

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

**DEFENDANTS' ANSWER TO SECOND  
AMENDED COMPLAINT AND AFFIRMATIVE DEFENSES**

NOW COME Defendants Michael Craig, Aaron Fortner, Rachel Jackson, Timothy Kirkland, Holley Kirkland, Jason O'Toole, Kyle Pacetti, Jr., Lori Petrilli, Nick Sarnicola, Frank Varon, and Tara Wilson, by and through their attorneys, Seyburn, Kahn, P.C., and in answer to Plaintiffs' Second Amended Complaint states as follows:

1. In answer to Paragraph 1, Defendants deny all of the allegations that refer to ViSalus as a pyramid scheme. Defendants neither admit nor deny whether over 100,000 people paid to become Independent Promoters of ViSalus. Defendants deny the remaining allegations as untrue.

2. In answer to Paragraph 2, Defendants neither admit nor deny the

allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

3. In answer to Paragraph 3, Defendants deny the allegations contained therein as untrue.

4. In answer to Paragraph 4, Defendants neither admit nor deny what promoters other than themselves might have known. Defendants admit that they are conducting sales in Canada and Europe. Defendants deny the remaining allegations as untrue.

5. In answer to Paragraph 5, Defendants deny that ViSalus is a pyramid scheme. Defendants deny the remaining allegations as untrue.

6. In answer to Paragraph 6, Defendants deny that ViSalus is a pyramid scheme. Defendants deny the remaining allegations as untrue.

7. In answer to Paragraph 7, Defendants admit that pyramid schemes are illegal, but deny the remaining allegations contained therein.

### **The Parties**

#### **Plaintiffs**

8. In answer to Paragraph 8, Defendants neither admit nor deny the allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

9. In answer to Paragraph 9, Defendants neither admit nor deny the

allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

10. In answer to Paragraph 10, Defendants deny that ViSalus is operating an illegal pyramid scheme. Defendants neither admit nor deny the remaining allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

11. In answer to Paragraph 11, Defendants neither admit nor deny the allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief, but deny that ViSalus is an illegal pyramid.

12. In answer to Paragraph 12, Defendants neither admit nor deny the allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief, but deny that ViSalus is an illegal pyramid.

13. In answer to Paragraph 13, Defendants neither admit nor deny the allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

14. In answer to Paragraph 14, Defendants neither admit nor deny the allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief, but deny that ViSalus is an illegal pyramid.

15. In answer to Paragraph 15, Defendants neither admit nor deny the allegations contained therein for the reason they are without sufficient information

to have knowledge or form a belief, but deny that ViSalus is an illegal pyramid.

**Defendants**

**Corporate Defendants**

16. In answer to Paragraph 16, Defendants neither admit nor deny the allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

17. In answer to Paragraph 17, Defendants deny that Ropart Asset Management Fund, LLC and Ropart Asset Management Fund II, LLC are Defendants. Defendants neither admit nor deny the remaining allegations for the reason they are without sufficient information to have knowledge or form a belief.

**Corporate Promoter Defendants**

18. In answer to Paragraph 18, Defendants neither admit nor deny the allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

19. In answer to Paragraph 19, Defendants neither admit nor deny the allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

20. In answer to Paragraph 20, Defendants deny that ViSalus is an illegal pyramid scheme or that Blair is a primary promoter of any such scheme. Defendants admit the remaining allegations.

21. In answer to Paragraph 21, Defendant Sarnicola admits he has residences in Florida and Michigan, and admits he is a shareholder of ViSalus. He admits he is one of the co-founders of ViSalus and left its employ in 2010. Sarnicola denies that he is a “Global Ambassador”, or that he controls any of the promoter downline. He further denies that ViSalus is a pyramid scheme, or that he is a primary promoter of any such scheme. The remaining Defendants neither admit nor deny the allegations for the reason they are without sufficient information to have knowledge or form a belief.

22. In answer to Paragraph 22, Defendants deny that ViSalus is an illegal pyramid scheme or that Mallen is a primary promoter of any such scheme. Defendants admit the remaining allegations.

23. In answer to Paragraph 23, Defendants deny that ViSalus is a pyramid scheme. Defendants admit that they are familiar with the network sales industry, but deny the remaining allegations for the reason they are not true.

