

Utah Division of Consumer Protection
160 East 300 South, Second Floor
PO Box 146704
Salt Lake City, UT 84114-6704
PH (801) 530-6601/FAX (801) 530-6001

**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**,

ALPHA VENDING LLC, a Utah limited liability company,

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

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.

**NOTICE OF AGENCY ACTION
Request for Hearing**

Relating only to Respondent **SCOTT BARTH**

**DCP Legal Case No. 83243
DCP Case No. 82403 and 86039**

BACKGROUND

- 1 On July 30, 2014, the Utah Division of Consumer Protection issued an Administrative Citation against the above named Respondents for violations of the *Utah Consumer Sales Practices Act*, Utah Code § 13-11-1 et seq and the *Utah Telephone Fraud Prevention Act*, Utah Code §13-

26-1 et seq The violations described in the Citation carried maximum potential administrative fine of \$822,500 00

- 2 On October 14, 2014, the Division and Respondents entered a Settlement Agreement (“Agreement”) Under the Agreement the Division agreed to suspend \$806,050 00 of the administrative fine based on Respondents’ compliance with the terms of the Agreement In the terms Respondents agreed to, among other things, change its business practices to be in compliance with Utah law

RESPONDENT

- 3 Respondent Scott Barth (“Barth”) was named individually and as an officer, director, manager, agent, and/or owner of the entities VAPEX, LLC and Alpha Vending LLC This action applies to Barth, and not the other Respondents named in the July 30, 2014 citation and October 14, 2014 Agreement Barth also owns and operates the entity Alpha International Marketing LLC, a Utah limited liability company established in November 2012 with a principal place of business at 4760 S Highland Dr #356, Holladay Utah 84117 Alpha International Marketing LLC also does business under the registered business names VictorEJuice and SelectEJuice Alpha International Marketing LLC is a subsidiary of Alpha Vending LLC that also operates under the name O2PUR Barth is the sole individual listed as the domain registrant, administrative, technical, and billing contact for the websites O2PURSTORE COM, BUYO2PUR COM and ORDERO2PUR COM

O2PUR

- 4 O2PUR is an electronic cigarette that consists of a recharging battery, stainless steel tank, unique dual-coil atomizer, and USB charger that utilizes an “E-juice” liquid to create an inhalable nicotine vapor O2PUR is marketed as a smokeless tobacco alternative to cigarettes that is sold

through promotional offerings online, on TV, and over the phone

- 5 On or about January 29, 2014, Alpha International Marketing LLC, and its sole manager Scott Barth, entered into an advertising agreement with Marketing Architects Inc (“MAI”) to provide radio advertising. The agreement indicates as the Advertiser, Barth and Alpha International Marketing LLC, will remit payment to MAI for each broadcast order placed. The agreement states

Advertiser further represents and warrants that (i) it will provide factual and truthful information on the advertised products and services and that creative approval by Advertiser will comply with all applicable laws and regulations. By Advertiser’s approval of creative material, Advertiser makes an affirmative representation of warranty that all information in the statements and claims are truthful and accurate and that Advertiser has sufficient substantiation for any such statements and claims.

- 6 MAI produced sixteen broadcast orders for Barth between February 13, 2014 and December 10, 2015. Five orders involved the promotion of a free Starter Kit for a Victor E juice e-cigarette and eleven involved the promotion of a free Starter Kit for a O2PUR e-cigarette. One such broadcast order for a O2PUR radio advertisement stated

Attention smokers! Would you like to free yourself from the mess and high cost of nasty smelly cigarettes? Would you like to be free to enjoy the nicotine you love, wherever and whenever you want? And would you like to do it for FREE? Now you can thanks to O2PUR’s revolutionary e-cigarette. Because right now you can get an O2PUR FREE Starter Kit, a \$99 value for FREE! For your FREE kit call in the next 10 minutes 1-800-400-1709. The advanced O2PUR design creates a pleasant vapor so you are free to enjoy the nicotine you love, wherever and whenever you want. Free from foul smelling smoke, free from nasty tar, free from the ridiculously high cost of cigarettes. In fact with O2PUR you can save hundreds of dollars a month. Get started now with O2PUR starter kit. This is a radio only offer so call in the next 10 minutes 1-800-400-1709.

- 7 Each of the sixteen broadcast orders promoted a free e-cigarette Starter Kit in a manner similar to the one stated above. At least 675 O2PUR specific radio advertisements ran from December 1,

2014 to February 28, 2016 in the Grand Rapids, Michigan area alone. These advertisements are also known to have run in markets in New York, Connecticut, and Florida, among others. O2PUR also advertised through a television commercial. The commercial has aired a total of 1,957 times nationally, most recently on August 29, 2016 at 6:40 am. The TV commercial for the O2PUR product appeared as follows:



8 The commercial stated

If you're not a smoker please cover your ears, because the following incredible free moneysaving offer is not for you. The makers of O2PUR are now giving away FREE Starter Kits to all smokers who call in the next 10 minutes valued at \$79. These premium kits are available for FREE complete with all accessories, but only while supplies last. Guarantee yours by calling now 1-800-519-6929. The revolutionary O2PUR design creates only vapor. There's no foul smelling smoke and no nasty tar, even better you can also save yourself a ton of money, hundreds of dollars a month with O2PUR. Again FREE Starter Kits are now available to any smoker who calls and the next 10 minutes this offer is not available in any store so to guarantee your FREE kit you must call now 1-800-519-6929 or go online now to O2PUR.COM that's O2PUR.COM.

