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

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In the matter of:

**SINLESS VAPOR LLC**, a Utah limited liability company, doing business as sinlessvapor.com; and

**19<sup>TH</sup> HOLE CONSULTING COMPANY**, a Utah Corporation; and

**GERALD TODD WESTRA**, individually and as an officer, director, manager, agent and/or owner of the above-named entity; and

**SHAROLYN STODDARD WESTRA**, as an officer, director, manager, agent and/or owner of the above-named entity;

Respondents.

**SETTLEMENT AGREEMENT**

DCP Legal Case No. 82760

DCP Case 81541

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The Utah Division of Consumer Protection (“Division”) and Sinless Vapor LLC and 19<sup>th</sup> Hole Consulting Company and its owners Gerald Todd Westra and Sharolyn Stoddard Westra (“Respondents”) enter into the following Settlement Agreement (“Agreement”).

1. Respondent’s Identity. Sinless Vapor, LLC is a Utah Limited Liability Company with a principal place of business located at 450 West 910 South, Suite 201 Heber, Utah 84032. 19<sup>th</sup> Hole Consulting Company is a Utah corporation listed as the sole member of Sinless Vapor, LLC. Gerald Todd Westra and Sharolyn Stoddard Westra are listed as directors of the entity. Gerald Todd Westra is also the President and Registered Agent of the corporation. 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 website, sinlessvapor.com and sinlessvaper.com

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 June 16, 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), and UTAH ADMINISTRATIVE RULE R152-11-10(C). These violations carry a maximum potential civil penalty of \$235,000. 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 agrees to assess a fine of \$235,000 and accept 2% of the potential administrative fine described in Paragraph 3, a payment of \$4,700 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 \$230,300 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 \$4,700 via certified funds to the "State of Utah" Division of Consumer Protection. Payment is due in minimum monthly installments of \$500

due on or before the 10th of each month, with the first installment due no later than **Monday November 10th, 2014** and every 30 days thereafter over the next 9 month time frame. The total \$4,700 amount must be paid in full by 5:00 pm Mountain Standard Time: August 10, 2015.

- c) Respondents agree to remove all unsubstantiated advertising claims concerning its product 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 or misleading statements with respect to its product, its benefits or uses, the retail value of the price, nor misuse of the term "Free" in any of its sales or promotions.
- e) Respondents agree to correct the retail price listed throughout its website to be consistent and further agree to fully disclose all terms and conditions related to its auto-ship policy throughout the transaction web-pages. 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;

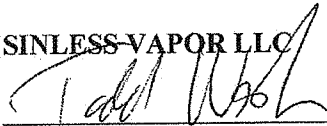
- (vii) The frequency with which the announcements and forms will be sent to the consumer and the maximum number of announcements and forms which will be sent to him during a 12-month period.
- f) Respondents agree to accept cancellation and refund requests from consumers who purchased products from 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.
- g) Respondents agree to comply with all of the regulations of the *Utah Consumer Sales Practices Act and Rules* in all future consumer transactions applicable to its business operations in the state of Utah.
- h) **The execution of this agreement must occur and be delivered to the Division's offices by Respondents no later than 5:00 pm MST on November 10, 2014.** In the event this agreement is not executed and delivered by Respondents on or before the date and time stipulated, the Division reserves the right to rescind any settlement offers, terms, conditions or agreements.
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 \$230,300 from Respondents, in addition to any other civil penalties arising from violations of the statutes listed in UTAH CODE § 13-2-1.

SINLESS-VAPOR LLC



Todd Weston  
Printed Name

Dated this 30 day of Oct., 2014

UTAH DIVISION OF CONSUMER PROTECTION



DANIEL R.S. O'BANNON, DIRECTOR

Dated this 30 date of Oct., 2014