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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) AMENDED CONSENT ORDER
13 THE COMMISSIONER OF FINANCIAL)
PROTECTION AND INNOVATION,)
14)
Complainant,)
15)
v.)
16)
17 WEI-HSIANG HSU, an Individual, DING TEA)
CORPORATION, a Delaware Corporation,)
18 CHU YU HSIANG CO. LTD., a Taiwanese)
Corporation, VISION & TRIUMPH LIMITED,)
19 a Samoan Company, an International Company.)
20)
Respondents.)
21)

22 On October 26, 2021 a Consent Order was entered into between the Commissioner of
23 Financial Protection and Innovation (Commissioner) and Respondents Wei-Hsiang Hsu (Hsu), Ding
24 Tea Corporation (DTC), Chu Yu Hsiang Co. Ltd. (CYH), and Vision & Triumph Limited (VTL),
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1 beverage service establishment offering gourmet teas, coffee, various flavored tea-based beverages,
2 bubble tea, and compatible food products and related supplies, accessories, and gifts.

3 C. CYH is a Taiwanese corporation, formed on October 5, 2018. CYH has its principal
4 place of business located at 21F-2, No. 88, Sec. 1, Huizhong Rd., Xitun Dist., Taichung City 407,
5 Taiwan (R.O.C.). CYH is not authorized to offer and sell franchises in California.
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7 D. VTL is an International Company (aka Samoa offshore company), formed in Samoa
8 on January 13, 2016. VTL has its principal place of business located at Sertus Chambers, P.O. Box
9 603, Apia, Samoa. VTL dissolved on September 6, 2019. VTL is not authorized to offer and sell
10 franchises in California.
11

12 E. At all times, Hsu was the general manager and a major shareholder of DTC and CYH
13 and also the sole shareholder of VTL.

14 F. Wendy Yang is the legal representative for Respondents and, as such, is authorized to
15 enter into this Amended Consent Order on their behalf.

16 G. From February 1, 2018 to September 14, 2020, Hsu as the general manager and major
17 shareholder of CYH offered and sold thirty-five (35) Ding Tea franchises in the State of California.

18 H. From October 7, 2016 to September 14, 2020, VTL offered and sold forty-four (44)
19 Ding Tea franchises in the State of California. The name, address, store number and amount of fees
20 paid is attached hereto and incorporated by reference herein as "Amended Exhibit A", California
21 Franchisee Listing.

22 I. On September 30, 2019, DTC filed an Initial Franchised Registration Application with
23 the Department and was granted a franchise registration on August 24, 2020, for the first time. The
24 Franchise Disclosure Document ("FDD") filed with the Department did not disclose that any Ding
25 Tea franchises existed in California.
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1 J. The Commissioner finds that Hsu, CYH and VTL offered and sold non-exempt,
2 unregistered franchises to a total of 79 franchisees in California in violation of section 31110 and
3 failed to provide the prospective franchisees, at least fourteen (14) days prior to the execution by
4 the prospective franchisee of any binding franchise or other agreement or receipt of any
5 consideration, whichever occurs first, a copy of a franchise disclosure document in violation of
6 section 31119.

7 K. The Commissioner finds that DTC failed to disclose to the Commissioner that
8 there were any existing Ding Tea franchises in California, in violation of section 31200.

9 L. Respondents acknowledge and agree with the Commissioner's findings in this
10 Amended Consent Order.

11 M. The Commissioner finds that entering into this Amended Consent Order is in the
12 public interest and consistent with the purposes fairly intended by the policies and provisions of the
13 FIL.

14 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
15 forth herein, the parties agree as follows.

16 **II.**

17 **Terms and Conditions**

18 1. **Purpose.** The parties intend to resolve this matter for the purpose of judicial economy
19 and expediency and without the uncertainty and expense of a hearing or other litigation and for the
20 purpose of allowing DTC to register its Ding Tea franchises.

21 2. **Desist and Refrain Order.** Pursuant to Corporations Code sections 31402 and 31406,
22 Respondents are hereby ordered to desist and refrain from the violations set forth herein, in violation
23 of Corporations Code sections 31110, 31119, and 31200.

