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8 Attorneys for Complainant

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

11 In the Matter of:)
12)
13 THE COMMISSIONER OF FINANCIAL) CONSENT ORDER
PROTECTION AND INNOVATION,)
14)
15 Complainant,)
16)
17 v.)
18)
19 WEI-HSIANG HSU, an Individual, DING TEA)
CORPORATION, doing Business as DING TEA)
20 CHU YU HSIANG CO. LTD., doing business as)
DING TEA, VISION & TRIUMPH LIMITED,)
doing business as DING TEA.)

21)
22 Respondents.

23 This Consent Order is entered into between the Commissioner of Financial Protection and
24 Innovation (Commissioner) and Respondents Wei-Hsiang Hsu, an individual (HSU), Ding Tea
25 Corporation, doing business as Ding Tea (DTC), Chu Yu Hsiang Co. Ltd., doing business as Ding
26

1 Tea (CYH), and Vision & Triumph Limited, doing business as Ding Tea (VTL), collectively
2 hereinafter referred to as “Respondents” and is made with respect to the following facts.

3 **I.**

4 **RECITALS**

5 A. The Commissioner is the head of the Department of Financial Protection and
6 Innovation (Department) and is responsible for administering and enforcing the Franchise Investment
7 Law (FIL) (Corp. Code, § 31000 et seq.)¹, and registering the offer and sale of franchises in
8 California. To register a franchise, a franchisor must file an application which includes a Uniform
9 Franchise Disclosure Document (FDD) with the Department for review and approval, in accordance
10 with sections 31111 and 31114. The FIL requires franchisors to disclose certain material information
11 which is intended to provide prospective franchisees with facts upon which to make an informed
12 decision to purchase a franchise, as stated in section 31001.

13 B. At all relevant times, DTC is a Delaware Corporation, with a principal place of
14 business located at 21F.-2, No. 88, Sec. 1, Huizhong Rd., Xitun Dist., Taichung City 407, Taiwan.
15 DTC offers franchises to consumers consisting of beverage service establishments offering gourmet
16 teas, coffee, various flavored tea-based beverages, bubble tea, compatible food products, related
17 supplies, accessories, and gifts.

18 C. At all relevant times, CYH is a Taiwanese corporation with a principal place of
19 business located at 21F-2, No. 88, Sec. 1, Huizhong Rd., Xitun Dist., Taichung City 407, Taiwan. At
20 all relevant times, CYH is not authorized to offer and sell franchises in California, pursuant to the
21 FIL.

22 D. At all relevant times, VTL is a Samoa offshore company with a principal place of
23 business located at Sertus Chambers, P.O. Box 603, Apia, Samoa. VTL dissolved on September 6,
24

25 _____
26 ¹ All further statutory references are to the California Corporations Code unless otherwise indicated.

1 2019. At all relevant times, VTL is not authorized to offer and sell franchises in California pursuant
2 to the FIL.

3 E. At all times, HSU was an individual, general manager and a major shareholder of
4 DTC, CYH, and the sole shareholder of VTL. At all relevant times, HSU engaged in the offer and
5 sale of Ding Tea franchises in California.

6 F. Pursuant to section 31110, it is unlawful for any person to offer or sell a franchise in
7 this state unless the offer has been registered with the Commissioner or is exempt.

8 G. From February 2018 to at least September 2020, HSU as the general manager and
9 major shareholder of CYH, offered and sold thirty-five (35) Ding Tea franchises in California, before
10 properly registering these franchises with the Commissioner.

11 H. From February 2015 to at least September 2020, VTL offered and sold forty-four (44)
12 Ding Tea franchises in California, before properly registering these franchises with the
13 Commissioner. VTL subsequently transferred and assigned thirty-six (36) of these Ding Tea
14 franchise outlets to CYH.

15 I. Pursuant section 31119, it is unlawful to sell any franchise without first providing a
16 prospective franchisee with the FDD at least fourteen days prior to the execution of a franchise
17 agreement or receipt of consideration.

18 J. HSU offered and sold thirty-five (35) Ding Tea franchises in California without
19 providing an FDD to prospective franchisees. VTL offered and sold forty-four (44) Ding Tea
20 franchises in California without providing and FDD to prospective franchisees. The California
21 Franchisee Listing attached herein and incorporated by reference as "Exhibit A" provides the names,
22 addresses, phone numbers, e-mail addresses of each franchisee along with the date of each franchise
23 sale.

24 K. Pursuant to section 31200, it is unlawful for any person willfully to make any untrue
25 statement of a material fact in any application, notice or report filed with the Commissioner under the
26 FIL, or willfully omit to state in any such application, notice, or report any material fact which is

1 required to be stated therein or fail to notify the Commissioner of any material change as required by
2 section 31123.

3 L. On September 30, 2019, DTC filed an Initial Franchise Registration Application with
4 the Department and was granted a franchise registration on August 24, 2020. The FDD filed with the
5 Department did not disclose that any Ding Tea franchises were existing in California.

6 M. The Commissioner finds that HSU, CYH and VTL offered and sold non-exempt,
7 unregistered franchises to a total of seventy-nine (79) franchisees in California in violation of
8 section 31110.

