
**BEFORE THE DIVISION OF CONSUMER PROTECTION
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

In the matter of:

VAPEX LLC a Utah limited liability company, doing business as **ALPHAFILL**, **TRYVAPEX.COM** and **VAPEXSTORE.COM**; and

ALPHA VENDING LLC, a Utah limited liability company; and

SCOTT BARTH, individually and as an officer, director, manager, agent and/or owner of the above-named entity; and

MARIO ZAMORA, individually and as an officer, director, manager, agent and/or owner of the above-named entity; and

KOURTNEY SALAVATORI, individually and as an officer, director, manager, agent and/or owner of the above-named entity;

Respondents.

SETTLEMENT AGREEMENT
DCP Legal Case No. 83243
DCP Case No. 82403

The Utah Division of Consumer Protection (“Division”) and Vapex LLC doing business as Tryvapex.com and its owners Alpha Vending LLC, Scott Barth, Mario Zamora and Kourtney Salavatori (“Respondents”) enter into the following Settlement Agreement (“Agreement”).

- 1. Respondent’s Identity.** Vapex LLC is a Utah limited liability company established on May 15, 2013 and lists its corporate address as 197 E 800 N Bountiful Utah. Vapex LLC operates an e-commerce business through the websites tryvapex.com and vapexstore.com. Alpha Vending LLC, is a Utah limited liability company listed as the owner of Vapex LLC. Scott Barth is listed as the registered agent of Vapex LLC and Alpha Vending LLC. Barth also serves as a member, manager or agent of the entity Alpha Vending LLC; he is also listed as the registrant of the Vapex LLC websites. Mario Zamora and Kourtney Salavatori are also listed as managing members of

the business Alpha Vending LLC. The above named entities and individuals will be referred to hereinafter as "Respondents." Respondents sell electronic cigarettes (also known as e-cigarettes), that utilize a heating element to vaporize a liquid solution containing a mixture of nicotine and flavorings. Respondents offer its product for sale through a trial and auto ship subscription on its websites.

2. Jurisdiction. Respondents admit to the jurisdiction of the Division over the parties and over the subject matter of this action.
3. Agency Action. On July 30, 2014, the Utah Division of Consumer Protection issued an Administrative Citation against the Respondents for violations to the *Utah Consumer Sales Practices Act*, UTAH CODE §13-11-1 *et seq.* including violations of UTAH CODE §13-11-4(2)(a), UTAH ADMINISTRATIVE RULE R152-11-4(B), UTAH ADMINISTRATIVE RULE R152-11-2(A), UTAH CODE §13-11-4(2)(j), UTAH ADMINISTRATIVE RULE R152-11-2(A), UTAH CODE §13-11-4(2)(e), UTAH CODE §13-11-4(2)(l), UTAH ADMINISTRATIVE RULE R152-11-10(B) and the *Utah Telephone Fraud Prevention Act*, UTAH CODE §13-26-1(1)(a). These violations carry a maximum potential civil penalty of \$822,500. Respondents admit to the violations, and in an effort to resolve this case, agree to voluntarily comply with the *Utah Consumer Sales Practices Act* and take measures to prevent future violations.
4. Waiver. Respondents specifically waive any right to an adjudicative proceeding, including administrative review, if applicable. Respondents and the Division hereby express their intent that this matter be resolved expeditiously through settlement as contemplated in UTAH CODE § 63G-4-102(4).
5. Obligations of the Division. The Division assesses a fine of \$822,500 and agrees to accept 2% of the potential administrative fine described in Paragraph 3, a payment of \$16,450 from the Respondent. This reduced fine is contingent upon verification by the Division that Respondents lack the ability to pay the full fine amount assessed. The Division agrees to stay payment of the remaining balance of \$806,050 for a period of 1 year from the execution of this agreement. Upon compliance with all terms set forth in this Agreement, the Division shall terminate its administrative investigation. If the Respondents violate any term(s) of the Agreement, the Division may reopen its investigation, take any enforcement action which is authorized by law and warranted by its investigative conclusions, and may seek to enforce full payment of the suspended portion of the fine. Upon Respondents' full compliance with the terms of this agreement, the Division will cancel the stayed portion of the fine.
6. Obligations of Respondent. Respondents, whether acting directly or through any officer, agent, or employee, shall perform in accordance with the following obligations agreed upon between the


Division and Respondents:

