Oversight, 320 West 4<sup>th</sup> Street,  
7 Suite 750, Los Angeles, California 90013; Sophia.Kim@dbo.ca.gov.

8 c. Within 45 days of the date on the Proof(s) of Service, OYO shall submit to the  
9 Commissioner satisfactory documentation evidencing each CA OYO Hotel’s response to the  
10 Rescission Offer. The documentation of each CA OYO Hotel’s response shall be sent to the  
11 attention of: Sophia C. Kim, Senior Counsel, Enforcement Division, Department of Business  
12 Oversight, 320 West 4<sup>th</sup> Street, Suite 750, Los Angeles, California 90013;  
13 Sophia.Kim@dbo.ca.gov.

14 5. Waiver of Hearing Rights. OYO agrees that the Settlement Agreement shall have  
15 the effect of withdrawing its request for an administrative hearing on the Citation currently set for  
16 August 10, 2020 through August 14, 2020, in OAH Case No. 2020040686. OYO acknowledges its  
17 right to an administrative hearing under the FIL and hereby waives its right to a hearing, and to any  
18 reconsideration, appeal, or other right to review which may be afforded pursuant to the FIL, the  
19 California Administrative Procedure Act (APA), the California Code of Civil Procedure (CCP), or  
20 any other provision of law.

21 6. Full and Final Settlement. The Parties hereby acknowledge and agree that this  
22 Settlement Agreement is intended to constitute a full, final, and complete resolution of the Citation  
23 and allegations described herein, and that no further proceedings or actions will be brought by the  
24 Commissioner in connection with these matters under the FIL or any other provision of law,  
25 excepting therefrom any proceeding to enforce compliance with the terms of this Settlement  
26 Agreement, or a proceeding or action based upon discovery of new and further violations of the FIL  
27 which do not form the basis for this Settlement Agreement or which OYO knowingly concealed  
28 from the Commissioner.

1           7.       Failure to Comply with Settlement Agreement. OYO agrees that if it fails to comply  
2 with the terms of this Settlement Agreement, the Commissioner may, in addition to all other  
3 available remedies it may invoke under the FIL, deny any application and/or summarily suspend or  
4 revoke any license granted by the Commissioner to OYO until OYO is in compliance.

5           8.       Future Actions by Commissioner. This Settlement Agreement may be revoked, and  
6 the Commissioner may pursue any and all remedies available under law against OYO if the  
7 Commissioner discovers that OYO knowingly or willfully withheld or misrepresented information  
8 used for and relied upon in this Settlement Agreement.

9           9.       Assisting Other Agencies. Nothing in this Settlement Agreement limits the  
10 Commissioner’s ability to assist any other government agency (city, county, state, or federal) with  
11 any prosecution, administrative, civil or criminal brought by any such agency against OYO or any  
12 other person based upon any of the activities alleged in this matter or otherwise.

13           10.      Headings. The headings to the paragraphs of this Settlement Agreement are inserted  
14 for convenience only and will not be deemed a part hereof or affect the construction or  
15 interpretation of the provisions hereof.

16           11.      Binding. This Settlement Agreement is binding on all the Parties’ heirs, assigns,  
17 and/or successors in interest.

18           12.      Reliance. Each of the Parties represents, warrants, and agrees that in executing this  
19 Settlement Agreement it has relied solely on the statements set forth herein and the advice of its  
20 own counsel. Each of the Parties further represents, warrants, and agrees that in executing this  
21 Settlement Agreement it has placed no reliance on any statement, representation, or promise of any  
22 other party, or any other person or entity not expressly set forth herein, or upon the failure of any  
23 party or any other person or entity to make any statement, representation or disclosure of anything  
24 whatsoever. The Parties have included this clause: (1) to preclude any claim that any party was in  
25 any way fraudulently induced to execute this Settlement Agreement; and (2) to preclude the  
26 introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this  
27 Settlement Agreement.

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1           13.    No Presumption Against Drafting Party. Each of the Parties acknowledges that it  
2 has had the opportunity to draft, review, and edit the language of this Settlement Agreement.  
3 Accordingly, the Parties intend that no presumption for or against the drafting party will apply in  
4 construing any part of this Settlement Agreement. The Parties waive the benefit of Civil Code  
5 section 1654 as amended or corresponding provisions of any successor statute, which provide that  
6 in cases of uncertainty, language of a contract should be interpreted most strongly against the party  
7 that caused the uncertainty to exist.

