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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)
PROTECTION AND INNOVATION,)
14) CONSENT ORDER
Complainant,)
15 v.)
16 FANG YUAN F&B INTERNATIONAL CO.,)
LTD and CHICHA SAN CHEN)
17 CORPORATION,)
18)
Respondents.)

19 _____
20 This Consent Order is entered into between the Commissioner of Financial Protection and
21 Innovation (Commissioner) and Respondents Fang Yuan F&B International Co., LTD and Chicha
22 San Chen Corporation (collectively, Commissioner and Respondents are referred to herein as
23 Parties) and is made with respect to the following facts:

24 **I.**

25 **RECITALS**

26 A. The Commissioner is the head of the Department of Financial Protection and
27 Innovation (Department) and is responsible for administering and enforcing the Franchise
28

1 Investment Law (FIL) (Corp. Code, § 31000 et seq.),¹ and registering the offer and sale of franchises
2 in California. To register a franchise, a franchisor must file an application that includes a Franchise
3 Disclosure Document (FDD) with the Department for review, in accordance with sections 31111 and
4 31114. The FIL requires franchisors to disclose certain material information that is intended to
5 provide prospective franchisees with facts upon which to make an informed decision to purchase a
6 franchise, as stated in section 31001.

7 B. At all relevant times, Fang Yuan F&B International Co., LTD (Fang Yuan) was and is
8 a Taiwan limited company with a principal place of business located at 2F., No. 10-3, Sec. 2, Xitun
9 Road, Xitun District, Taichung, Taiwan 40746. Fang Yuan offered subfranchises granting the right
10 to offer and sell franchises for food service establishments offering gourmet coffees and teas, coffee-
11 or tea-based beverages, bubble tea, compatible food products, coffee and tea makers and related
12 supplies, and accessories and gifts, under the name San Chen (San Chen Subfranchise).

13 C. At all relevant times, Chicha San Chen Corporation (Chicha), formerly known as
14 Chichia San Chen Corporation, was and is a California corporation with a principal place of business
15 located at 1267 Willis St., Ste 200, Redding, California 96001. Chicha San Chen Corporation offers
16 franchises for retail food establishments that sell items from a focused menu featuring a variety of
17 teas and juice drinks, using proprietary teas, milk teas and juices, tapioca balls, recipes and
18 preparation techniques, freshly prepared and available for carry-out or consumption on the premises
19 (San Chen Franchises), as well as San Chen Subfranchises.

20 D. On May 7, 2019, Fang Yuan offered and sold a San Chen Subfranchise to Globalink
21 USA, Inc. (Globalink). The Master Franchise Agreement signed by Globalink granted it the right to
22 itself open San Chen Franchises.

23 E. In or around November 2019, Globalink opened one San Chen Franchise in San
24 Gabriel, California.

25 F. Fang Yuan has assigned Chicha San Chen Corporation the rights to franchise the San
26 Chen Franchise and San Chen Subfranchise in the United States.

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¹ All further statutory references are to the Corporations Code unless otherwise indicated.

1 G. On September 16, 2020, Fang Yuan filed an application for approval of a Notice of
2 Violation pursuant to section 31303 for the unregistered offer and sale of the San Chen Subfranchise
3 to Globalink, which application is identified by the Department by the designation “app-19146.”

4 H. On October 1, 2020, Chicha filed an initial franchise registration application for the
5 offer and sale of San Chen Franchises, identified by the Department by the designation “app-19267”
6 as well as an initial franchise registration application for the offer and sale of San Chen
7 Subfranchises, identified by the Department by the designation “app-19220.” On November 5,
8 2020, the Department issued orders making both registrations effective, which allowed Chicha to
9 offer and sell San Chen Franchises and San Chen Subfranchises in California from November 5,
10 2020 through April 20, 2021.

11 I. On April 12, 2021, Chicha filed a franchise registration renewal application for the
12 offer and sale of San Chen Franchises, identified by the Department by the designation “app-20596,”
13 as well as a franchise registration renewal application for the offer and sale of San Chen
14 Subfranchises, identified by the Department by the designation “app-20594.” Both applications are
15 still pending before the Department.

16 J. Corp. Code sections 31111 and 31114 require franchisors to disclose the existence of
17 and the name, address, and contact information for existing outlets as of the most recent fiscal year
18 end in Item 20 of FDDs filed with the Department.

19 K. Pursuant to section 31200, it is unlawful for any person willfully to make any untrue
20 statement of a material fact in any application, notice or report filed with the Commissioner under
21 the FIL, or willfully omit to state in any such application, notice, or report any material fact which is
22 required to be stated therein or fail to notify the Commissioner of any material change as required by
23 section 31123.

24 L. In app-19267, franchisor did not disclose the existing unit franchise operated by
25 Globalink in Item 20 of the FDD. In app-19220, franchisor did not disclose the name, address, and
26 contact information for the existing subfranchise operated by Globalink in Item 20 of the FDD.