- a) Respondents agree to submit bank statements or other financial records to the Division to demonstrate its inability to pay the reduced fine in full within 10 business days of execution of this Agreement.
- b) Respondents agree to pay \$16,450 via certified funds to the "State of Utah" Division of Consumer Protection. Payments are due in minimum monthly installments of \$1,000 due on or before the 14th of each month, with the first installment due no later than Tuesday October 14, 2014 by 5 p.m. mountain time. The total \$16,450 amount must be paid in full by Monday June 15, 2015.
- c) Respondents agree to remove all unsubstantiated advertising claims concerning its product and trial including, but not limited to the claim that e-cigarettes, "*can be smoked anywhere*" and the phrase, "*smoke anywhere*", and that its product is a "*healthy alternative*" to traditional cigarette smoking until such time when claims can be substantiated with supporting evidence.
- d) Respondents' future advertisements shall be clear, factual, supportable, and shall not include any false, misleading or hidden statements with respect to its product, its benefits or uses, the retail value of the price, or misuse of the term "Free" in any of its sales or promotions. The terms and conditions of Respondents' offer must be clearly and conspicuously displayed from the outset of its lead generation, landing and payment pages to leave no reasonable probability that the terms of the offer might be unknown or misunderstood by the consumer.
- e) Respondents agree to clearly and conspicuously disclose its cancellation policy and the terms and conditions of its advertised "Satisfaction Guarantee and its products "Lifetime Warranty".
- f) Respondents agree to appropriately disclose all terms and conditions related to its auto-ship policy within close proximity of its advertisements. Such terms must be clearly and conspicuously stated and be in compliance with Utah Administrative Rule R152-11-12 and the federal regulations concerning negative options under 16 C.F.R. 425.1 including:
 - (i) How the consumer must notify the seller, if he does not wish to purchase the product or continue to purchase the product from the Respondent;
 - (ii) Any obligation of the consumer to purchase a minimum quantity of merchandise from the Respondent;
 - (iii) The right of the consumer to cancel his renewing order at any time;

- (iv) Whether billing charges will include an amount for postage and handling;
 - (v) A disclosure indicating that the consumer will be provided with at least ten (10) days in which to mail any form, contained in or accompanying an announcement identifying the selection, to the Respondent;
 - (vi) A disclosure that Respondents will credit the return of any selections sent to a consumer, and guarantee to the Postal Service or the consumer postage to return such selections to Respondents when the announcement and form are not received by Respondents in time to afford him at least ten (10) days in which to mail his form to the Respondents;
 - (vii) The frequency with which the announcements and forms will be sent to the consumer and the maximum number of announcements and forms which will be sent to him during a 12-month period.
- g) Respondents agree to accept cancellation and refund requests from consumers who purchased products from Respondents during the time frame when Respondents did not provide the disclosures and corrections listed above in this Agreement. Respondents agree to honor such requests for consumers who have not previously received reimbursement for the transaction through a charge back process, such cancellation and refund requests must be processed within 30 days of request.
- h) Respondents will provide the Division with its merchant account information for instances in which Respondents no longer have access to the account for the purpose of confirming or issuing a consumer refund. The Division will obtain the transaction information for these consumers' owed refunds and Respondents will provide consumers refunds at the discretion of the Division.
- i) Respondents agree to cease engaging in any telephone solicitations in the State of Utah until it obtains a Utah Telemarketing registration permit and posts a \$75,000 form of surety with the Division.
- j) Respondents agree to accept cancellation, returns and refunds for damaged or defective products not clearly marked "as is" during the transaction. Respondents further agree to provide adequate verbal or written disclosure during the transaction regarding its restocking fee and refund policy.
- k) Respondents agree to comply with all of the regulations of the *Utah Consumer Sales Practices Act*, *Utah Telephone Fraud Prevention Act*, and Administrative Rules in all future consumer transactions applicable to its business operations in the state of Utah.

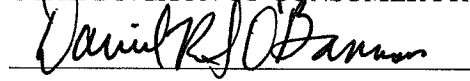
7. Actions by Other Parties. This agreement is between the Division and the Respondents and does not affect the civil claims of other parties. In addition, this agreement does not affect any enforcement action that might be brought by any local, state, or federal enforcement authority, including any enforcement action that might be brought by a criminal prosecutor
8. Voluntary Nature of Agreement. Respondents agree to the provisions of this Agreement freely and voluntarily, without any undue influence of the Division. This document and any documents incorporated herein by reference constitute the entire agreement between the parties. This document supersedes and cancels any and all prior negotiations, representations, understandings or agreements between the parties. There are no verbal agreements that modify, interpret, construe, or affect this Agreement.
9. Facsimile Signatures. A fully executed facsimile or emailed copy and/or photocopy of this Settlement Agreement are as legally enforceable and binding as the original.
10. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.
11. Legal Representation. Respondents acknowledge that they have been informed of the right to be represented by legal counsel and that by signature to this document the Respondents have either sought the advice of an attorney, or has voluntarily chosen not to do so.
12. Classification. Respondents acknowledge that this document, once executed, will be classified as a public document under the Utah Government Records Access Management Act, UTAH CODE § 63G-2.
13. Breach of Agreement. If Respondents fail to comply with any of the terms of this Agreement, including any cease and desist order issued pursuant to this stipulated agreement the Division may take any enforcement action authorized by law, including but not limited to issuing a Notice of Agency Action and scheduling an administrative hearing to determine whether a breach of this Agreement occurred. If the presiding officer finds that a breach occurred, the Division may immediately enter an Order and demand payment of \$806,050 from Respondents, in addition to any other civil penalties arising from violations of the statutes listed in UTAH CODE § 13-2-1.

ALPHA VENDING LLC



 Scott Barth
 Printed Name
 Dated this 10th day of Oct, 2014

UTAH DIVISION OF CONSUMER PROTECTION



 DANIEL R.S. O'BANNON, DIRECTOR
 Dated this 14 date of Oct., 2014

Mario Zamora

Mario Zamora

Printed Name

Dated this 10th day of Oct, 2014

Kourtney Salvatori

Kourtney Salvatori

Printed Name

Dated this 10 day of Oct, 2014