#### **Individual Promoter Defendants**

24. In answer to Paragraph 24, Defendants deny the allegations contained therein as untrue.

25. In answer to Paragraph 25, Defendants deny the allegations contained therein as untrue.

26. In answer to Paragraph 26, Defendant Jackson denies the allegations.

27. In answer to Paragraph 27, Defendants admit the allegations contained therein.

28. In answer to Paragraph 28, Defendants admit the allegations contained therein.

29. In answer to Paragraph 29, Defendants admit the allegations contained therein.

30. In answer to Paragraph 30, Defendants admit the allegations contained therein.

31. In answer to Paragraph 31, Defendants deny the allegations contained therein as untrue.

32. In answer to Paragraph 32, Defendant Fortner admits that he resides in the San Diego, CA area. Since Residual Marketing, Inc. is no longer a Defendant, Defendants are not required to respond to the remaining allegations.

33. In answer to Paragraph 33, Defendant Wealth Builder International, LLC was dismissed from this litigation and, therefore, this paragraph requires no response.

### **Jurisdiction and Venue**

34. In answer to Paragraph 34, Defendants neither admit nor deny that they are subject to the jurisdiction of this Court. Defendants deny that they all continuously and systematically engaged in business in Michigan.

35. In answer to Paragraph 35, Defendants admit that they have received payments from ViSalus and that they have appeared in advertising or promotional materials. They deny the remaining allegations as untrue.

36. Defendant Sarnicola admits that he has a residence in Michigan. Defendants neither admit nor deny the remaining allegations for the reason they are without sufficient information to have knowledge or form a belief.

37. There are no limited liability Defendants in this litigation, therefore, this paragraph does not require an answer.

38. No contest.

39. In answer to Paragraph 39, Defendants neither admit nor deny the allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

40. In answer to Paragraph 40, Defendants neither admit nor deny the allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

41. In answer to Paragraph 41, Defendants state that MCLA 445.1528 speaks for itself.

42. In answer to Paragraph 42, Defendants neither admit nor deny the allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

43. In answer to Paragraph 43, Defendants neither admit nor deny the allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

44. In answer to Paragraph 44, Defendants deny that they operated a pyramid scheme.

45. In answer to Paragraph 45, Defendants admit the allegations.

46. In answer to Paragraph 46, Defendants admit the allegations.

47. In answer to Paragraph 47, Defendants admit that ViSalus offers two distributorship rights packages as described therein. Defendants neither admit nor deny the remaining allegations for the reason they are without sufficient information to have knowledge or form a belief.

48. In answer to Paragraph 48, Defendants neither admit nor deny the allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

49. In answer to Paragraph 49, Defendants admit that Sarnicola has appeared in videos and in person at meetings to promote the ViSalus program. Defendants neither admit nor deny the remaining allegations for the reason they are without sufficient information to have knowledge or form a belief.

50. In answer to Paragraph 50, Defendants admit that new enrollees are offered additional features for purchase. Defendants neither admit nor deny the



remaining allegations for the reason they are without sufficient information to have knowledge or form a belief.

51. In answer to Paragraph 51, Defendants neither admit nor deny the allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

52. In answer to Paragraph 52, Defendants neither admit nor deny the allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

53. In answer to Paragraph 53, Defendants state that the Compensation Plan speaks for itself.

54. In answer to Paragraph 54, Defendants deny that they are promoters of a scheme and they deny the remaining allegations as untrue.

55. In answer to Paragraph 55, Defendants state that the Compensation Plan speaks for itself. Defendants neither admit nor deny the remaining allegations for the reason they are without sufficient information to have knowledge or form a belief.

56. In answer to Paragraph 56, Defendants deny Plaintiffs' characterization of payments under the Compensation Plan.

57. In answer to Paragraph 57, Defendants state that the Compensation Plan speaks for itself.

58. In answer to Paragraph 58, Defendants state that the Compensation Plan speaks for itself.

59. In answer to Paragraph 59, Defendants refer to the materials depicted therein for the content thereof.

60. In answer to Paragraph 60, Defendants state that the Compensation Plan speaks for itself and Defendants deny Plaintiffs' characterization of the bonuses.