27 M. The Commissioner finds that Chicha’s failure to disclose the existing unit franchise in
28 Item 20 of the FDD filed with app-19267 and failure to disclose the name, address, and contact

1 information of the existing subfranchisor in its FDD filed with app-19220 are omissions of material
2 fact under the FIL, in violation of section 31200.

3 N. NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions
4 set forth herein, the Parties agree as follows:

5 **II.**

6 **TERMS AND CONDITIONS**

7 1. Purpose. This Consent Order resolves the issues before the Commissioner,
8 described in the Recitals above, in a manner that avoids the expense of a hearing and other possible
9 court proceedings, protects consumers, is in the public interest, and is consistent with the purposes
10 and provisions of the applicable law.

11 2. Desist and Refrain Order. Pursuant to Corporations Code section 31406, Fang Yuan
12 F&B International Co., LTD and Chicha San Chen Corporation are hereby ordered to desist and
13 refrain from the violations set forth herein, in violation of Corporations Code section 32100, and
14 from any violations of the Franchise Investment Law. The issuance of this order is necessary, in
15 the public interest, for the protection of investors, and is consistent with the purposes, policies, and
16 provisions of the Franchise Investment Law.

17 3. Notice of Violation.

18 i. Approval. Fang Yuan shall obtain approval of pending app-19146 for the
19 Notice of Violation by providing all necessary responses and making all necessary changes to the
20 Notice of Violation required by the Department’s counsel. Upon approval from the
21 Commissioner, Fang Yuan will deliver the approved Notice of Violation to Globalink.

22 ii. Report to Commissioner. Fang Yuan will provide the Commissioner with
23 proof of mailing of the Notice of Violation (the Report), within 30 days of the Commissioner’s
24 Order Approving Fang Yuan’s Notice of Violation. Fang Yuan shall submit the Report to Lulu
25 Gomez at lulu.gomez@dfpi.ca.gov.

26 4. Pre-Effective Amendment to Pending Application. Chicha hereby agrees that it shall
27 file pre-effective amendments to the franchise registration applications app-20596 and app-20594
28 currently pending with the Department to disclose this Consent Order in Item 3 of the FDDs filed

1 therewith.

2 5. Remedial Education. The following class of persons are required to attend remedial
3 California franchise law compliance education: (1) all principal officers, directors, trustees, and
4 any other individual who will have management responsibility relating to the sale or operation of
5 franchises; (2) all persons who assist in preparing franchise materials, including, but not limited to,
6 registrations, renewals, or amendments (including outside lawyers and representatives but
7 excluding any auditors); (3) any person selling Chicha Subfranchise or Chicha Franchises; and (4)
8 the person who certifies the accuracy of Chicha's Franchise Disclosure Documents filed with the
9 Commissioner. Each of these persons shall attend eight (8) hours of remedial education within
10 sixty (60) days from the Effective Date of this Consent Order, in the form of franchise law training
11 courses offered by a seasoned franchise attorney to be approved by the Department. Respondents
12 shall file proof of compliance, in the form of a sworn statement of each person required to take
13 remedial education, under penalty of perjury, within sixty (60) days from the Effective Date of this
14 Consent Order.

15 6. Monitor. Within thirty (30) days from the Effective Date, Respondents are hereby
16 directed to provide the name and contact information of an independent monitor (Monitor), who
17 shall have no prior familial, financial, or professional affiliation with Respondents or any of their
18 senior management level employees, for the Commissioner's review and approval. Within fifteen
19 (15) days of the Commissioner's approval of the Monitor, Respondents shall contract with the
20 Monitor. The Monitor shall be a licensed attorney with experience in franchise transactions in
21 California. The Monitor shall be responsible for consulting with Respondents as to all of its filings
22 with the Department for the next three (3) consecutive years. On or before January 31, 2023, 2024,
23 and 2025, the Monitor shall submit a report on Respondents' activities before the Department,
24 describing the Monitor's participation in the preparation and review of all of Respondents' filings
25 with the Department. The report shall be submitted to Lulu Gomez via email at
26 lulu.gomez@dfpi.ca.gov. This three-year term for the Monitor shall be reviewed by the
27 Commissioner on each annual anniversary date of this Consent Order Effective Date. This three-
28 year term for the Monitor may be shortened by the Commissioner in her discretion if Respondents

1 have demonstrated compliance with the FIL and this Consent Order.

2 7. Waiver of Hearing Rights. Respondents acknowledge that the Commissioner is
3 ready, willing, and able to proceed with the filing of an administrative enforcement action on the
4 charges contained in this Consent Order. Respondents hereby waive the right to any hearings, and to
5 any reconsideration, appeal, or other right to review which may be afforded pursuant to the FIL, the
6 Administrative Procedure Act (APA), the Code of Civil Procedure (CCP), or any other provision of
7 law. Respondents further expressly waive any requirement for the filing of any accusation pursuant
8 to Government Code section 11415.60, subdivision (b). By waiving such rights, Respondents
9 effectively consent to this Consent Order becoming final.