24 3. **Penalties.**

25 a. Assessment. Respondents shall pay penalties of \$397,500 for the violations

1 discussed herein (Penalties). Respondents shall pay the Penalties to the Commissioner within sixty
2 (60) calendar days of the effective Date as set forth in Paragraph 27 (Effective Date) of this Amended
3 Consent Order via cashier's check or Automated Clearing House deposit to the Department of
4 Financial Protection and Innovation, Accounting, 2101 Arena Blvd., Sacramento, California 95834.
5 Failure to timely pay the Penalties constitutes a breach of this Amended Consent Order.

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

10 4. Administrative Cost and Fees Payment. Respondents shall pay to the Department the
11 sum of \$5,000 as Administrative Costs and Fees (Administrative Payment). Respondents hereby
12 agree to pay the Administrative Payment within ten (10) business days of the Effective Date of this
13 Amended Consent Order via cashier's check or Automated Clearing House deposit to the Department
14 of Financial Protection and Innovation, Accounting, 2101 Arena Blvd., Sacramento, California
15 95834. Failure to timely pay the Penalties constitutes a breach of this Amended Consent Order.

16 5. Cancellation and Refund for Franchises.

17 a. Paragraph 3b, Offset of Penalties, is incorporated by reference in this
18 Paragraph 5. Respondents agree to inform and allow the California franchisees listed in Amended
19 Exhibit A to choose to cancel their franchise agreement and obtain a full refund all franchise fees,
20 including the security deposits paid (Refund Payment). Respondents shall provide this Refund
21 Payment option within ten (10) calendar days from the Effective Date of this Amended Consent
22 Order. Franchisees will have thirty (30) calendar days from the receipt of the Amended Cancellation
23 Notice, sent by certified mail to all California franchisees, to notify the Respondents whether they
24 would like to cancel their franchise agreement and obtain a full refund. A form Amended
25 Cancellation Notice and Refund of the Initial Franchise Fees are attached hereto and incorporated by
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1 reference herein as “Amended Exhibit B” (Amended Cancellation Notice). No other credits or
2 benefits paid to, or received by, a franchisee shall offset the Refund Payment. The total sum of paid
3 Refund Payments, may be deducted from any Penalties paid to the Commissioner stated in Paragraph
4 3, above, provided Respondents show proof of the Refund Payments made and amount of refunds
5 made. This provision shall apply to all California franchisees who purchased a DTC franchise
6 regardless of whether they were terminated on or before the Effective Date of this Amended Consent
7 Order, including any that are eligible but may have been omitted from Amended Exhibit A, according
8 to proof.

9 b. Respondents shall submit to the Commissioner proofs of service of the Amended
10 Cancellation Notice to all California franchisees to the attention of Shohreh Aram, by email at:
11 Shohreh.Aram@dfpi.ca.gov.

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

16 6. Remedial Education. HSU, the general manager of DTC, shall complete at least eight
17 (8) hours of remedial FIL education offered by a Department-approved vendor or franchise attorney
18 within ninety (90) days of the Effective Date herein. DTC shall file proof of compliance, in the form
19 of a sworn statement of Hsu, under penalty of perjury, and a certificate of completion from the
20 vendor to the Commissioner upon completion. Proof of compliance shall be sent to the Department
21 of Financial Protection and Innovation, Attention Shohreh Aram, Senior Counsel, 320 W. 4th Street,
22 #750, Los Angeles, California 90013.

23 7. Waiver of Hearing Rights. Respondents acknowledge that the Commissioner is ready,
24 willing, and able to proceed with the filing of an administrative enforcement action on the findings
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1 contained in the recitals set forth above. Respondents hereby waive its rights to any hearing, and to
2 any reconsideration, appeal, or other right to review which may be afforded it pursuant to the FIL; the
3 Administrative Procedure Act; the Code of Civil Procedure; or any other provision of law. By
4 waiving such rights, Respondents effectively consent to this Amended Consent Order and Citations
5 becoming final.