61. In answer to Paragraph 61, Defendants state that the ViSalus Plan Book speaks for itself.

62. In answer to Paragraph 62, Defendants state that the Compensation Plan speaks for itself and Defendants deny Plaintiffs' characterization of the bonuses.

63. In answer to Paragraph 63, Defendants state that the Compensation Plan speaks for itself.

64. In answer to Paragraph 64, Defendants deny that the Compensation Plan rewards recruiting above all else. Defendants neither admit nor deny the remaining allegations for the reason they are without sufficient information to have knowledge or form a belief.

65. In answer to Paragraph 65, Defendants state that the Welcome Booklet speaks for itself.

66. In answer to Paragraph 66, Defendants neither admit nor deny the allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

67. In answer to Paragraph 67, Defendants deny Plaintiffs' characterization of the ViSalus ranking system. Defendants neither admit nor deny the remaining allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

68. In answer to Paragraph 68, Defendants deny Plaintiffs' characterization of ViSalus as a pyramid scheme. Defendants neither admit nor deny the remaining allegations for the reason they are without sufficient information to have knowledge or form a belief.

69. In answer to Paragraph 69, Defendants deny Plaintiffs' characterization of ViSalus as a pyramid scheme. Defendants neither admit nor deny the remaining allegations for the reason they are without sufficient information to have knowledge or form a belief.

70. In answer to Paragraph 70, Defendant deny the allegations regarding their knowledge of the demand for the product. In further answer, Defendants neither admit nor deny the remaining allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

71. In answer to Paragraph 71, Defendants neither admit nor deny the

allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

72. In answer to Paragraph 72, Defendants neither admit nor deny the allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

73. In answer to Paragraph 73, Defendants neither admit nor deny the allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

74. In answer to Paragraph 74, Defendants neither admit nor deny the allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

75. In answer to Paragraph 75, Defendants deny that they know that the majority of new sign-ups will lose money. Defendants neither admit nor deny the remaining allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

76. In answer to Paragraph 76, Defendants state that the promotions speak for themselves. Defendants deny that they are professionals who were paid for recruiting others.

77. In answer to Paragraph 77, Defendants admit the allegations contained therein.

78. In answer to Paragraph 78, Defendants deny Plaintiffs' characterization of the ViSalus ranking system. In further answer, Defendants state that the excerpt from the ViSalus website speaks for itself.

79. In answer to Paragraph 79, Defendant Sarnicola admits that ViSalus reimburses him for some of his travel expenses incurred in marketing ViSalus. Defendant Sarnicola states that the videos referenced speak for themselves. Defendants deny the remaining allegations as untrue.

80. In answer to Paragraph 80, Defendants state that the videos and presentations speak for themselves.

81. In answer to Paragraph 81, Defendants deny that ViSalus is a pyramid scheme. Defendants admit the remaining allegations.

82. In answer to Paragraph 82, Defendants deny the allegations contained therein as untrue.

83. In answer to Paragraph 83, Defendants neither admit nor deny the allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

84. In answer to Paragraph 84, Defendants state that the Compensation Plan speaks for itself. In further answer, Defendants neither admit nor deny the remaining allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

85. In answer to Paragraph 85, Defendants neither admit nor deny the allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

86. In answer to Paragraph 86, Defendants neither admit nor deny the allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

87. In answer to Paragraph 87, Defendants state that the video referenced therein speaks for itself.

88. In answer to Paragraph 88, Defendants admit the allegations contained therein.

89. In answer to Paragraph 89, Defendants state that the Compensation Plan speaks for itself. Defendants neither admit nor deny the remaining allegations for the reason they are without sufficient information to have knowledge or form a belief.

90. In answer to Paragraph 90, Defendants neither admit nor deny the allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

91. In answer to Paragraph 91, Defendant Jackson admits that she is shown in the photograph. In further answer, Defendants deny the remaining allegations as stated.

92. In answer to Paragraph 92, Defendants neither admit nor deny the allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

93. In answer to Paragraph 93, Defendants admit that they are featured in ViSalus promotions. Defendants neither admit nor deny the remaining allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

94. In answer to Paragraph 94, Defendants admit that Mallen, Blair and Sarnicola are featured in various videos and books, but deny Plaintiffs' characterizations of the content of those videos and books.