9 As of January 26, 2015 the O2PUR product was also advertised and sold online through the websites O2PURSTORE.COM, BUYO2PUR.COM and ORDERO2PUR.COM. An advertisement on the website ORDERO2PUR.COM appears as follows:



Act within 10 minutes to Guarantee your Free Kit!
(with purchase of 2 atomizers)

OUR MOST ADVANCED E-CIG EVER!

WHILE SUPPLIES LAST!



- ✓ Enjoy Nicotine without Smoke or Tar!
- ✓ Exhale pleasant vapor!
- ✓ Smell great!

- Improve your Nicotine Experience
- ✓ Eliminate Tar
 - ✓ Feel Great
 - ✓ Whiter Teeth
 - ✓ Smell Good
 - ✓ No Smoke
 - ✓ Save Thousands of \$\$\$'s
 - ✓ Amazing Taste
 - ✓ Easy to use

FREE KIT

With Purchase of 2 Replacement Atomizers

10 A consumer that attempts to purchase the Free Kit online is given the following purchase options

✓ SHIPPING INFORMATION

2 FREE KIT OPTIONS

☐ FREE KIT 6 Bottles Ejuice 2 Replacement Atomizers - \$34.95



☐ FREE KIT 3 Bottles Ejuice 2 Replacement Atomizers - \$24.99

☐ FREE KIT & 2 Replacement Atomizers \$14.99

Delivery in 10-14 business days

Next Step

11 The "Terms and Conditions" found on the website ORDERO2PUR.COM state

2.1.1 Pricing for the products is as follows

2.1.1.1 Free Kit Options \$4.95 (shipping) for Free Standard Kit, only with the purchase of one of the following packages \$34.95 for 2 replacement atomizers & 6 bottles ejuice, or \$24.99 for 2 replacement atomizers & 3 bottles ejuice, or \$14.99 for 2 replacement atomizers

2.1.1.2 Switch System for 3 payments of \$29.00, 1st payment today, 2nd payment in 30 days, and final payment in 60 days. Includes a variable violated deluxe e-cig kit with Car Charger, Wall Charger, and Switch Guide e-book

2 1 1 3 Additional Product Add-ons IF selected by Customers \$19 99
Flavor Pack (6 bottles of Ejuice) & \$14 94 Additional Kit

- 12 The website also contained a link to the TV commercial described above and several consumer testimonials Respondent has demonstrated the testimonials to be from actual consumers One such testimonial is titled "The Benefits" a transcript of the testimonial is as follows

When I made the switch I noticed immediately that my health was getting better I can't make it up a flight of stairs without being out of breath I could also notice that my smokers hands went away my hands weren't ice cold anymore and I mean I started noticing those within weeks the quitting smoking

I could play with my kids without huff and puff and I noticed I spend a lot more time with my kids, you know I could go out and play ball for an hour or two and not skip a beat I wasn't sitting down taking breaks every 10 minutes my son wasn't yelling at me hey dad come on

I felt happier you know Sometimes you know when people smoke it's may be that they're having a stressful day, it's, it's, just a depression thing, which is why they are using the tobacco and yeah It was it was a life-changing experience for me and everybody noticed around me because I felt healthier I feel happy running around with my kids, my wife noticed my kids um you know my grandparents, like everybody even my friends were like you are a completely different person now

- 13 Another testimonial is titled "The Savings" a transcript is as follows

Oh my gosh ever since I quit smoking and made the switch to O2PUR I've saved over \$230 bucks a month and you know I was able to take my wife on a second honeymoon, take my kids to Disneyland, there's so much money that accumulates because people don't notice that you know five bucks here six bucks here day that adds up but nobody wants to think about how much that accumulates to month or year

Spending five dollars every day pretty much as much about a pack a day depending on the stress may be two and that was costing me anywhere between \$75 to I want to say like \$150- 200 dollars a month just five dollars every day so didn't seem like a lot to me, but once I was able to actually add it all up it was a lot more than I thought with O2PUR it's a lot better because I'm only paying one price each month getting an entire shipment to my door I don't have to stress about anything they take care of everything for me all I have to do is just stay committed quitting

BREACH OF AGREEMENT

14 Paragraph 6(c) of the 2014 Agreement states

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

15 Respondent’s radio advertisements stated and implied that its product can be smoked wherever and whenever Respondent’s use of these terms is false, deceptive and substantially inaccurate Respondent’s product cannot be smoked wherever or whenever Respondent amended the “wherever and whenever” statement in its advertising on or about February 29, 2016 after being contacted by the Division

16 Respondent’s TV commercial indicates a different value for the same starter kit than its radio advertisements Respondent has failed to list the regular price of its starter kit in these advertisements and have misused the term free in connection with its offer Respondent’s testimonials, radio, and TV advertisements imply cost saving benefits that have not been substantiated Respondent’s testimonials also imply health benefits that have not been substantiated All of these instances are in violation of paragraph 6(c) of the Agreement

17 Paragraph 6(d) of the Agreement states

(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

18 Respondent advertised a free Starter Kit in Radio, on TV, and online, when in fact Respondent’s Starter Kit is not free No terms, conditions, or restrictions were stated in the radio or TV

advertisements to indicate that consumers would be charged additional fees for the free Starter Kit or would be required to make an additional purchase to be eligible to receive the free starter kit. When online a consumer must initiate the purchase to become aware of these conditions. Respondent is in violation of paragraph 6(d) of the Agreement.

