

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

TIMOTHY KERRIGAN, LORI MIKOVICH  
and RYAN M. VALLI, individually, and on  
behalf of all others similarly situated,

Plaintiffs,

v.

VISALUS, INC., a corporation, et al.,

Defendants.

Case No. 2:14-cv-12693  
Hon. Matthew F. Leitman

**DEFENDANT TODD GOERGEN'S ANSWER TO SECOND AMENDED  
COMPLAINT**

Defendant Todd Goergen ("T. Goergen"), through undersigned counsel, for its Answer to the Second Amended Complaint ("SAC"), admits, denies, and alleges as follows:

1. Responding to Paragraph 1 of the SAC, T. Goergen denies the allegations contained therein.
2. Responding to Paragraph 2 of the SAC, T. Goergen refers to the website quoted therein for the full content thereof.
3. Responding to Paragraph 3 of the SAC, T. Goergen denies the allegations contained therein.
4. Responding to Paragraph 4 of the SAC, T. Goergen denies the allegations contained therein.
5. Responding to Paragraph 5 of the SAC, T. Goergen denies the allegations contained therein.

6. Responding to Paragraph 6 of the SAC, T. Goergen denies the allegations contained therein.

7. Responding to Paragraph 7 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the allegations contained therein, and therefore denies the same.

8. Responding to Paragraph 8 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the allegations contained therein, and therefore denies the same.

9. Responding to Paragraph 9 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the allegations contained therein, and therefore denies the same.

10. Responding to Paragraph 10 of the SAC, T. Goergen refers to Exhibits A and B to the SAC for the full content thereof. T. Goergen denies that ViSalus ever operated as a pyramid scheme. T. Goergen is without knowledge or sufficient information to respond to the remaining allegations contained therein, and therefore denies the same.

11. Responding to Paragraph 11 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the allegations contained therein, and therefore denies the same.

12. Responding to Paragraph 12 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the remaining allegations contained therein, and therefore denies the same.

13. Responding to Paragraph 13 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the allegations contained therein, and therefore denies the same.

14. Responding to Paragraph 14 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the allegations contained therein,

and therefore denies the same.

15. Responding to Paragraph 15 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the allegations contained therein, and therefore denies the same.

16. Responding to Paragraph 16 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the allegations contained therein, and therefore denies the same.

17. Responding to Paragraph 17 of the SAC, the allegations contained therein relate to defendants who have been dismissed from this lawsuit, and T. Goergen therefore need not answer those allegations.

18. Responding to Paragraph 18 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the allegations contained therein, and therefore denies the same.

19. Responding to Paragraph 19 of the SAC, T. Goergen admits that he currently resides in Connecticut and is the Chief Operating Officer of Visalus. T. Goergen denies the remaining allegation contained in Paragraph 19.

20. Responding to Paragraph 20 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the allegations contained therein, and therefore denies the same.

21. Responding to Paragraph 21 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the allegations contained therein, and therefore denies the same.

22. Responding to Paragraph 22 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the allegations contained therein, and therefore denies the same.

23. Responding to Paragraph 23 of the SAC, T. Goergen denies the factual allegations contained therein.

24. Responding to Paragraph 24 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the allegations contained therein, and therefore denies the same.

25. Responding to Paragraph 25 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the allegations contained therein, and therefore denies the same.

26. Responding to Paragraph 26 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the allegations contained therein, and therefore denies the same.

27. Responding to Paragraph 27 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the allegations contained therein, and therefore denies the same.

28. Responding to Paragraph 28 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the allegations contained therein, and therefore denies the same.

29. Responding to Paragraph 29 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the allegations contained therein, and therefore denies the same.

30. Responding to Paragraph 30 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the allegations contained therein, and therefore denies the same.

31. Responding to Paragraph 31 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the allegations contained therein, and therefore denies the same.

32. Responding to Paragraph 32 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the allegations contained therein, and therefore denies the same.

33. Responding to Paragraph 33 of the SAC, the allegations contained therein relate to defendants who have been dismissed from this lawsuit, and Visalus therefore need not answer those allegations.

34. Responding to Paragraph 34 of the SAC, T. Goergen admits that he is subject to the Court's jurisdiction in this matter and that the Court has subject-matter jurisdiction at this time. T. Goergen is without knowledge or sufficient information to respond to the remaining allegations contained therein, and therefore denies the same.

35. Responding to Paragraph 35 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the allegations contained therein, and therefore denies the same.

36. Responding to Paragraph 36 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the allegations contained therein, and therefore denies the same.

37. Responding to Paragraph 37 of the SAC, the allegations contained therein relate to defendants who have been dismissed from this lawsuit, and Visalus therefore need not answer those allegations.