95. In answer to Paragraph 95, Defendants admit that Pacetti, Wilson, O'Toole and Sarnicola have appeared on "The Pyramid Thing", but deny that Jackson appeared on the show or that ViSalus created or sponsored "The Pyramid Thing". The message of the series speaks for itself. Defendants admit the remaining allegations.

96. In answer to Paragraph 96, Defendants admit that there are numerous videos on the Internet that promote ViSalus, but neither admit nor deny the remaining allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

97. In answer to Paragraph 97, Defendants admit that Ashley and Nick

Sarnicola speak at ViSalus promotional events. Defendants deny the accuracy of Plaintiffs' depiction of those events.

98. In answer to Paragraph 98, Defendants deny the accuracy of Plaintiffs' characterizations of ViSalus promotions.

99. In answer to Paragraph 99, Defendants admit that ViSalus promotes itself through the meetings and events described therein, but denies the accuracy of Plaintiffs' characterization of those meetings and events.

100. In answer to Paragraph 100, Defendants state that the PowerPoint pictures speak for themselves. Defendants deny the remaining allegations as untrue.

101. In answer to Paragraph 101, Defendants admit that the ranking of IPs is handled by a program designed by iCentris. The remaining allegations are denied in the form and manner stated by Plaintiffs.

102. In answer to Paragraph 102, Defendants deny the allegations stated therein as untrue.

103. In answer to Paragraph 103, Defendants deny the allegations contained therein as untrue.

104. In answer to Paragraph 104, Defendants neither admit nor deny the allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.



105. In answer to Paragraph 105, Defendants neither admit nor deny the allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

106. In answer to Paragraph 106, Defendants state that the Compensation Plan speaks for itself. Defendants neither admit nor deny the remaining allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

107. In answer to Paragraph 107, Defendants neither admit nor deny the allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

108. In answer to Paragraph 108, Defendants deny that ViSalus is a pyramid scheme, and deny the remaining allegations in the form and manner stated.

109. In answer to Paragraph 109, Defendants admit that an IPO was contemplated in 2012. Defendants deny the remaining allegations contained therein for the reason they are not true.

110. In answer to Paragraph 110, Defendants Wilson and Jackson admit that they have left ViSalus and are now associated with Life Vantage. Defendant Sarnicola admits that he has repurchased ViSalus stock from Blyth, Inc. Defendants deny the remaining allegations as untrue.

**Class Action Allegations**

111. Defendants state that this allegation does not require a response, but in further answer, state that Plaintiffs' claims are not entitled to be certified as a class action under Fed.R.Civ.P. 23(b).

112. Defendants state that this allegation does not require a response, but in further answer, state that Plaintiffs' claims are not entitled to be certified as a class action under Fed.R.Civ.P. 23(b).

113. In answer to Paragraph 113, Defendants deny the allegations contained therein as untrue.

114. In answer to Paragraph 114, Defendants deny that Plaintiffs will adequately represent the interests of the class. Defendants neither admit nor deny the remaining allegations for the reason they are without sufficient information to have knowledge or form a belief.

115. In answer to Paragraph 115, Defendants deny the allegations contained therein as untrue.

116. In answer to Paragraph 116, Defendants deny the allegations contained therein as untrue.

117. In answer to Paragraph 117, Defendants deny the allegations contained therein as untrue.

118. In answer to Paragraph 118, Defendants deny that there are common

issues of law or fact.

119. In answer to Paragraph 119, Defendants deny the allegations contained therein as untrue.

120. In answer to Paragraph 120, Defendants deny the allegations contained therein as untrue.

121. In answer to Paragraph 121, Defendants deny the allegations contained therein as untrue.

### **Count One**

122. In answer to Paragraph 122, Defendants state that the statute speaks for itself.

123. In answer to Paragraph 123, Defendants state that the statute speaks for itself.

124. In answer to Paragraph 124, Defendants state that the statute speaks for itself.

125. In answer to Paragraph 125, Defendants deny the allegations contained therein as untrue.

126. In answer to Paragraph 126, Defendants deny the allegations contained therein as untrue.

127. In answer to Paragraph 127, Defendants neither admit nor deny the allegations contained therein for the reason they are without sufficient information

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to have knowledge or form a belief.