19 Paragraph 6(i) of the Agreement states

Respondents agree to cease from engaging in any telephone solicitations, as defined in the Telephone Fraud Prevention Act, Utah Code §13-26-1 et seq without first obtaining a permit from the Division to do so. If Respondents seek a permit, Respondents agree to post a \$75,000 form of surety with the Division as part of the application process.

20 In Respondent's radio and television advertising, consumers are directed to call within the next 10 minutes to receive the limited time offer. Consumers that are seeking to obtain a "FREE" Starter Kit enter into transactions over the phone that Respondent's advertisements cause to occur. In these instances, Respondent meets the definition of a telephone solicitor and has failed to register and failed to post a \$75,000.00 bond as required under the *Utah Telephone Fraud Prevention Act*, Utah Code §13-26-1 et seq. Respondent is in violation of the paragraph 6(i) of the Agreement.

21 Paragraph 6(k) of the Agreement states

Respondents agree to comply with all of the regulations of the *Utah Consumer Sales Practices Act*, *Telephone Fraud Prevention Act*, and administrative rules pursuant to those Acts in all future consumer transactions applicable to its business operations in the state of Utah.

22 Respondent has failed to comply with Utah law applicable to its Utah operations. This is a violation of the paragraph 6(k) of the Agreement.

BREACH OF AGREEMENT

23 Paragraph 13 of the Agreement states

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 \$806,050.00 from Respondents, in addition to any other civil penalties arising from violations of the statutes listed in UTAH CODE § 13-2-1.

REQUEST FOR HEARING

24 The Division requests that the presiding officer schedule an administrative hearing to determine that a breach of the Agreement occurred and for the imposition of the suspended fines stipulated to in the Agreement.

THIS NOTICE ISSUED THE 16th DAY OF SEPTEMBER 2016



LIZ Blaylock, Investigator
Utah Division of Consumer Protection

CERTIFICATE OF SERVICE

I certify that I have this day served the foregoing document on the parties of record in this proceeding set forth below by mailing a copy thereof, properly addressed by first class mail and certified mail with postage prepaid, to

ALPHA VENDING LLC
SCOTT BARTH
197 E 800 N
BOUNTIFUL UT 84010

SCOTT BARTH
4525 S 2300 E STE 100
SALT LAKE CITY UT 84117

And By Hand Delivery to

Bruce Dibb, Administrative Law Judge for the Department of Commerce

BY  _____
Liz Blaylock, Investigator

**WALZ
CERTIFIED
MAILER®**

FROM

WALZ

FORM #35663 VERSION B02/16
U S PAT NO 5,501,393

9414 7266 9904 2068 0089 62



ALPHA VENDING LLC
SCOTT BARTH
197 E 800 N
BOUNTIFUL, UT 84010-

Label #1



ALPHA VENDING LLC
SCOTT BARTH
197 E 800 N
BOUNTIFUL, UT 84010-

Label #2

UTAH DIVISION OF CONSUMER
PROTECTION
160 E 300 S
BOX 146704
SALT LAKE CITY, UT 84114-6704

Label #3

TO: ALPHA VENDING LLC
SCOTT BARTH
197 E 800 N
BOUNTIFUL, UT 84010-

SENDER: EBB

REFERENCE: 02PUR

← TEAR ALONG THIS LINE

PS Form 3800 January 2005

RETURN RECEIPT SERVICE	Postage	0 48
	Certified Fee	3 30
	Return Receipt Fee	2 70
	Restricted Delivery	0 00
	Total Postage & Fees	6 48

USPS®

**Receipt for
Certified Mail®**

No Insurance Coverage Provided
Do Not Use for International Mail

POSTMARK OR DATE

A

FOLD AND TEAR THIS WAY → OPTIONAL

WALZ

WALZ Form No:35663

Version:B02/16

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(800) 882-3811

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- ⊕ TRACKRIGHT™ Tracks USPS® Delivery events, images and updated status
- ⊕ STORERIGHT Return Receipt and Unclaimed Mail storage and records management system

Since 1983, WALZ has been a pioneer and the nationwide leader in providing Certified Mail solutions. We offer significant domain expertise in Certified Mail and the leading solutions in the industry.

- ⊕ WALZ currently services 34 of the Fortune 100 companies and 86 of the AmLaw 200
- ⊕ 80% of the top mortgage companies are our clients along with over 3,500 organizations such as government, legal, healthcare, and insurance
- ⊕ Over the past 30 years, WALZ has created unique Certified Mail solutions for over 300 million mailings

WALZ REFERRAL PROGRAM

- + Do you know someone who could benefit from using our forms?
- + Mention our forms to a friend and tell them to mention your name when they call. Both you and your friend will receive **10% off** of your next orders (limit of 10% off per order).