38. Responding to Paragraph 38 of the SAC, T. Goergen admits the allegations contained therein.

39. Responding to Paragraph 39 of the SAC, the allegations therein set forth legal conclusions as to which no response is required.

40. Responding to Paragraph 40 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the remaining allegations contained therein, and therefore denies the same.

41. Responding to Paragraph 41 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the remaining allegations contained therein, and therefore denies the same.

42. Responding to Paragraph 42 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the remaining allegations contained therein, and therefore denies the same.

43. Responding to Paragraph 43 of the SAC, the allegations therein set forth legal conclusions as to which no response is required.

44. Responding to Paragraph 44 of the SAC, T. Goergen denies the allegations contained therein.

45. Responding to Paragraph 45 of the SAC, T. Goergen admits that ViSalus has referred to the right to distribute its products as a business opportunity. T. Goergen admits that ViSalus has referred to those individuals with the right to sell ViSalus products as the promoter sales force. T. Goergen denies the remaining allegations contained in Paragraph 45.

46. Responding to Paragraph 46 of the SAC, T. Goergen admits that no training or experience is required to become a ViSalus IP. T. Goergen further admits that a person can become a distributor through another IP. T. Goergen admits that an individual must fill out a written form in order to become a distributor. T. Goergen further admits that there are different enrollment options that an individual may choose from when becoming a ViSalus distributor. T. Goergen refers to the Independent Distributor Application for the full content thereof. T. Goergen denies the remaining allegations contained in Paragraph 46.

47. Responding to Paragraph 47 of the SAC, T. Goergen admits that prospective ViSalus IPs could enroll by purchasing an ESS for \$499 or an ESS with samples for \$999, in addition to a basic enrollment for \$49. T. Goergen denies the remaining allegations contained in Paragraph 47.

48. Responding to Paragraph 48 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the allegations contained therein, and therefore denies the same.

49. Responding to Paragraph 49 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the allegations contained therein, and therefore denies the same.

50. Responding to Paragraph 50 of the SAC, T. Goergen admits that new distributors provide ViSalus with their social security number and a credit card number. T. Goergen admits that new distributors and other customers can purchase various ViSalus products on a one-time or recurring (i.e. auto ship) basis. T. Goergen admits that new distributors could enroll for a monthly website subscription. T. Goergen denies the remaining allegations contained in Paragraph 50.

51. Responding to Paragraph 51 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the allegations contained therein, and therefore denies the same.

52. Responding to Paragraph 52 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the allegations contained therein, and therefore denies the same.

53. Responding to Paragraph 53 of the SAC, T. Goergen refers to the Visalus Compensation Plan for the content thereof. T. Goergen denies the remaining allegations contained in Paragraph 53.

54. Responding to Paragraph 54 of the SAC, T. Goergen denies the allegations contained therein.

55. Responding to Paragraph 55 of the SAC, T. Goergen refers to the Visalus Compensation Plan for the content thereof. T. Goergen denies the remaining allegations contained in Paragraph 55.

56. Responding to Paragraph 56 of the SAC, T. Goergen refers to the Visalus Compensation Plan for the content thereof. T. Goergen denies the remaining allegations contained in Paragraph 56.

57. Responding to Paragraph 57 of the SAC, T. Goergen refers to the ViSalus Compensation Plan for the content thereof. T. Goergen denies the remaining allegations contained in Paragraph 57.

58. Responding to Paragraph 58 of the SAC, T. Goergen refers to the Visalus Compensation Plan for the content thereof. T. Goergen denies the remaining allegations contained in Paragraph 58.

59. Responding to Paragraph 59 of the SAC, T. Goergen refers to the materials depicted therein for the content thereof.

60. Responding to Paragraph 60 of the SAC, T. Goergen refers to the Visalus Prospectus quoted therein for the content thereof. T. Goergen denies the remaining allegations contained in Paragraph 60.

61. Responding to Paragraph 61 of the SAC, T. Goergen refers to the Visalus Plan Book for the content thereof.

62. Responding to Paragraph 62 of the SAC, T. Goergen refers to the Visalus Compensation Plan for the content thereof.

63. Responding to Paragraph 63 of the SAC, T. Goergen refers to the Visalus Compensation Plan for the content thereof and to the ViSalus Prospectus from which these statement appear to be quoted for the content thereof. T. Goergen denies the remaining allegations contained in Paragraph 63.

64. Responding to Paragraph 64 of the SAC, T. Goergen refers to the pleadings or filings quoted or referred to therein for the content thereof. T. Goergen denies the remaining allegations contained in Paragraph 64.