128. In answer to Paragraph 128, Defendant Sarnicola admits that Blair met Sarnicola and Mallen in 2005. Defendant Sarnicola denies the remaining allegations contained therein as untrue. The remaining Defendants neither admit nor deny the allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

129. In answer to Paragraph 129, Defendant Sarnicola admits that ViSalus has had an affiliation with Dr. Michael Seidman, who was previously with Henry Ford Hospital and who is a patent holder and, upon information and belief, recipient of NIH grants. Sarnicola further admits that ViSalus has paid Dr. Seidman licensing fees. The Defendants neither admit nor deny the remaining allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

130. In answer to Paragraph 130, Defendants deny that ViSalus has operated as a pyramid scheme. Sarnicola admits that ViSalus has worked with Michael Sheffield and denies the remaining allegations contained in Paragraph 130. The remaining Defendants neither admit nor deny the remaining allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

131. In answer to Paragraph 131, Defendants state that the 2012 Prospectus

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and the ViSalus website biographies referenced therein speak for themselves. Defendants neither admit nor deny the remaining allegations for the reason they are without sufficient information to have knowledge or form a belief.

132. In answer to Paragraph 132, Defendants state that the interviews referenced therein speak for themselves.

133. In answer to Paragraph 133, Defendants deny that ViSalus has operated as a pyramid scheme. Sarnicola denies that Robert Goergen, Sr. and Todd Goergen lent Blair \$1.5 million to buy all or some of ViSalus' assets and became ViSalus shareholders. Defendants neither admit nor deny the remaining allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

134. In answer to Paragraph 134, Sarnicola admits that Defendant Blair has served as ViSalus' Chief Executive Officer and that Defendants Sarnicola, Blair, and Mallen have referred to themselves as "co-founders." Defendants neither admit nor deny the allegation regarding the Goergens' knowledge for the reason they are without sufficient information to have knowledge or form a belief. Defendants deny the remaining allegations contained therein.

135. In answer to Paragraph 135, Defendants refer to the video referenced therein for the contents thereof. Defendants further refer to the Membership Interest Purchase Agreement for the content thereof. Defendants neither admit nor

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deny the remaining allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

136. In answer to Paragraph 136, Defendant Sarnicola admits [use ViSalus answer]. The remaining Defendants neither admit nor deny the remaining allegations for the reason they are without sufficient information to have knowledge or form a belief.

137. In answer to Paragraph 137, Defendants neither admit nor deny the allegations regarding Blyth and Goergens for the reason they are without sufficient information to have knowledge or form a belief. Defendants deny the remaining allegations contained therein.

138. In answer to Paragraph 138, Defendants deny the allegations contained therein as untrue.

139. In answer to Paragraph 139, Defendants deny the allegations contained therein as untrue.

140. In answer to Paragraph 140, Defendants deny the allegations contained therein as untrue.

141. In answer to Paragraph 141, Defendants deny the allegations contained therein as untrue.

142. In answer to Paragraph 142, Defendant Sarnicola admits that he records videos promoting the benefits of the ViSalus products and the opportunity

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to join ViSalus. In further answer, Defendants deny the remaining allegations.

143. In answer to Paragraph 143, Defendants neither admit nor deny the allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

144. In answer to Paragraph 144, Defendants neither admit nor deny the allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

145. In answer to Paragraph 145, Defendants state that the videos speak for themselves.

146. In answer to Paragraph 146, Defendants state that the statements referenced therein speak for themselves.

147. In answer to Paragraph 147, Defendants neither admit nor deny the allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

148. In answer to Paragraph 148, Defendants state that the video and website referenced therein speak for themselves. Defendant Sarnicola admits that Todd Goergen, as Chief Strategy Officer, has promoted ViSalus. The remaining Defendants neither admit nor deny the remaining allegations for the reason they are without sufficient information to have knowledge or form a belief.

149. In answer to Paragraph 149, Defendants deny the allegations

contained therein as untrue.