9 N. The Commissioner also finds that on a total of seventy-nine (79) occasions HSU,
10 CYH and VTL failed to provide prospective franchisees, at least fourteen (14) days prior to the
11 execution by the prospective franchisee of any binding franchise or other agreement or receipt of
12 any consideration, whichever occurs first, a copy of a FDD, in violation of section 31119.

13 O. The Commissioner further finds that DTC failed to disclose to the Commissioner
14 that there were existing Ding Tea franchises in California, in violation of section 31200.

15 P. Respondents acknowledge and agree with the Commissioner's findings in this
16 Consent Order.

17 Q. The Commissioner finally finds that entering into this Consent Order is in the public
18 interest and consistent with the purposes fairly intended by the policies and provisions of the FIL.

19 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
20 forth herein, the parties agree as follows:
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1 II.

2 **TERMS AND CONDITIONS**

3 1. **Purpose.** This Consent Order resolves the issues before the Commissioner [findings in
4 paragraphs A through Q above] in a manner that avoids the expense of a hearing and other possible
5 court proceedings, protects consumers, is in the public interest, and is consistent with the purposes
6 and provisions of the FIL.

7 2. **Desist and Refrain Order.** Pursuant to Corporations Code sections 31402 and 31406,
8 Wei-Hsiang Hsu, an individual, Ding Tea Corporation, doing business as Ding Tea, Chu Yu Hsiang
9 Co. Ltd., doing business as Ding Tea, and Vision & Triumph Limited, doing business as Ding Tea,
10 are hereby ordered to desist and refrain from the violations set forth herein, in violation of
11 Corporations Code sections 31110, 31119, and 31200, and from any violations of the California
12 Franchise Investment Law.

13 3. **Penalties.**

14 a. **Assessment.** Respondents shall pay penalties of \$397,500 for the violations
15 discussed herein (Penalties). Respondents shall pay the Penalties to the Commissioner within sixty
16 (60) calendar days of the effective Date as set forth in Paragraph 27 (Effective Date) of this Consent
17 Order via cashier's check or Automated Clearing House deposit to the Department of Financial
18 Protection and Innovation, Accounting, 2101 Arena Blvd., Sacramento, California 95834. Failure to
19 timely pay the Penalties constitutes a breach of this Consent Order.

20 b. **Offset of Penalties.** The Commissioner hereby grants Respondents an offset of
21 Penalties to Respondents in the amount of each and every refund payment made to a California
22 franchisee of their franchise fees paid to Respondents (Offset). The Offset must be executed
23 according to the terms set forth in Paragraph 5 of this Consent Order.

24 4. **Administrative Cost and Fees Payment.** Respondents shall pay to the Department the
25 sum of \$5,000 as Administrative Costs and Fees (Administrative Payment). Respondents hereby
26 agree to pay the Administrative Payment within ten (10) business days of the Effective Date of this
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1 Consent Order via cashier's check or Automated Clearing House deposit to the Department of
2 Financial Protection and Innovation, Accounting, 2101 Arena Blvd., Sacramento, California 95834.
3 Failure to timely pay the Penalties constitutes a breach of this Consent Order.

4 5. Cancellation and Refund for Franchises.

5 a. Paragraph 3b, Offset of Penalties, is incorporated by reference in this Paragraph 5.

6 Respondents agree to inform and allow the California franchisees listed in Exhibit A, to choose to
7 cancel their franchise agreement and obtain a full refund all franchise fees paid (Refund Payment).
8 Respondents shall provide this Refund Payment option within ten (10) calendar days from the
9 Effective Date of this Consent Order. Franchisees will have thirty (30) calendar days from the receipt
10 of the Cancellation Notice, sent by certified mail to all California franchisees, to notify the
11 Respondents whether they would like to cancel their franchise agreement and obtain a full refund. A
12 form Cancellation Notice and Refund of the Initial Franchise Fees are attached hereto and
13 incorporated by reference herein as "Exhibit B" (Cancellation Notice). No other credits or benefits
14 paid to, or received by, a franchisee shall offset the Refund Payment. The total sum of paid Refund
15 Payments, may be deducted from any Penalties paid to the Commissioner stated in Paragraph 3,
16 above, provided Respondents show proof of the Refund Payments made and amount of refunds
17 made. This provision shall apply to all California franchisees who purchased a DTC franchise
18 regardless of whether they were terminated on or before the Effective Date of this Consent Order,
19 including any that are eligible but may have been omitted from Exhibit A, according to proof.

20 b. Respondents shall submit to the Commissioner proofs of service of the Cancellation
21 Notices to all California franchisees to the attention of Shohreh Aram, by email at:

22 Shohreh.Aram@dfpi.ca.gov.

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24 c. Respondents shall submit to the Commissioner satisfactory documentation evidencing
25 each franchisee's response to the Cancellation Notice no later than forty-five (45) days after service
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1 of the Cancellation Notice. The documentation of each franchisee’s response shall be sent to the
2 attention of Shohreh Aram, by email at: Shohreh.Aram@dfpi.ca.gov.