65. Responding to Paragraph 65 of the SAC, T. Goergen refers to the Welcome Booklet quoted therein for the content thereof.

66. Responding to Paragraph 66 of the SAC, T. Goergen refers to the "other publications" referenced therein for the content thereof. T. Goergen denies the remaining allegations contained in Paragraph 66.



67. Responding to Paragraph 67 of the SAC, T. Goergen refers to the Compensation Plan for the content thereof. T. Goergen admits that ViSalus has made copies of the Compensation Plan available on the internet and at meetings with prospective distributors. T. Goergen denies the remaining allegations contained in Paragraph 67.

68. Responding to Paragraph 68 of the SAC, T. Goergen refers to the pleadings or filings quoted or referred to therein for the content thereof. T. Goergen denies the remaining allegations contained in Paragraph 68.

69. Responding to Paragraph 69 of the SAC, T. Goergen admits that the ViSalus products compete against similar products manufactured by other companies, including those companies referenced in Paragraph 69. T. Goergen denies the remaining allegations contained in Paragraph 69.

70. Responding to Paragraph 70 of the SAC, T. Goergen refers to the eBay and Craigslist ads and listings quoted or referred to therein for the content thereof. T. Goergen denies the remaining allegations contained in Paragraph 70.

71. Responding to Paragraph 71 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the allegations contained therein, and therefore denies the same.

72. Responding to Paragraph 72 of the SAC, T. Goergen denies the allegations contained therein.

73. Responding to Paragraph 73 of the SAC, T. Goergen denies knowing that the vast majority of people recruited to be distributors lose money. T. Goergen is without knowledge or sufficient information to respond to the remaining allegations contained therein, and therefore denies the same.

74. Responding to Paragraph 74 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the general allegations about the operation of pyramid schemes contained therein, and therefore denies the same.

ViSalus denies the remaining allegations contained in Paragraph 74.

75. Responding to Paragraph 75 of the SAC, T. Goergen refers to the ViSalus website and the promotional materials referenced therein for the content thereof. T. Goergen is without knowledge or sufficient information to respond to the remaining allegations contained therein, and therefore denies the same.

76. Responding to Paragraph 76 of the SAC, T. Goergen refers to the ViSalus promotions referenced therein for the content thereof.

77. Responding to Paragraph 77 of the SAC, T. Goergen admits that ViSalus has referred to its most successful distributors as "Ambassadors," and that ViSalus employs a ranking system to differentiate between different levels of "Ambassadors." T. Goergen refers to the "the success stories posted on the ViSalus website or the blog the company runs" and the ads and promotions referred to in Paragraph 77 for the content thereof. T. Goergen denies the remaining allegations contained in Paragraph 77.

78. Responding to Paragraph 78 of the SAC, T. Goergen refers to ViSalus' website and print promotions for the content thereof. T. Goergen denies the remaining allegations contained in Paragraph 78.

79. Responding to Paragraph 79 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the allegations contained therein, and therefore denies the same.

80. Responding to Paragraph 80 of the SAC, T. Goergen refers to the videos and downloadable PowerPoint presentations referred to therein for the content thereof. T. Goergen denies the remaining allegations contained in Paragraph 80.

81. Responding to Paragraph 81 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the allegations about the Promoter Defendants' alleged "web and social media presence," "individual

accounts on Facebook, YouTube and Vimeo," and "videos" contained therein, and therefore denies the same. T. Goergen admits that ViSalus advertises on the internet, maintains social media accounts on websites, and has produced promotional videos. T. Goergen refers to those accounts, websites, and videos for the content thereof. T. Goergen denies the remaining allegations contained in Paragraph 81.

82. Responding to Paragraph 82 of the SAC, T. Goergen refers to the interviews, articles or blogs referenced therein for the content thereof. T. Goergen denies the remaining allegations contained in Paragraph 82.

83. Responding to Paragraph 83 of the SAC, T. Goergen refers to Vimeo, Google, and YouTube for the content thereof. T. Goergen is without knowledge or sufficient information to respond to the allegations about the spread of interviews and lists of top distributors through network-marketing website, and therefore denies the same. T. Goergen denies the remaining allegations contained in Paragraph 83.

84. Responding to Paragraph 84 of the SAC, T. Goergen refers to the PowerPoint presentations and videos referenced therein for the content thereof. T. Goergen admits that in order to become and remain a Regional Director (which is one level above Director) in the ViSalus system, an individual must sign up three active promoters and have monthly sales volume of at least \$12,500. T. Goergen denies the remaining allegations of Paragraph 84.