8           14.    Independent Legal Advice. Each of the Parties represents, warrants, and agrees that  
9 it has received independent advice from its attorney(s) and/or representatives with respect to the  
10 advisability of executing this Settlement Agreement.

11           15.    Waiver, Amendments, and Modifications. No waiver, amendment, or modification  
12 of this Settlement Agreement will be valid or binding unless it is in writing and signed by each of  
13 the Parties. The waiver of any provision of this Settlement Agreement will not be deemed a waiver  
14 of any other provision. No waiver by either of the Parties of any breach of, or of compliance with,  
15 any condition or provision of this Settlement Agreement by the other party will be considered a  
16 waiver of any other condition or provision or of the same condition or provision at another time.

17           16.    Full Integration. This Settlement Agreement is the final written expression and the  
18 complete and exclusive statement of all the agreements, conditions, promises, representations, and  
19 covenants between the Parties with respect to the subject matter hereof, and supersedes all prior or  
20 contemporaneous agreements, negotiations, representations, understandings, and discussions  
21 between and among the Parties, their respective representatives, and any other person or entity, with  
22 respect to the subject matter covered hereby. This Settlement Agreement resolves the matter of the  
23 Citation, and the parties agree that the penalties and remedies therein are no longer in effect.

24           17.    Governing Law. This Settlement Agreement will be governed by and construed in  
25 accordance with California law. Each of the Parties hereto consents to the jurisdiction of such  
26 court, and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an  
27 inconvenient forum to the maintenance of such action or proceeding in such court.

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1           18.    Counterparts. This Settlement Agreement may be executed in one or more separate  
2 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall  
3 together constitute a single document.

4           19.    Effect Upon Future Proceedings. If OYO is the subject of any future action by the  
5 Commissioner to enforce this Settlement Agreement, then the subject matter hereof may be used to  
6 enforce the Settlement Agreement. In consideration for OYO’s agreeing to the terms of this  
7 Settlement Agreement the Department will timely review and consider any future or pending  
8 application and this Settlement Agreement will not be the sole basis of any action to deny such  
9 application.

10          20.    Voluntary Agreement. OYO enters into this Settlement Agreement voluntarily and  
11 without coercion and acknowledges that no promises, threats, or assurances have been made by the  
12 Commissioner or any officer, or agent thereof, about this Settlement Agreement. The Parties each  
13 represent and acknowledge that he, she, or it is executing this Settlement Agreement completely  
14 voluntarily and without any duress or undue influence of any kind from any source.

15          21.    Notice. Any notice required under this Settlement Agreement shall be provided to  
16 each of the Parties at the following addresses:

17           To OYO:

18                   LATHROP GPM LLP, Eric L. Yaffe, Michael L. Sturm, Danielle N. Twait, and  
19                   Ronald A. Valenzuela, Attorneys on behalf of OYO Hotels LLC; OYO Hotels, Inc.;  
20                   and OYO Rooms and Technology LLC  
21                   1888 Century Park East, Suite 1000, Los Angeles, California 90067;  
22                   Eric.Yaffe@LathropGPM.com; Michael.Sturm@LathropGPM.com;  
23                   Danielle.Twait@LathropGPM.com; Ronald.Valenzuela@LathropGPM.com;

24           To the Commissioner:

25                   Sophia C. Kim, Senior Counsel, Enforcement Division, California Department of  
26                   Business Oversight, 320 West 4<sup>th</sup> Street, Suite 750, Los Angeles, California 90013;  
27                   Sophia.Kim@dbo.ca.gov

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22. Signatures. A fax or electronic mail signature shall be deemed the same as an original signature.

23. Public Record. OYO hereby acknowledges that this Settlement Agreement is and will be a matter of public record.

24. Effective Date. This Settlement Agreement shall become final and effective when signed by each of the Parties and delivered by the Commissioner’s agent via e-mail to OYO at Eric.Yaffe@LathropGPM.com; Michael.Sturm@LathropGPM.com; Danielle.Twait@LathropGPM.com; and Ronald.Valenzuela@LathropGPM.com.

25. Authority to Sign. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Settlement Agreement and undertake the obligations set forth herein.

Dated: 6/3/20 MANUEL P. ALVAREZ  
Commissioner of Business Oversight

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

Dated: 6/3/20 OYO HOTELS INC. (formerly OYO Hotels LLC)

By \_\_\_\_\_  
Christopher Nowak  
Vice President

Dated: 6/3/20 OYO ROOMS AND TECHNOLOGY LLC

By \_\_\_\_\_  
Christopher Nowak  
Vice President