3 6. Remedial Education. HSU, the general manager of DTC, shall complete at least eight
4 (8) hours of remedial FIL education offered by a Department-approved vendor or franchise attorney
5 within ninety (90) days of the Effective Date herein. DTC shall file proof of compliance, in the form
6 of a sworn statement of Hsu, under penalty of perjury, and a certificate of completion from the
7 vendor to the Commissioner upon completion. Proof of compliance shall be sent to the Department
8 of Financial Protection and Innovation, Attention Shohreh Aram, Senior Counsel, 320 W. 4th Street,
9 #750, Los Angeles, California 90013.

10 7. Waiver of Hearing Rights. Each Party acknowledges that the Commissioner is ready,
11 willing, and able to proceed with the filing of an administrative enforcement action on the findings
12 contained in the recitals set forth above. Each Party hereby waive its rights to any hearing, and to any
13 reconsideration, appeal, or other right to review which may be afforded it pursuant to the FIL; the
14 Administrative Procedure Act (APA); the Code of Civil Procedure (CCP); or any other provision of
15 law. By waiving such rights, Respondents effectively consent to this Consent Order becoming final.

16 8. Failure to Comply with Consent Order. Respondents agree that if it fails to comply
17 with the terms of this Consent Order, the Commissioner may, in addition to all other available
18 remedies it may invoke under the FIL, summarily suspend or revoke its franchise registration (if
19 applicable) or deny FIL applications (if applicable) until Respondents are in compliance.
20 Respondents waive any notice and hearing rights to contest such summary suspensions which may
21 be afforded under the FIL, the APA and the CCP, or any other provision of law in connection
22 therewith.

23 9. Full and Final Resolution. The parties hereby acknowledge and agree that this Consent
24 Order intended to constitute a full and final resolution of the violations described herein, and that no
25 further proceedings or actions will be brought by the Commissioner against Respondents, their
26 affiliates, principals, or representatives in connection with these matters under the FIL or any other
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1 provision of law, excepting therefrom any proceeding to enforce compliance with the terms of this
2 Consent Order.

3 10. Information Willfully Withheld. This Consent Order may be revoked, and the
4 Commissioner may pursue any and all remedies available under law against Respondents if the
5 Commissioner discovers that Respondents knowingly or willfully withheld or misrepresented
6 information used for and relied upon in this Consent Order.

7 11. Future Actions by Commissioner. If Respondents fail to comply with the terms of this
8 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
9 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
10 against Respondents, or any of its members, partners, owners, officers, directors, employees, or
11 successors for any and all unknown violations of the FIL.

12 12. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner's
13 ability to assist any other government agency (city, county, state or federal) with any prosecution,
14 administrative, civil, criminal action brought by that agency against Respondents any other person
15 based on any of the activities alleged in this matter or otherwise.

16 13. No Presumption Against Drafter. Each Party acknowledges that it has had the
17 opportunity to draft, review, and edit the language of this Consent Order. Accordingly, the parties
18 intend no presumption for or against the drafting Party will apply in construing any part of this
19 Consent Order. The Parties waive the benefit of Civil Code section 1654 as amended or
20 corresponding provisions of any successor statute, which provide that in cases of uncertainty,
21 language of a contract should be interpreted most strongly against the Party who caused the
22 uncertainty to exist.

23 14. Independent Legal Advice. Each of the Parties represents, warrants, and agrees that
24 he, she, or it has received independent advice from its attorney(s) or representatives with respect to
25 the advisability of executing this Consent Order.

To the Commissioner:

Shohreh Aram, Senior Counsel
Department of Financial Protection and Innovation
320 W. 4th Street, Suite 750
Los Angeles, California 90013-2344
Shohreh.Aram@dfpi.ca.gov

25. Signatures. A scanned or electronic signature shall be deemed the same as an original signature.

26. Public Record. Respondents hereby acknowledge that this Consent Order is and will be a matter of public record.

27. Effective Date. This Consent Order shall become final and effective when signed by all parties and delivered by the Commissioner’s agent via email to Respondents at the following email address: Wendyyang.tse@gmail.com.

28. Authority to Sign. Each signatory hereto covenants that he or she possesses all necessary capacity and authority to sign and enter into this Consent Order and undertake the obligations set forth herein.

IN WITNESS WHEREOF, the Parties hereto have approved and executed this Consent Order on the dates set forth opposite their respective signatures.

Dated: 10/26/2021

CHRISTOPHER S. SHULTZ (Acting)
Commissioner of Financial Protection and Innovation

By _____
JENNIFER RUMBERGER
Deputy Commissioner
Legal Division

[Signature Page Continued]

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Dated: 10/22/2021

WEI-HSIANG HSU, an individual

By _____
WEI-HSIANG HSU

Dated: 10/22/2021

DING TEA CORPORATION,
doing business as Ding Tea

By _____
WEI-HSIANG HSU

Dated: 10/22/2021

CHU YU HSIANG CO. LTD.,
doing business as Ding Tea

By _____
WEI-HSIANG HSU
Representative

Dated: 10/22/2021

VISION & TRIUMPH LIMITED,
doing business as Ding Tea

By _____
WEI-HSIANG HSU
Representative