85. Responding to Paragraph 85 of the SAC, T. Goergen refers to the marketing materials and videos referenced therein, including those regarding the "Bimmer Club," for the content thereof. T. Goergen is without knowledge or sufficient information to respond to the allegations about Rick Gutman, and therefore denies the same. T. Goergen denies the remaining allegations contained in Paragraph 85.

86. Responding to Paragraph 86 of the SAC, T. Goergen admits that a ViSalus Promoter remains responsible for making all required payments on their BMW vehicle. T. Goergen further admits that in order to continue receiving the monthly bonus payment under ViSalus' Bimmer Bonus Program, a Promoter must remain active and achieve and maintain the rank of Regional Director. T. Goergen denies the remaining allegations contained in Paragraph 86.

87. Responding to Paragraph 87 of the SAC, T. Goergen refers to the videos contained therein for the content thereof. T. Goergen denies the remaining allegations contained in Paragraph 87.

88. Responding to Paragraph 88 of the SAC, T. Goergen admits that ViSalus has published its own magazine for distribution to, among others, its distributors, and that it has worked with "Success" magazine. T. Goergen denies the remaining allegations contained in Paragraph 88.

89. Responding to Paragraph 89 of the SAC, T. Goergen admits that the next rank up from Regional Director is National Director. T. Goergen is without knowledge or sufficient information to respond to the remaining allegations contained therein, and therefore denies the same.

90. Responding to Paragraph 90 of the SAC, T. Goergen refers to the public filing referred to therein for the content thereof. T. Goergen denies the remaining allegations contained in Paragraph 90.

91. Responding to Paragraph 91 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the general allegations about the "the network marketing business" and "the check-waving ritual" contained therein, and therefore denies the same. T. Goergen denies the remaining allegations contained in Paragraph 91.

92. Responding to Paragraph 92 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the allegations contained therein,

and therefore denies the same.

93. Responding to Paragraph 93 of the SAC, T. Goergen refers to the printed and Internet materials referred to therein for the content thereof. T. Goergen is without knowledge or sufficient information to respond to the remaining allegations contained therein, and therefore denies the same.

94. Responding to Paragraph 94 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the allegations contained therein, and therefore denies the same.

95. Responding to Paragraph 95 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the allegations contained therein, and therefore denies the same.

96. Responding to Paragraph 96 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the allegations contained therein, and therefore denies the same.

97. Responding to Paragraph 97 of the SAC, T. Goergen admits that Nick and Ashley Sarnicola have spoken on stage together at ViSalus events. T. Goergen denies the remaining allegations of Paragraph 97.

98. Responding to Paragraph 98 of the SAC, T. Goergen denies the allegations contained therein.

99. Responding to Paragraph 99 of the SAC, T. Goergen admits that ViSalus provides IPs with training opportunities. T. Goergen refers to the training videos and promotional materials referred to therein for the content thereof. T. Goergen denies the remaining allegations contained in Paragraph 99.

100. Responding to Paragraph 100 of the SAC, T. Goergen refers to the promotional materials and downloadable PowerPoint referred to therein for the content thereof. T. Goergen denies the remaining allegations contained in Paragraph 100.

101. Responding to Paragraph 101 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the allegations contained therein, and therefore denies the same.

102. Responding to Paragraph 102 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the allegations contained therein, and therefore denies the same.

103. Responding to Paragraph 103 of the SAC, T. Goergen denies the allegations contained therein.

104. Responding to Paragraph 104 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the allegations contained therein, and therefore denies the same.

105. Responding to Paragraph 105 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the allegations contained therein, and therefore denies the same.

106. Responding to Paragraph 106 of the SAC, T. Goergen refers to the Compensation Plan and ViSalus' policies and procedures for the content thereof. T. Goergen is without knowledge or sufficient information to respond to the allegations about the exact number of ViSalus IP's at specified times, and therefore denies the same. T. Goergen admits that ViSalus has laid off corporate staff. T. Goergen denies the remaining allegations contained in Paragraph 106.

107. Responding to Paragraph 107 of the SAC, T. Goergen admits that ViSalus has expanded to Canada, the UK, and other European Nations. T. Goergen denies the remaining allegations contained in Paragraph 107.

108. Responding to Paragraph 108 of the SAC, T. Goergen denies the allegations contained therein.

109. Responding to Paragraph 109 of the SAC, T. Goergen admits that, in 2012, ViSalus filed to participate in an initial public offering and that the initial

public offering was eventually withdrawn. T. Goergen is without knowledge or sufficient information to form a belief as to the truth of the allegations about other Defendants' knowledge of the likelihood of survival of network marketing companies, and therefore denies the same. T. Goergen denies the remaining allegations contained in Paragraph 109.