Promotional Code R1

WALZ
CERTIFIED
MAILER®

FROM

WALZ

FORM #35663 VERSION B02/16
U S PAT NO 5,501,393

9414 7266 9904 2068 0089 79



SCOTT BARTH
4525 S 2300 E STE 100
SALT LAKE CITY, UT 84117-

Label #1



SCOTT BARTH
4525 S 2300 E STE 100
SALT LAKE CITY, UT 84117-

Label #2

UTAH DIVISION OF CONSUMER
PROTECTION
160 E 300 S
BOX 146704
SALT LAKE CITY, UT 84114-6704

Label #3

TO: SCOTT BARTH
4525 S 2300 E STE 100
SALT LAKE CITY, UT 84117-

SENDER: EBB

REFERENCE: 02PUR

← TEAR ALONG THIS LINE

PS Form 3800, January 2005

RETURN RECEIPT SERVICE	Postage	0 48
	Certified Fee	3 30
	Return Receipt Fee	2 70
	Restricted Delivery	0 00
	Total Postage & Fees	6 48

USPS®
Receipt for
Certified Mail®

No Insurance Coverage Provided
Do Not Use for International Mail

POSTMARK OR DATE

A FOLD AND TEAR THIS WAY → OPTIONAL

WALZ

WALZ Form No:35663
Version:B02/16

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sales@walzgroup.com

(800) 882-3811

www.walzgroup.com

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➌ TRACKRIGHT™ Tracks USPS® Delivery events, images and updated status

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WALZ REFERRAL PROGRAM

- + Do you know someone who could benefit from using our forms?
- + Mention our forms to a friend and tell them to mention your name when they call. Both you and your friend will receive **10% off** of your next orders (limit of 10% off per order).

Promotional Code R1

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PH (801) 530-6601/FAX (801) 530-6001

**BEFORE THE DIVISION OF CONSUMER PROTECTION
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**ALPHA INTERNATIONAL
MARKETING LLC**, a Utah Limited
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VICTOREJUICE, SELECTEJUICE and
O2PUR, and

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

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ADMINISTRATIVE CITATION

**DCP Legal File No. CP-16-11
DCP Case No. 86039**

PURSUANT TO THE AUTHORITY granted by Utah Code § 13-2-6, which empowers the
Division of Consumer Protection (Division) to issue a citation upon reasonable cause to believe a
person has violated any statute listed in Utah Code § 13-2-1, it appears, upon information and
belief, that you are in violation of the *Utah Consumer Sales Practices Act*, Utah Code § 13-11-1
et seq In particular, the Division alleges

RESPONDENTS

- 1 Alpha International Marketing LLC 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 Alpha International Marketing LLC also does business under the

registered business names VictorEJuice, SelectEJuice, and O2PUR

2 Scott Barth is the sole individual listed on the Utah business entity filing for Alpha International Marketing LLC and is identified as the CEO of the business. Barth is also listed as the domain registrant, administrative, technical, and billing contact for the websites O2PURSTORE.COM, BUYO2PUR.COM and ORDERO2PUR.COM

3 The individual and his business will be referred to collectively as Respondents. Respondents sell electronic cigarettes and flavored liquid for electronic cigarettes.

BACKGROUND

4 O2PUR is an electronic cigarette that consists of a recharging battery, stainless steel tank, unique dual-coil atomizer, and USB charger that utilizes an "E-juice" liquid to create an inhalable nicotine vapor. O2PUR is marketed as a smokeless tobacco alternative to cigarettes that is sold through promotional offerings online, on TV, and over the phone.

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8 The commercial stated

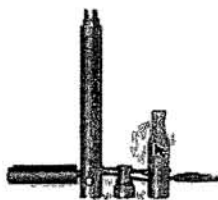
If you're not a smoker please cover your ears, because the following incredible free moneysaving offer is not for you The makers of O2PUR are now giving away FREE Starter Kits to all smokers who call in the next 10 minutes valued at \$79 these premium kits are available for FREE complete with all accessories, but only while supplies last Guarantee yours by calling now 1-800-519-6929 The revolutionary O2PUR design creates only vapor There's no foul smelling smoke and no nasty tar, even better you can also save yourself a ton of money, hundreds of dollars a month with O2PUR again FREE Starter Kits are now available to any smoker who calls and the next 10 minutes this offer is not available in any store so to guarantee your FREE kit you must call now 1-800-519-6929 or go online now to O2PUR.COM com that's O2PUR.COM

9 As of January 26, 2015, the O2PUR product is also advertised and sold online through the websites O2PURSTORE.COM, BUYO2PUR.COM, and ORDERO2PUR.COM An advertisement on the website ORDERO2PUR.COM appears as follows



**Act within 10 minutes to Guarantee your Free Kit!
(with purchase of 2 atomizers)**

OUR MOST ADVANCED E-CIG EVER!



- ✓ Enjoy Nicotine without Smoke or Tar!
- ✓ Exhale pleasant vapor!
- ✓ Smell great!

