

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

IN THE MATTER OF:

**ALPHA INTERNATIONAL
MARKETING LLC**, a Utah limited
liability company, doing business as
O2PURSTORE.COM,
BUYO2PUR.COM, ORDERO2PUR.COM
and O2PUR; and

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

Respondents.

SETTLEMENT AGREEMENT

Only as to Alpha International Marketing LLC

DCP Legal File No. CP-16-11

DCP Case No. 86039

The Utah Division of Consumer Protection (Division) and Alpha International Marketing LLC (hereafter "AIM" or "Respondent") enter into the following Settlement Agreement (Agreement). This Agreement does not resolve or affect the legal claims of the Division against Respondent Scott Barth.

1. Identity of Respondent. AIM is a Utah limited liability company established in November 2012 with a principal place of business at 4760 S. Highland Dr. #356, Holladay, Utah 84117. AIM also does business under the registered business names O2purstore.Com, Buyo2pur.Com, Ordero2pur.Com and O2pur. Respondent sells electronic cigarettes and flavored liquid for electronic cigarettes.
2. Jurisdiction. As part of this Agreement, Respondent admits to the jurisdiction of the Division over Respondent and over the subject matter of this action.
3. Agency Action. On September 16, 2016, the Division issued an Administrative Citation against AIM and another party, alleging that the Respondents named therein violated the *Utah Consumer Sales Practices Act*, Utah Code § 13-11-1 *et seq.* (CSPA) and the *Utah Telephone Fraud Prevention Act*, Utah Code § 13-26-1 *et seq.* (TFPA) after investigating a complaint filed with the Division. Each CSPA and TFPA violation listed in the citation carries a maximum fine of \$2,500.00 per violation. The Administrative Citation and the specific violations alleged therein by the Division are a matter of public record pursuant to the Utah Government Records Access and Management Act, Utah Code § 63G-2-101 *et seq.*

In response to the Division's Administrative Citation and as part of its own compliance program, Respondent has implemented internal regulatory control mechanisms to ensure compliance with the code provisions set forth above. More specifically, the Respondent has a Regulatory Compliance Officer. Respondent has also retained a Utah attorney and law firm (Roger J. McConkie, Prince Yeates, 15 West South Temple, #1700, Salt Lake City, Utah 84101 (801) 524-1000) for guidance, direction and oversight regarding all Utah regulatory compliance issues.

As part of this Agreement, the Division and Respondent agree to the assessment of a fine of \$10,000.00. The Division further agrees to suspend \$5,000.00 of the \$10,000.00 contingent on Respondent's compliance with the terms of this Agreement.

4. Obligations of the Division. The Division agrees to suspend the portion of the fine described in Section 3. The Division further agrees that this Agreement resolves the Administrative Citation listed above as it pertains to Respondent.
5. Obligations of Respondent. Respondent agrees to perform in accordance with the following obligations:
 - A. Upon execution of this agreement, Respondent shall pay the Division the unsuspended portion of the fine stipulated in Section 3 of this Agreement of \$5,000.00. The funds must be certified and made payable to "Utah Division of Consumer Protection."
 - B. Respondent agrees to resolve current consumer complaints and future consumer complaints received within the immediate twelve (12) months following the execution of this Agreement to the satisfaction of the Division by providing a full refund for instances in which a consumer files a complaint regarding purchased product(s) ordered by the consumer: (a) at a time when Respondent's product(s) were represented as being part of a free offer that was not actually free; or (b) for which material terms were not clearly and conspicuously disclosed. Refunds under this paragraph shall be made within 30 days of receiving a valid request from a consumer, notice from the Division or the Better Business Bureau.
 - C. Respondent agrees to comply with Utah Admin. Code R-152-11-2 ensuring all future advertising to clearly and conspicuously disclose all applicable terms, conditions, and restrictions in compliance with Utah Admin. Code R-152-11-2.
 - D. Respondent agrees to comply with the Telephone Fraud Prevention Act (TFPA) and corresponding Administrative Rules by, among others, refraining from telephone solicitations, into, out of or from the State of Utah until it or its affiliate has obtained a permit, an exemption, or is otherwise in compliance with the TFPA. Respondent further understands that nothing in this agreement is an assurance that it or its affiliate will receive a registration permit or an exemption under the TFPA.

6. Warranty. Respondent warrants that it is the proper party, and has authority to enter into this settlement.
7. Waiver. Respondent voluntarily waives any right to have a hearing, present testimony, present evidence, comment on the issues, or seek agency or judicial review. Respondent also waives any claim or cause of action it may have, known or unknown, against the Division.
8. Breach of Agreement. If Respondent fails to comply with any of the terms of this Agreement, the Division may take any action authorized by law including, but not limited to, issuing a citation, opening or reopening an investigation, 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 any suspended fine from Respondent and may also seek administrative and/or civil penalties arising from violations of the statutes listed in Utah Code § 13-2-1.
9. Specific Performance. In addition to other available remedies, and in no way waiving its rights to due process, Respondent acknowledges and agrees that the Division may, upon breach of this Agreement, immediately seek enforcement of this Agreement by means of specific performance.
10. Non-Exclusion of Remedies. Failure to require compliance or to exercise any right shall not be constituted a waiver by the Division of said term, condition, and/or right and shall not affect the validity or enforceability of any provision of this Agreement.
11. Actions by Other Parties. This Agreement is between the Division and the Respondent, 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.
12. Voluntary Nature of Settlement Agreement. Respondent agrees to the provisions of this Agreement freely and voluntarily, without any undue influence of the Division.
13. Entire Agreement. 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.
14. Facsimile or Electronic Signatures. A fully executed facsimile or electronic copy and/or photocopy of this Agreement are as legally enforceable and binding as the original Agreement.

15. 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.
16. Legal Representation. Respondent acknowledges that it has the right to be represented by legal counsel. By signing this document, Respondent acknowledges it has either sought the advice of an attorney or has voluntarily chosen not to do so. Respondent has read and understands this Agreement.
17. Classification. Respondent acknowledges that this document, once executed, will be classified as a public document under the Utah Government Records Access and Management Act, Utah Code § 63G-2-101 *et seq.*

THIS AGREEMENT IS NON-BINDING UNTIL SIGNED BY THE DIVISION DIRECTOR AND RESPONDENTS.

**ALPHA INTERNATIONAL
MARKETING LLC**

Signed: _____

By: _____

Its _____

Dated this _____

28 day of Decemb, 2016

**UTAH DIVISION OF CONSUMER
PROTECTION**

DANIEL R.S. O'BANNON, DIRECTOR

Dated this _____

4 day of January, 2017