110. Responding to Paragraph 110 of the SAC, T. Goergen admits ViSalus is currently a private company. T. Goergen is without knowledge or sufficient information to form a belief as to the truth of the allegations about Defendant Wilson and Jackson's involvement with LifeVantage, and therefore denies the same. T. Goergen denies the remaining allegations contained in Paragraph 110.

111. Responding to Paragraph 111 of the SAC, T. Goergen denies that this lawsuit satisfies the requirements under Federal Rule of Civil Procedure 23 for class action treatment.

112. Responding to Paragraph 112 of the SAC, T. Goergen admits that Plaintiffs have sought a class action under Federal Rule of Civil Procedure 23, but T. Goergen denies that this lawsuit satisfies the requirements under Federal Rule of Civil Procedure 23 for class action treatment or that a class as defined in Paragraph 112 would be appropriate.

113. Responding to Paragraph 113 of the SAC, T. Goergen denies the allegations contained therein.

114. Responding to Paragraph 114 of the SAC, T. Goergen denies the allegations contained therein.

115. Responding to Paragraph 115 of the SAC, T. Goergen denies the allegations contained therein.

116. Responding to Paragraph 116 of the SAC, T. Goergen denies the allegations contained therein.

117. Responding to Paragraph 117 of the SAC, T. Goergen denies the

allegations contained therein.