FREE KIT

With Purchase of 2 Replacement Atomizers

**WHILE
SUPPLIES LAST!**

Improve your
Nicotine Experience

- ✓ Eliminate Tar
- ✓ Feel Great
- ✓ Whiter Teeth
- ✓ Smell Good
- ✓ No Smoke
- ✓ Save Thousands of \$\$\$'s
- ✓ Amazing Taste
- ✓ Easy to use

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hour or two and not skip a beat I wasn't sitting down taking breaks every 10 minutes my son wasn't yelling at me hey dad come on

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14 Respondents' website also promoted a 100% satisfaction guarantee A consumer that completes the purchase online is sent an e-mail confirmation which specifically states, "O2PUR comes with a 100% Satisfaction guarantee " No additional terms or restrictions of this satisfaction guarantee are disclosed

TRUTH IN ADVERTISING COMPLAINTS

15 The Division has become aware of at least 5 consumer complaints filed against Respondents from the organization Truth In Advertising A list of these complaints is included as Attachment A An example of these complaints is as follows

16 **Complaint:**

I responded to a TV ad for this company located in Utah about a free starter kit for e-cig. I did receive the starter kit for the \$5.95 mailing and handling charge, which I paid for with my debit card. A month later I discovered that this company had charged \$69.99 to my debit card for three small bottles for what they call "juice" and a replacement coil. I contacted this company and went nuts on them! Apparently they put you on some automatic supply system that ships you the above items every month for \$69.99!!!! I never agreed to any such mailing!! This company is faulty in its advertising. When I demanded a refund (after much babbling by its rep), I was informed that I had two options: #1 I could send the product back (at my expense) and wait 10-12 weeks for a refund!!, or #2 I could keep the cheap junk sent to me and get a \$35.00 refund in 7-10 days!!

BETTER BUSINESS BUREAU COMPLAINTS

17 The Division has become aware of at least 11 additional consumer complaints filed against Respondents from the Utah Better Business Bureau. A list of these complainants is included in Attachment A. Each complaint alleges a similar pattern of conduct in which consumers indicate they responded to an advertising for a free Starter Kit and were charged additional fees for the transaction that were not disclosed in advertising. A sampling of these complaints are as follows:

18 **Complaint:**

I ordered an e-cig promotion which was free, all I was supposed to pay was \$4.95 in shipping. They charged my card an additional \$59.95 and when I called to find out why it was their response was because I signed up for some auto ship of Ejuice monthly. I absolutely did not and I was never sent whatever they claimed to be charging me for. They refunded the money and I reminded them that I don't want my card charged again and I wanted them to remove me from whatever bullshit they signed me up for. Again next month I get a charge on my card for \$59.95. I called, after sitting on hold for 20 minutes I finally get to speak to Edwin who can't keep his story straight. First he tells me that I signed up for the auto ship and then when I asked where was so called package shipped to because I surely hadn't received it, he tells me I agreed to pick it up in Salt Lake City. Ok I'm sorry but do you know how far Kansas City is from Salt Lake City?? Not to mention the e-cig I received has been broken for a month. So I now know that he's full of it and he tells me once I receive the

package to ship it back and once they receive it they will issue a refund
When I asked to speak to a supervisor he hung up on me

19 **██████████** Complaint:

I ordered a e-cigarette starter kit from O2pur with a 14 day free trial period After the 14 day trial period they were to charge me \$79 a month I received my package in the mail and three days later I cancelled the contract (before 14 days were up) They took upon themselves to send out more products and charged me \$79 without my consent and now they refuse to cancel the shipment and credit my account the money that was wrongfully charged

20 **██████████** Complaint:

Around the 4th week of September I called this company in reference to their product of an e-cigarette for a 10 day trial period for the charge of some \$14 give or take and when I received the product maybe 3 weeks later I called to tell them that I was having problems loading the liquid into the machine because it seem to be leaking they didn't inform me that they may[sic] I may have received a defective product and that they would be more than willing to the ship me out a second device I at that time declined and told them to please cancel my subscription because it would take me into the month over Where there is an automatic charge and I didn't want that automatic charge for a product that wasn't happy with I assumed that my call to cancel this product was done on November 6th I noticed my account had been hit for nearly \$90 from this company I immediately called and was told that they do have a record that I called to cancel but I failed to do the two step process of cancellation which I was not aware of at the time that I had first cancelled so it took 3 tries because I got disconnected twice in order for me to speak with two separate people for them to verify my cancellation

21 **██████████** Complaint:

Called O2Pur for advertised free vape pipe Call was entirely automated and continued to ask if I wanted this or this or that I continued to select that I only wanted the free pipe The message continued to go on and on and on and I eventually hung up Maybe these stipulations were done at the end of the message, but nowhere did it state, prior to, to stay on the line until call completed or about monthly shipments at \$80/month After getting the pipe, I got 2 monthly shipments of liquid, I never requested, and was charged \$79 95 for each shipment When I called to see why I was getting these, was told that I agreed to a 14 day "trial" after which

these liquids would be sent to me unless I cancelled. There was no invoice with the initial product nor with the subsequent shipments stating any of this. They would not take back the first shipment because it was past 30 days. I did return the 2nd shipment and am awaiting a refund. Highly deceptive.

22 **██████████** Complaint:

Went to order the "free trial", I hung up in the middle of the call. I believe it was the next day, the 5 dollars was charged to my card. I called to cancel because I no longer wanted it but they said they can't refund it because the shipping goes to the post office and that they don't get that money. So I said fine, when will it be here? They couldn't tell me. I had the customer service rep yell at me when I told him to stop talking over me and let me talk to a supervisor then he proceeded to hang up on me. I used to work as a cust. service rep and you CANNOT hang up on the customer! I called back and talked to a supervisor who was very helpful, at the time it seemed helpful. So far, nothing. No email with a tracking number and no product. He also assured me there would be no further charges on my account. What they don't know is I have both of my calls recorded. So if they go back on their word, I have proof of them saying otherwise!