10 8. Failure to Comply with Consent Order. Respondents agree that if they fail to
11 comply with the terms of this Consent Order, the Commissioner may, in addition to all other
12 available remedies it may invoke under the FIL, summarily suspend or revoke Respondents’
13 franchise registration (if applicable) or deny Respondents’ FIL applications (if applicable), until
14 Respondents are in compliance. Respondents waive any notice and hearing rights to contest such
15 summary actions by the Commissioner, which may be afforded under the FIL, APA, CCP, or any
16 other provision of law.

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

21 10. Future Actions by Commissioner. If Respondents fail to comply with any terms of
22 the Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
23 resolved by this Consent Order. The Commissioner reserves the right to bring any future actions
24 against Respondents, or any of their partners, owners, officers, shareholders, directors, employees, or
25 successors for any and all unknown violations of the FIL or any other law under the Commissioner’s
26 jurisdiction.

27 11. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner’s
28 ability to assist any other government agency (whether city, county, state, or federal) with any

1 administrative, civil, or criminal action brought by that agency against Respondents, or any other
2 person based upon any of the activities alleged in this matter or otherwise.

3 12. Headings. The headings to the paragraphs of this Consent Order are inserted for
4 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
5 the provisions hereof.

6 13. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
7 interest.

8 14. Reliance. Each of the Parties represents, warrants, and agrees that in executing this
9 Consent Order, it has relied solely on the statements set forth herein and the advice of its own
10 counsel. Each of the Parties further represents, warrants, and agrees that in executing this Consent
11 Order, it has placed no reliance on any statement, representation, or promise of any other party, or
12 any other person or entity not expressly set forth herein, or upon the failure of any party or any
13 other person or entity to make any statement, representation, or disclosure of anything whatsoever.
14 The Parties have included this clause: (1) to preclude any claim that any party was in any way
15 fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of parol
16 evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

17 15. Waiver, Amendments, and Modifications. No waiver, amendment, or modification
18 of this Consent Order will be valid or binding unless it is in writing and signed by each of the
19 Parties. The waiver of any provision of this Consent Order will not be deemed a waiver of any
20 other provision. No waiver by either Party of any breach of, or of compliance with, any condition
21 or provision of this Consent Order by the other Party will be considered a waiver of any other
22 condition or provision or of the same condition or provision at another time.

23 16. Full Integration. This Consent Order is the final written expression and the complete
24 and exclusive statement of all the agreements, conditions, promises, representations, and covenant
25 between the Parties with respect to the subject matter hereof, and supersedes all prior or
26 contemporaneous agreements, negotiations, representations, understandings, and discussions
27 between and among the Parties, their respective representatives, and any other person or entity with
28 respect to the subject matter covered hereby.

1 17. Governing Law. This Consent Order will be governed by and construed in
2 accordance with California law. Each of the Parties hereto consents to the jurisdiction of such
3 court, and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an
4 inconvenient forum to the maintenance of such action or proceeding in such court.

5 18. Counterparts. This Consent Order may be executed in one or more separate
6 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
7 together constitute a single document.

8 19. Effect Upon Future Proceedings. If Respondents apply for any license, registration,
9 permit, or qualification under the Commissioner’s current or future jurisdiction, or is the subject of
10 any future action by the Commissioner to enforce this Consent Order, then the subject matter hereof
11 shall be admitted for the purpose of such application(s) or enforcement proceeding(s).

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

17 21. Notice. Any notice required under this Consent Order shall be provided to each
18 party at the following addresses:

19 To Respondent: Lunyin Cheng
20 Japan Tokyo International Law LLP
21 1-3-8-701 Hirakawacho, Chiyoda
22 Tokyo, Japan 102-0093
23 lcheng@lcheng-law.com

24 To the Commissioner: Lulu Gomez, Senior Counsel
25 Department of Financial Protection and Innovation
26 320 W. 4th St., Ste. 750
27 Los Angeles, CA 90013
28 lulu.gomez@dfpi.ca.gov

29 22. Signatures. A fax, scanned, or electronic signature shall be deemed the same as an
30 original signature.

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

3 24. Effective Date. This Consent Order shall become final and effective when signed by
4 all Parties and delivered by the Commissioner’s agent via e-mail to Respondents’ agent, Lunyin
5 Cheng at lcheng@lcheng-law.com.

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

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10 Dated: 2/1/2022

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection
and Innovation

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12
13
14 By: _____
15 JENNIFER RUMBERGER
16 Deputy Commissioner

17 Dated: 1/28/2022

FANG YUAN F&B INTERNATIONAL CO., LTD

18
19
20 By: _____
21 KUO LIANG WANG
22 Chief Executive Officer

23 Dated: 1/28/2022

CHICHA SAN CHEN CORPORATION

24
25 By: _____
26 KUO LIANG WANG
27 Chief Executive Officer
28