118. Responding to Paragraph 118 of the SAC, T. Goergen denies the allegations contained therein.

119. Responding to Paragraph 119 of the SAC, T. Goergen denies the allegations contained therein.

120. Responding to Paragraph 120 of the SAC, T. Goergen denies the allegations contained therein.

121. Responding to Paragraph 121 of the SAC, T. Goergen denies the allegations contained therein.

122. Responding to Paragraph 122 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

123. Responding to Paragraph 123 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

124. Responding to Paragraph 124 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

125. Responding to Paragraph 125 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

126. Responding to Paragraph 126 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

127. Responding to Paragraph 127 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.



128. Responding to Paragraph 128 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

129. Responding to Paragraph 129 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

130. Responding to Paragraph 130 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

131. Responding to Paragraph 131 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

132. Responding to Paragraph 132 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

133. Responding to Paragraph 133 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

134. Responding to Paragraph 134 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

135. Responding to Paragraph 135 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

136. Responding to Paragraph 136 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

137. Responding to Paragraph 137 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

138. Responding to Paragraph 138 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

139. Responding to Paragraph 139 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

140. Responding to Paragraph 140 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

141. Responding to Paragraph 141 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

142. Responding to Paragraph 142 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

143. Responding to Paragraph 143 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

144. Responding to Paragraph 144 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

145. Responding to Paragraph 145 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

146. Responding to Paragraph 146 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

147. Responding to Paragraph 147 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

148. Responding to Paragraph 148 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

149. Responding to Paragraph 149 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

150. Responding to Paragraph 150 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

151. Responding to Paragraph 151 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

152. Responding to Paragraph 152 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

153. Responding to Paragraph 153 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

154. Responding to Paragraph 154 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

155. Responding to Paragraph 155 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

156. Responding to Paragraph 156 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

157. Responding to Paragraph 157 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

158. Responding to Paragraph 158 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

159. Responding to Paragraph 159 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

160. Responding to Paragraph 160 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

161. Responding to Paragraph 161 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

162. Responding to Paragraph 162 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

163. Responding to Paragraph 163 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

164. Responding to Paragraph 164 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

165. Responding to Paragraph 165 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

166. Responding to Paragraph 166 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

167. Responding to Paragraph 167 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

168. Responding to Paragraph 168 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

169. Responding to Paragraph 169 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

170. Responding to Paragraph 170 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

171. Responding to Paragraph 171 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

172. Responding to Paragraph 172 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

173. Responding to Paragraph 173 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

174. Responding to Paragraph 174 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

175. Responding to Paragraph 175 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

176. Responding to Paragraph 176 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

177. Responding to Paragraph 177 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

178. Responding to Paragraph 178 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

179. Responding to Paragraph 179 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

180. Responding to Paragraph 180 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

181. Responding to Paragraph 181 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

182. Responding to Paragraph 182 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

183. Responding to Paragraph 183 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

184. Responding to Paragraph 184 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

185. Responding to Paragraph 185 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

186. Responding to Paragraph 186 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

187. Responding to Paragraph 187 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

188. Responding to Paragraph 188 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

189. Responding to Paragraph 189 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

190. Responding to Paragraph 190 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

191. Responding to Paragraph 191 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

192. Responding to Paragraph 192 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

193. Responding to Paragraph 193 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

194. Responding to Paragraph 194 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

195. Responding to Paragraph 195 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

196. Responding to Paragraph 196 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

197. Responding to Paragraph 197 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

198. Responding to Paragraph 198 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

199. Responding to Paragraph 199 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.



200. Responding to Paragraph 200 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

201. Responding to Paragraph 201 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

202. Responding to Paragraph 202 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

203. Responding to Paragraph 203 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

204. Responding to Paragraph 204 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

205. Responding to Paragraph 205 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

206. Responding to Paragraph 206 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

207. Responding to Paragraph 207 of the SAC, T. Goergen refers to Section 1962(d) for the content thereof.

208. Responding to Paragraph 208 of the SAC, T. Goergen re-states its responses contained in Paragraphs 1-207 as if fully set forth here.

209. Responding to Paragraph 209 of the SAC, T. Goergen denies the allegations contained therein.

210. Responding to Paragraph 210 of the SAC, T. Goergen denies the allegations contained therein.

211. Responding to Paragraph 211 of the SAC, T. Goergen denies the allegations contained therein..

212. Responding to Paragraph 212 of the SAC, that Paragraph relates exclusively to defendants who have been dismissed, and therefore T. Goergen need not answer that Paragraph.

213. Responding to Paragraph 213 of the SAC, T. Goergen denies that ViSalus ever operated as a pyramid scheme. T. Goergen is without knowledge or sufficient information to respond to the remaining allegations contained therein, and therefore denies the same.

214. Responding to Paragraph 214 of the SAC, that Paragraph relates exclusively to defendants who have been dismissed, and therefore T. Goergen need not answer that Paragraph.

215. Responding to Paragraph 215 of the SAC, that Paragraph relates exclusively to defendants who have been dismissed, and therefore T. Goergen need not answer that Paragraph.

216. Responding to Paragraph 216 of the SAC, T. Goergen denies the allegations contained therein.

217. Responding to Paragraph 217 of the SAC, T. Goergen denies the allegations contained therein.

218. Responding to Paragraph 218 of the SAC, T. Goergen denies the allegations contained therein related to him. T. Goergen is without knowledge or sufficient information to respond to the remaining allegations contained therein, and therefore denies the same.

219. Responding to Paragraph 219 of the SAC, T. Goergen denies the allegations contained therein.

220. Responding to Paragraph 220 of the SAC, T. Goergen denies the allegations contained therein.

221. Responding to Paragraph 221 of the SAC, T. Goergen re-states its responses contained in Paragraphs 1-220 as if fully set forth here.

222. Responding to Paragraph 222 of the SAC, T. Goergen denies that Plaintiffs have successfully alleged violations of securities laws or that those allegations are not a waiver of the Plaintiffs' racketeering claims.

223. Responding to Paragraph 223 of the SAC, T. Goergen denies the allegations contained therein.

224. Responding to Paragraph 224 of the SAC, T. Goergen denies the allegations contained therein.

225. Responding to Paragraph 225 of the SAC, T. Goergen denies the allegations contained therein.

226. Responding to Paragraph 226 of the SAC, T. Goergen denies the allegations contained therein.

227. Responding to Paragraph 227 of the SAC, T. Goergen denies the allegations contained therein.

228. Responding to Paragraph 228 of the SAC, T. Goergen denies the allegations contained therein.

229. Responding to Paragraph 229 of the SAC, T. Goergen denies the allegations contained therein.

230. Responding to Paragraph 230 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

231. Responding to Paragraph 231 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

232. Responding to Paragraph 232 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

233. Responding to Paragraph 233 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

234. Responding to Paragraph 234 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

235. Responding to Paragraph 235 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

236. Responding to Paragraph 236 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

237. Responding to Paragraph 237 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

238. Responding to Paragraph 238 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

239. Responding to Paragraph 239 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

240. Responding to Paragraph 240 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

241. Responding to Paragraph 241 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

242. Responding to Paragraph 242 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

243. Responding to Paragraph 243 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

244. Responding to Paragraph 244 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

245. Responding to Paragraph 245 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

246. Responding to Paragraph 246 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

247. Responding to Paragraph 247 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

248. Responding to Paragraph 248 of the SAC, T. Goergen re-states its responses contained in Paragraphs 1-247 as if fully set forth here.

249. Responding to Paragraph 249 of the SAC, T. Goergen denies the allegations contained therein.

250. Responding to Paragraph 250 of the SAC, T. Goergen refers to the common law in Michigan for the elements of an unjust enrichment claim.

251. Responding to Paragraph 251 of the SAC, T. Goergen denies the allegations contained therein.

252. Responding to Paragraph 252 of the SAC, T. Goergen denies the allegations contained therein.

253. Responding to Paragraph 253 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the allegations contained therein, and therefore denies the same.