AMERICAN VAPING ASSOCIATION

23 On June 20, 2016, Gregory ██████████ of the American Vaping Association filed a complaint against Respondents. The complaint alleged that on or about May 25, 2016, Respondents sent out a promotional e-mail to its mailing list that included an American Vaping Association press release and the contact information for its officer Gregory ██████████

24 ██████████ reports he received several phone calls in response to his press release from consumers seeking to contact Respondents. ██████████ indicated each complaint call alleged a similar pattern of conduct in which consumers responded to an advertising for a FREE Starter Kit and were charged additional fees for the transaction that were not disclosed in advertising. Neither ██████████ nor the American Vaping Association is affiliated with, endorse or approve Respondents, their product, or the use of their press release.

COUNTS 1-3

25 Respondents promotional advertisements represented that its product can be smoked wherever and whenever is a false, deceptive, or substantially inaccurate statement Respondents used testimonials to make unsubstantiated statements concerning the cost savings and health benefits of its product Respondents used a press release from the American Vaping Association (AVA) to promote its product The AVA does not endorse Respondents product

26 The above actions are in violation of the *Utah Consumer Sales Practices Act*, Utah Code § 13-11-4 which states

(1) A deceptive act or practice by a supplier in connection with a consumer transaction violates this chapter whether it occurs before, during, or after the transaction

(2) Without limiting the scope of Subsection (1), a supplier commits a deceptive act or practice if the supplier knowingly or intentionally

(a) indicates that the subject of a consumer transaction has sponsorship, approval, performance characteristics, accessories, uses, or benefits, if it has not,

27 **The above actions are alleged as three violations of the above referenced statute, with a maximum potential fine of \$7,500.00 per violation.**

COUNT 4

28 Respondents used the word "FREE" in multiple advertising mediums in reference to its Starter Kit to imply the product is without cost, when such is not the fact Respondents Free Starter Kit requires the purchase of additional products which is not clearly and conspicuously disclosed in Radio, TV or website advertising

29 The above actions are in violation of the *Consumer Sales Practices Act Rules*, Utah Admin Rules § R152-11-2 Exclusions and Limitations in Advertisement R152-11-4

B Disclosure of Conditions A "free" or similar offer is deceptive unless all the terms, conditions, and obligations upon which receipt and retention of the "free" item are contingent are set forth clearly and conspicuously at

the outset of the offer so as to leave no reasonable probability that the terms of the offer might be misunderstood

- 30 **The above actions are alleged as one violation of the above referenced statute, with a maximum potential fine of \$2,500.00 per violation.**

COUNTS 5-15

- 31 Respondents advertised a “100% Satisfaction Guarantee” of its product, however no terms, conditions, restrictions, or polices were stated for this guarantee were disclosed in any of Respondents’ representations to the consumer including its website and e-mail advertisement. Close evaluation of the Respondents’ *Terms and Conditions* indicate it offers no such warranty or guarantee and its products are sold “as-is”

- 32 The above actions are in violation of the *Utah Consumer Sales Practices Act*, Utah Code § 13-11-4

(2) Without limiting the scope of Subsection (1), a supplier commits a deceptive act or practice if the supplier knowingly or intentionally

(j) (1) indicates that a consumer transaction involves or does not involve a warranty, a disclaimer of warranties, particular warranty terms, or other rights, remedies, or obligations, if the representation is false,

- 33 **The above actions are alleged as eleven counts of violation of the above referenced statute, with a maximum potential fine of \$2,500.00 per violation.**

COUNT 16-20

- 34 Respondents engaged in telephone solicitations as defined under Utah Code § 13-26-2 as the sale or solicitation of goods or services in which the seller solicits the sale over the telephone, the purchaser's agreement to purchase is made over the telephone, and the purchaser, over the telephone, pays for or agrees to commit to payment for goods or services prior to or upon receipt by the purchaser of the goods or services. Respondents are not registered with the Division to conduct telephone solicitations

35 The above actions are in violation of the *Utah Telephone Fraud Prevention Act*, Utah Code § 13-26-1

- (1) It is unlawful for any solicitor
 - (a) to solicit a prospective purchaser on behalf of a telephone soliciting business that is not registered with the division or exempt from registration under this chapter,

36 **The above actions are alleged as five counts of violation of the above referenced statute, with a maximum potential fine of \$2,500.00 per violation.**

COUNT 21

37 Respondents failed to make clear and conspicuous written disclosures within close proximity to any of its offers stating any material exclusion, reservations, limitations, prices, terms or conditions, or other statements regarding the Free Starter Kit
Respondents specifically failed to disclose additional purchase was required to receive the Free Starter Kit

38 The above actions are in violation of the *Utah Consumer Sales Practices Act Rules*, Utah Admin Code § R152-11-2

A It is a deceptive act or practice for a supplier in connection with a consumer transaction, in the sale or offering for sale of a consumer commodity to make any offer in written or printed advertising or promotional literature without stating clearly and conspicuously in close proximity to the words stating the offer of any material exclusions, reservations, limitations, modifications, or conditions The following are examples of the types of material exclusions, reservations, limitations, modifications, or conditions of offers which must be clearly stated

- (10) If there are "additional" items that must be purchased for the advertised price to apply that fact must be so stated

