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

IN THE MATTER OF: SCOTT BARTH, Respondent.	SETTLEMENT AGREEMENT DCP Legal File No. 83243 and CP-16-11 DCP Case No. 82403 and 86039
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The Utah Division of Consumer Protection (Division) and Scott Barth (Respondent or Barth) enter into the following Settlement Agreement (Agreement).

1. Identity of Respondent. Respondent is an individual who resides in the state of Utah and who until 2013, served as either an officer, director, manager, agent, and/or owner of the entities Vapex, LLC, Alpha Vending LLC doing business as AlphaFill, tryvapex.com and is listed as the registered agent of Vapex LLC and Alpha Vending LLC. Barth also served as a member, manager or agent of the entity Alpha Vending LLC; and he was listed as the domain registrant of the Vapex LLC websites.
2. Jurisdiction. As part of this Agreement Respondent admits to the jurisdiction of the Division over the parties and over the subject matter of this action.
3. Agency Action. On September 16, 2016, the Division issued a Notice of Agency Action alleging Respondent breached four of the eleven obligations of an October 2014 settlement agreement (the October 2014 Settlement Agreement) with the Division. The October 2014 Settlement Agreement was entered into after the Division had issued a Citation in 2014 (the 2014 Citation) against the above-named respondent. The 2014 Citation, the 2014 Settlement Agreement, and the 2016 Notice of Agency Action including the specific violations alleged therein are a matter of public record pursuant to the Utah Records Access and Management Act, Utah Code § 63G-2-101 et seq.

The four settlement terms allegedly breached directly coincide with violations detailed in the 2014 Citation, which are as follows:

- i. Three counts under Utah Code § 13-11-4(2)(a);
- ii. One count under Utah Admin. Code R 152-11-2(B);
- iii. Two counts under Utah Admin. Code R152-11-2(A)(1);
- iv. Four counts under Utah Code § 13-11-4(2)(j)(i); and
- v. Five counts under Utah Code § 13-26-1(1)(a).

Each of the Utah Consumer Sales Practices Act (“CSPA”) and the Utah Telephone Fraud Prevention Act (“TFPA”) violations cited carry a maximum fine

of \$2,500.00 per violation. The fines associated with the specific settlement breach total \$37,500.00. As part of this Agreement, the Division assesses Respondent a fine of \$37,500.00.

4. Obligations of the Division. The Division agrees to dismiss its Notice of Agency Action in DCP Legal File No. 83243 and the Citation issued in DCP Legal File No. CP-16-11 and DCP Case No. 86039 (the "Citation"). Nothing in this Agreement should be seen as a waiver by the Division of claims it has under the 2014 Settlement Agreement including but not limited to its claim that Respondent is a party to the 2014 Settlement Agreement.
5. Obligations of Respondent. Respondent agrees to perform in accordance with the following obligations:
 - A. Respondent shall pay the Division the fine stipulated in Section 3 of this Agreement of \$37,500.00 in twelve (12) installments as follows: \$2,000.00 payable upon execution of this Agreement, ten (10) subsequent payments of \$2,000.00 each payable on the 10th of each month from February 10 through November 10, 2017, and a final balloon payment of \$15,500.00 payable on December 10, 2017. All funds must be certified and made payable to "Utah Division of Consumer Protection."
 - B. Respondent agrees to comply with any statutes enforced by the Division as contained in Utah Code § 13-2-1, and Respondent understands that, as provided by Utah Code § 13-2-6(2), an intentional violation of a final cease and desist order entered by the Division is a third degree felony.
6. Warranty. Respondent warrants that it is a proper party to this Settlement Agreement and has authority to enter into this settlement.
7. Waiver. With regard to the allegations in the underlying Notice of Agency Action and Citation, Respondent voluntarily waives any right to have a hearing, present testimony, present evidence, and comment on the issues, or seek agency or judicial review. Respondent also waives any claim or cause of action he 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 his 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. 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.
14. 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.
15. Legal Representation. Respondent acknowledges that they have the right to be represented by legal counsel. By signing this document, Respondent acknowledges they have either sought the advice of an attorney or have voluntarily chosen not to do so. Respondent has read and understand this Agreement.
16. 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.

SCOTT BARTH

Signed: Scott Barth

Dated this 20 day of Jan, 20 17

**UTAH DIVISION OF CONSUMER
PROTECTION**


DANIEL R.S. O'BANNON, DIRECTOR

Dated this 20 day of January, 20 17

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