254. Responding to Paragraph 254 of the SAC, T. Goergen is without knowledge or sufficient information to respond to the allegations contained therein, and therefore denies the same.

255. Responding to Paragraph 255 of the SAC, T. Goergen denies the allegations contained therein.

256. Responding to Paragraph 256 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

257. Responding to Paragraph 257 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

258. Responding to Paragraph 258 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

259. Responding to Paragraph 259 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

260. Responding to Paragraph 260 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

261. Responding to Paragraph 261 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

262. Responding to Paragraph 262 of the SAC, T. Goergen re-states its responses contained in Paragraphs 1-261 as if fully set forth here.

263. Responding to Paragraph 263 of the SAC, T. Goergen admits that Plaintiffs are asserting a claim for civil conspiracy. T. Goergen denies the remaining allegations contained in Paragraph 263.

264. Responding to Paragraph 264 of the SAC, T. Goergen refers to the Michigan common law for the elements of a civil conspiracy claim.

265. Responding to Paragraph 265 of the SAC, T. Goergen denies the allegations contained therein.

266. Responding to Paragraph 266 of the SAC, T. Goergen denies the allegations contained therein relating specifically to him. T. Goergen is without knowledge or sufficient information to respond to the remaining allegations contained therein, and therefore denies the same.

267. Responding to Paragraph 267 of the SAC, T. Goergen denies the allegations contained therein.

268. Responding to Paragraph 268 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

269. Responding to Paragraph 269 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

270. Responding to Paragraph 270 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

271. Responding to Paragraph 271 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

272. Responding to Paragraph 272 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

273. Responding to Paragraph 273 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

274. Responding to Paragraph 274 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

275. Responding to Paragraph 275 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

276. Responding to Paragraph 276 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

277. Responding to Paragraph 277 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

278. Responding to Paragraph 278 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.

279. Responding to Paragraph 279 of the SAC, that Paragraph relates to a claim that is not asserted against T. Goergen, and therefore he need not answer that Paragraph.



280. T. Goergen denies each and every allegation contained in the SAC not expressly admitted herein.

**AFFIRMATIVE DEFENSES**

As and for its affirmative defenses to the Second Amended Complaint, and each and every claim asserted therein, T. Goergen asserts the following:

**FIRST AFFIRMATIVE DEFENSE**

The SAC fails to state a claim upon which relief can be granted against T. Goergen and must, therefore, be dismissed.

**SECOND AFFIRMATIVE DEFENSE**

The SAC is barred, in whole or in part, due to a lack of any cognizable injury or damages legally compensable at law.

**THIRD AFFIRMATIVE DEFENSE**

The SAC is barred, in whole or in part, for lack of standing.

**FOURTH AFFIRMATIVE DEFENSE**

Although T. Goergen denies each and every allegation by Plaintiffs that it made misrepresentations or omissions, Plaintiffs knew or should have known the facts concerning such misrepresentations or omissions.

**FIFTH AFFIRMATIVE DEFENSE**

The SAC is barred, in whole or in part, because Plaintiffs, and the members of the purported class, did not rely on any alleged statement or omission by T. Goergen.

**SIXTH AFFIRMATIVE DEFENSE**

The SAC is barred, in whole or in part, based on the doctrine of unclean hands.

**SEVENTH AFFIRMATIVE DEFENSE**

The SAC is barred, in whole or in part, by the doctrines of waiver and/or estoppel.

**EIGHTH AFFIRMATIVE DEFENSE**

The documents and statements allegedly issued by ViSalus or others contain full and fair disclaimers with respect to the subject matter of each alleged misrepresentation or omission so as to fully inform prospective distributors as to the risks and benefits of becoming a ViSalus distributor.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiffs are barred from recovering some or all of their claimed losses because they failed to exercise reasonable care and diligence to avoid, minimize or mitigate their alleged damages.

**TENTH AFFIRMATIVE DEFENSE**

The SAC is barred, in whole or in part, by the doctrine of laches.

**ELEVENTH AFFIRMATIVE DEFENSE**

The SAC is barred, in whole or in part, by the applicable statutes of limitations.

**TWELFTH AFFIRMATIVE DEFENSE**

The SAC is barred, in whole or in part, because no act, conduct or omission of T. Goergen was a factor in bringing about any injury, damage or loss purportedly sustained by Plaintiffs, nor was any act or omission of T. Goergen a contributing cause thereof.

**THIRTEENTH AFFIRMATIVE DEFENSE**

The SAC is barred, in whole or in part, because Plaintiffs and/or purported class members, through actions or omissions, have expressly or implicitly consented to and ratified the acts about which Plaintiffs now complain.