39 **The above actions are alleged as one violation of the above referenced statute, with a maximum potential fine of \$2,500.00 per violation.**

COUNT 22-37

40 Respondents failed to make oral disclosures in its radio and TV offers stating any

material exclusion, reservations, limitations, prices, terms or conditions, or other statements regarding the Free Starter Kit Respondents specifically failed to disclose that an additional purchase was required to receive the Free Starter Kit Respondent promoted at least 11 broadcast orders for hundreds if not thousands of radio advertisements and promoted a TV commercial that has run at least 1,000 times

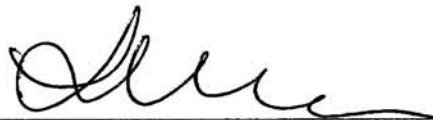
41 The above actions are in violation of the *Utah Consumer Sales Practices Act Rules*, Utah Admin Code R152-11-2

B Offers made orally, such as through radio or television advertising, must include a conspicuously clear and oral statement of any material exclusions, reservations, modifications, or conditions

42 **The above actions are alleged as seventeen violations of the above referenced statute, with a maximum potential fine of \$2,500.00 per violation.**

Total Alleged Counts:	37
Total Potential Fine:	\$92,500.00

THIS CITATION ISSUED this 16 day of September 16



Liz Blaylock – Investigator
UTAH DIVISION OF CONSUMER PROTECTION

CERTIFICATE OF SERVICE

I certify that I have this day served the foregoing document on the parties of record in this proceeding set forth below by mailing a copy thereof, properly addressed by first class mail and certified mail with postage prepaid, to

By regular and certified mail to

ORDER O2PUR, LLC
4760 S HIGHLAND DR #356
HOLLADAY UT 84117

ALPHA VENDING LLC
SCOTT BARTH
197 E 800 N
BOUNTIFUL UT 84010

SCOTT BARTH
4525 S 2300 E STE 100
SALT LAKE CITY UT 84117

Dated this 16 day of September 16



Liz Blaylock- Investigator
UTAH DIVISION OF CONSUMER PROTECTION

IMPORTANT NOTICE - READ CAREFULLY

This citation may be contested by filing a request for review, in writing, within ten (10) days of receipt of this citation. Following receipt of a request for review, an informal hearing will be scheduled before the State of Utah, Department of Commerce, Division of Consumer Protection pursuant to Utah Code § 63G-4-203, Procedures for Informal Adjudicative Proceedings. The purpose for such a hearing is a review of the citation for factual and legal sufficiency and other questions to be determined by the presiding officer. A citation which is not contested becomes the final order of the Division and is not subject to further agency review. In addition to any fines which might be levied, a cease and desist order may be entered against you. An intentional violation of a final cease and desist order is a third degree felony pursuant to Utah Code § 13-2-6(2). To request a review of the citation, mail your written request to

Daniel R. S. O'Bannon – Director
Utah Division of Consumer Protection
PO Box 146704
Salt Lake City, UT 84114-6704

Please be advised that all inquiries, correspondence, or other contacts concerning this citation, with the exception of any written request for review as set out above, should be directed to the below-named Division employee, designated by the Director of the Division of Consumer Protection pursuant to Utah Code § 13-2-6(3).

Liz Blaylock – Investigator
Utah Division of Consumer Protection
PO Box 146704
Salt Lake City, UT 84114-6704
Telephone (801) 530-6601

DIVISION OF CONSUMER PROTECTION
STATE OF UTAH DEPARTMENT OF COMMERCE
160 E 300 S
PO BOX 146704
SALT LAKE CITY UT 84114

**INFORMAL HEARINGS BEFORE THE
DIVISION OF CONSUMER PROTECTION**

You may request an informal hearing to contest an Administrative Citation issued by the Division of Consumer Protection within ten (10) business days from the date of the Citation. Your request should be in writing, include the case number from your Citation, and be directed to the Director of the Utah Division of Consumer Protection at the address listed above. As you prepare for the hearing, please keep in mind the following:

1 **Notice** You will receive a Notice of Administrative Hearing specifying a time and date of the hearing. On the day of the hearing, the Division receptionist at the address listed above, on the second floor, will give you the room number for the hearing. The name of the Presiding Officer for the hearing is on your Notice. Please address the Presiding Officer by name (e.g., "Mr. Smith" or "Ms. Jones").

2 **Open Hearing** The hearing is open to all parties, and is open to the public unless closed by the Presiding Officer. The Division will record the hearing.

3 **Access to Information** Discovery is prohibited, but parties may have access to all materials and information the Division intends to present at the hearing. You may contact the investigator whose name appears on your citation to request access to this information.

4 **Legal Representation** You may represent yourself or be represented by an attorney. Ordinarily, the Division is not represented by an attorney at the hearing.

5 **Issues** The primary issues for the hearing are:

- Was there a factual and legal basis to issue the Citation?
- If so, was it fair to issue the Citation?
- If so, what is the appropriate penalty?

6 **Burden of Proof** The Division is responsible to prove its case against you by substantial evidence.

7 **Evidence** All parties may testify, present evidence, and comment on the issues. In presenting evidence, any party may examine witnesses and submit exhibits. At the request of either party, or at his or her own initiative, the Presiding Officer may examine a witness. Any party may ask to present a witness by telephone. The Presiding Officer will exclude any evidence he or she deems irrelevant, repetitious or improper.