6 8. Failure to Comply with Amended Consent Order. Respondents agree that if it fails to
7 comply with the terms of this Amended Consent Order, the Commissioner may, in addition to all
8 other available remedies it may invoke under the FIL, summarily suspend or revoke its franchise
9 registration (if applicable) or deny FIL applications (if applicable) until Respondents are in
10 compliance. Respondents waive any notice and hearing rights to contest such summary suspensions
11 which may be afforded under the FIL, the Administrative Procedures Act and the California Code of
12 Civil Procedure, or any other provision of law in connection therewith.

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

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

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

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

7 13. No Presumption Against Drafter. Each party acknowledges that it has had the
8 opportunity to draft, review, and edit the language of this Amended Consent Order. Accordingly, the
9 parties intend no presumption for or against the drafting party will apply in construing any part of this
10 Amended Consent Order. The parties waive the benefit of Civil Code section 1654 as amended or
11 corresponding provisions of any successor statute, which provide that in cases of uncertainty,
12 language of a contract should be interpreted most strongly against the party who caused the
13 uncertainty to exist.

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

17 15. Headings. The headings to the paragraphs of this Amended Consent Order are inserted
18 for convenience only and will not be deemed a part hereof or affect the construction or interpretation
19 of the provisions hereof.

20 16. Binding. This Amended Consent Order is binding on all heirs, assigns, and successors
21 in interest.

22 17. Reliance. Each of the parties represents, warrants, and agrees that in executing this
23 Amended Consent Order, he, she, or it has relied solely on the statements set forth herein and the
24 advice of their own legal counsel. Each of the parties further represents, warrants, and agrees that in
25 executing this Amended Consent Order they have placed no reliance on any statement,
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1 representation, or promise of any other party, or any other person or entity not expressly set forth
2 herein, or upon the failure of any party or any other person or entity to make any statement,
3 representation, or disclosure of anything whatsoever. The parties have included this clause: (1) to
4 preclude any claim that any party was in any way fraudulently induced to execute this Amended
5 Consent Order; and (2) to preclude the introduction of parol evidence to vary, interpret, supplement,
6 or contradict the terms of this Amended Consent Order.

7 18. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
8 this Amended Consent Order will be valid or binding unless it is in writing and signed by each of the
9 parties. The waiver of any provision of this Amended Consent Order will not be deemed a waiver of
10 any other provision. No waiver by either party of any breach of, or of compliance with, any condition
11 or provision of this Amended Consent Order by the other party will be considered a waiver of any
12 other condition or provision or of the same condition or provision at another time.

13 19. Full Integration. This Amended Consent Order is the final written expression and the
14 complete and exclusive statement of all the agreements, conditions, promises, representations, and
15 covenants between the parties with respect to the subject matter hereof, and supersedes all prior or
16 contemporaneous agreements, negotiations, representations, understandings, and discussions between
17 and among the parties, their respective representatives, and any other person or entity, with respect to
18 the subject matter covered hereby.

19 20. Governing Law. This Amended Consent Order will be governed by and construed in
20 accordance with California law. Each of the parties hereto consents to the jurisdiction of such court
21 and thereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient
22 forum to the maintenance of such action or proceeding in such court.

23 21. Counterparts. This Amended Consent Order may be executed in one or more separate
24 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
25 together constitute a single document.

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

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

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

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11 Dated: 2/14/2022

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation

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14 By _____
15 THERESA LEETS
16 Assistant Chief Counsel
17 Legal Division

18 Dated: 2/9/2022

WEI-HSIANG HSU

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20 By _____
21 WEI-HSIANG HSU

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24 [Signature Page to Continue]

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Dated: 2/9/2022

CHU YU HSIANG CO. LTD.

By _____
WEI-HSIANG HSU
Representative

Dated: 2/9/2022

VISION & TRIUMPH LIMITED

By _____
WEI-HSIANG HSU
Representative

Approved as to Form

By _____
WENDY YANG, Esq.
Attorney on behalf of Respondents