**FOURTEENTH AFFIRMATIVE DEFENSE**

The SAC is barred, in whole or in part, by the doctrines of res judicata, collateral estoppel, and/or other similar doctrines of preclusion.

**FIFTEENTH AFFIRMATIVE DEFENSE**

The SAC is barred, in whole or in part, because at all relevant times T. Goergen's conduct was made in good faith.

**SIXTEENTH AFFIRMATIVE DEFENSE**

T. Goergen's business practices are not unfair, unlawful, or likely to mislead a reasonable consumer.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

T. Goergen's business practices and conduct falls within a safe harbor created by law.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

The SAC is barred, in whole or in part, because Plaintiffs consented to or approved of (by words or conduct) acts and omissions about which Plaintiffs now complain.

**NINETEENTH AFFIRMATIVE DEFENSE**

The SAC is barred, in whole or in part, to the extent that it is based on non-actionable puffing.

**TWENTIETH AFFIRMATIVE DEFENSE**

The SAC is barred, in whole or in part, by release of the asserted claims.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

The SAC is barred, in whole or in part, because any representations or statements alleged to have been made by ViSalus or T. Goergen were true and accurate at the time made and/or otherwise were made in good faith and with a reasonable belief as to their validity and accuracy and with reasonable belief that all of their conduct was lawful.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

The SAC is barred, in whole or in part, because Plaintiffs seek relief to which they are not entitled.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

The SAC is barred, in whole or in part, because Plaintiffs' state law claims are preempted by federal law.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

Plaintiffs knowingly and voluntarily assumed the risk that they may not be as successful as other ViSalus distributors under ViSalus' network marketing plan, and any damages sustained by Plaintiffs were the proximate result of the risks so assumed.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

The SAC is barred, in whole or in part, because Plaintiffs failed to seek such rescission in a timely manner.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

To the extent that Plaintiffs are entitled to seek rescission, the SAC is barred, in whole or in part, because Plaintiffs' own actions have rendered rescission impossible.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs' SAC is barred, in whole or in part, to the extent ViSalus complied with the defense set forth in *In re Amway Corp.*, 93 F.T.C. 618 (1979).

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

The equitable claims asserted in the SAC are barred, in whole or in part, because of and to the extent there is an adequate remedy at law.

**TWENTY-NINTH AFFIRMATIVE DEFENSE**

The SAC is barred, in whole or in part, because it alleges "damages" that was caused by Plaintiffs' own acts, or by the acts of third parties, for which T. Goergen is not responsible or liable.

**THIRTIETH AFFIRMATIVE DEFENSE**

The SAC is barred, in whole or in part, because recovery in favor of Plaintiffs would result in Plaintiffs' unjust enrichment.

**THIRTY-FIRST AFFIRMATIVE DEFENSE**

As to each and every claim asserted in the SAC, Plaintiffs do not constitute proper representatives of the putative class, are not qualified to protect and represent fairly and adequately the interests of every member of the purported class, and do not have claims typical of other putative class members.

**THIRTY-SECOND AFFIRMATIVE DEFENSE**

The SAC, and each claim for relief alleged against T. Goergen, fails to set forth facts that warrant class certification under Rule 23 because, among other things, members of the putative class have divergent interests, individual questions of law and fact predominate over questions of law and fact common to members of the putative class, and a class action is not superior to other available methods for the fair and efficient adjudication of this controversy.

**THIRTY-THIRD AFFIRMATIVE DEFENSE**

While T. Goergen denies any liability in this matter, any potential liability that might ultimately be determined must be offset by the extent to which any alleged losses, liabilities, or other damages or amounts for which Plaintiffs seek recovery are attributable to the conduct of Plaintiffs and third parties.

**THIRTY-FOURTH AFFIRMATIVE DEFENSE**

T. Goergen specifically reserves the right to assert any additional affirmative defenses that may become apparent during the course of discovery.

WHEREFORE, having fully answered the SAC, T. Goergen prays for judgment as follows:

1. That certification of the putative class be denied;
2. That the SAC be dismissed and that Plaintiffs take nothing from T. Goergen by virtue thereof;
3. That judgment be entered in favor of T. Goergen and against Plaintiffs;

4. That T. Goergen be awarded its attorneys' fees and costs of suit; and
5. For such other and further relief as the Court may deem just and proper.

Dated: April 25, 2016

Respectfully submitted,

By: /s/Nicholas B. Gorga  
Attorney for the ViSalus Defendants

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 25, 2016, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to all counsel of record.

By: /s/Nicholas B. Gorga  
Attorney for the ViSalus Defendants

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