8 **Final Order** Following the hearing, the Presiding Officer will take the matter under advisement and make a recommendation to the Division Director, who will issue a Final Order to uphold, dismiss or modify the Citation. The Final Order will include a notice of any right of administrative or judicial review.

You should not rely on this letter alone for instructions regarding informal hearings. The hearing is governed by law (Utah Administrative Procedures Act, *see* Utah Code § 63G-4 *et al.*), Utah Division of Consumer Protection, *see* Utah Code § 13-2 *et al.* and rule Department of Commerce Administrative Procedures Act Rules, *see* Utah Admin. Code R151-4. You may access these laws and rules at your local library or at the following Internet sites: le.utah.gov and rules.utah.gov.

You may contact the Presiding Officer with any technical or procedural questions, but the Presiding Officer may not discuss the merits of the case with you.

Revision Date November 17, 2014

WALZ

WALZ Form No:35663

Version:B02/16

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- ⊕ TRACKRIGHT™ Tracks USPS® Delivery events, images and updated status
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Since 1983, WALZ has been a pioneer and the nationwide leader in providing Certified Mail solutions. We offer significant domain expertise in Certified Mail and the leading solutions in the industry.

- ⊕ WALZ currently services 34 of the Fortune 100 companies and 86 of the AmLaw 200
- ⊕ 80% of the top mortgage companies are our clients along with over 3,500 organizations such as government, legal, healthcare, and insurance
- ⊕ Over the past 30 years, WALZ has created unique Certified Mail solutions for over 300 million mailings

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- + Do you know someone who could benefit from using our forms?
- + Mention our forms to a friend and tell them to mention your name when they call. Both you and your friend will receive **10% off** of your next orders (limit of 10% off per order).

Promotional Code R1

**WALZ
CERTIFIED
MAILER®**

FROM

WALZ

FORM #35663 VERSION B02/16
U.S. PAT NO 5,501,393

9414 7266 9904 2068 0089 48



ALPHA VENDING LLC
SCOTT BARTH
197 E 800 N
BOUNTIFUL, UT 84010-

Label #1



ALPHA VENDING LLC
SCOTT BARTH
197 E 800 N
BOUNTIFUL, UT 84010-

Label #2

UTAH DIVISION OF CONSUMER
PROTECTION
160 E 300 S
BOX 146704
SALT LAKE CITY, UT 84114-6704

Label #3

TO: ALPHA VENDING LLC
SCOTT BARTH
197 E 800 N
BOUNTIFUL, UT 84010-

SENDER: EBB

REFERENCE: 02PUR NOAA

← TEAR ALONG THIS LINE

PS Form 3800 January 2005

RETURN RECEIPT SERVICE	Postage	0 48
	Certified Fee	3 30
	Return Receipt Fee	2 70
	Restricted Delivery	0 00
	Total Postage & Fees	6 48

**USPS®
Receipt for
Certified Mail®**

No Insurance Coverage Provided
Do Not Use for International Mail

POSTMARK OR DATE

A FOLD AND TEAR THIS WAY → OPTIONAL

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Promotional Code R1

FROM
**WALZ
CERTIFIED
MAILER®**

WALZ

FORM #35663 VERSION B02/16
U S PAT NO 5,501,393

9414 7266 9904 2068 0089 55



ORDER O2PUR
LLC
4760 S HIGHLAND DR #356
HOLLADAY, UT 84117-

Label #1



ORDER O2PUR
LLC
4760 S HIGHLAND DR #356
HOLLADAY, UT 84117-

Label #2

UTAH DIVISION OF CONSUMER
PROTECTION
160 E 300 S
BOX 146704
SALT LAKE CITY, UT 84114-6704

Label #3

TO: ORDER O2PUR
LLC
4760 S HIGHLAND DR #356
HOLLADAY, UT 84117-

SENDER: EBB

REFERENCE: O2PUR

← TEAR ALONG THIS LINE

PS Form 3800 January 2005

RETURN RECEIPT SERVICE	Postage	0 48
	Certified Fee	3 30
	Return Receipt Fee	2 70
	Restricted Delivery	0 00
	Total Postage & Fees	6 48

**USPS®
Receipt for
Certified Mail®**

No Insurance Coverage Provided
Do Not Use for International Mail

POSTMARK OR DATE

A FOLD AND TEAR THIS WAY → OPTIONAL

WALZ

WALZ Form No:35663
Version:B02/16

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Promotional Code R1

Attachment A

Case Number	Consumer
BBB 11016537	JACKY [REDACTED]
BBB 10530514	ROBECKA [REDACTED]
BBB 10543562	KEVIN [REDACTED]
BBB 10654295	SHAWN [REDACTED]
BBB 10726758	LISA [REDACTED]
BBB 10815519	TERRA [REDACTED]
BBB 10838029	CRISTINA [REDACTED]
BBB 10971014	ANDREA [REDACTED]
BBB 10876224	JOSEPH [REDACTED]
BBB 10944641	KIRK [REDACTED]
BBB 10993909	HOLLY [REDACTED]
TINA 6.11.16	SUE [REDACTED]
TINA 5.14.16	MONROE [REDACTED]
TINA 5.10.16	BRIAN [REDACTED]
TINA 4.03.16	ALEC [REDACTED]
TINA 4 02.16	ANONYMOUS