150. In answer to Paragraph 150, Defendants state that the videos speak for themselves.

151. In answer to Paragraph 151, Defendants state that the videos speak for themselves.

152. In answer to Paragraph 152, Defendants neither admit nor deny the allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

153. In answer to Paragraph 153, Defendants deny that ViSalus is a pyramid scheme.

154. In answer to Paragraph 154, Defendants deny the allegations contained therein as untrue.

155. In answer to Paragraph 155, Defendants deny the allegations contained therein as untrue.

156. In answer to Paragraph 156, Defendants deny that ViSalus is a pyramid scheme. Defendants deny making false statements.

157. In answer to Paragraph 157, Defendants deny that the statements referenced therein were false or an act of racketeering.

158. In answer to Paragraph 158, Defendant Fortner admits that he joined ViSalus as a promoter in June, 2010 and ceased promotion activities in 2013. He

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also admits that he maintained a website as referenced therein, but that said website is currently offline. Since Residual Marketing, Inc. is no longer a Defendant, Defendants are not required to respond to the remaining allegations.

159. In answer to Paragraph 159, Defendants deny the allegations contained therein as untrue.

160. In answer to Paragraph 160, Defendants state that the videos and blog referenced therein speak for themselves. Defendant Fortner denies the remaining allegations.

161. In answer to Paragraph 161, Defendants state that the interview speaks for itself. Defendants deny that ViSalus is a pyramid scheme.

162. In answer to Paragraph 162, Defendant Jackson admits that Fortner was upline from her and that the videos referenced therein speak for themselves. Defendant Jackson denies the remaining allegations as they are not true.

163. In answer to Paragraph 163, Defendant Jackson denies the allegations contained therein.

164. In answer to Paragraph 164, Defendant O'Toole admits he is a promoter in Canada. The videos and interviews speak for themselves. Defendant O'Toole denies the remaining allegations.

165. In answer to Paragraph 165, Defendant Craig admits that he was formerly the ViSalus Director of Sales, North America, from 2008 to 2010. He

admits he left with Defendant Sarnicola to become an independent promoter. He admits he and his wife had in the past operated a website promoting ViSalus, but does not know if it is still active. He denies the remaining allegations as untrue.

166. In answer to Paragraph 166, Defendant Craig states that the article and press release referenced therein speak for themselves. The remaining allegations are denied as untrue.

167. In answer to Paragraph 167, Defendant Pacetti admits he joined ViSalus in 2010 and is responsible for over 10% of the company's downline. He admits that he is a "Top Earner" and achieved his status in 45 days. He states that the press releases speak for themselves. Defendant Pacetti denies the remaining allegations as untrue.

168. In answer to Paragraph 168, Defendant Pacetti admits that he maintains a website and is a Crown Ambassador. He admits that he participates in events for both potential recruits and for ViSalus promoters. He states that the videos speak for themselves. He denies the remaining allegations as untrue.

169. In answer to Paragraph 169, Defendant Pacetti admits that he was responsible for more than 10% of the ViSalus downline in 2012 and his Lamborghini appeared on The Pyramid Thing. He denies the remaining allegations as untrue.

170. In answer to Paragraph 170, Defendants Petrilli and Varon deny that

they were or are married to each other. They also deny the remaining allegations as untrue.

171. In answer to Paragraph 171, Defendants Petrilli and Varon admit they have been featured in various ViSalus materials and state that the videos referenced therein speak for themselves. They deny the remaining allegations as untrue.

172. In answer to Paragraph 172, Defendants Petrilli and Varon deny they are or were married to each other. They deny the remaining allegations as untrue.

173. In answer to Paragraph 173, Defendant Wilson admits that she was a significant distributor for ViSalus, and was a distributor for GeneWiz. She admits that she was a Diamond Ambassador and that the news release and videos referenced therein speak for themselves. She admits that she appeared on The Pyramid Thing. Defendant Wilson denies all the remaining allegations as untrue.

174. In answer to Paragraph 174, Defendant Timothy Kirkland states that the videos speak for themselves. He denies the remaining allegations as untrue.

175. In answer to Paragraph 175, Defendants deny the allegations contained therein as untrue.

176. In answer to Paragraph 176, Defendants deny the allegations contained therein as untrue.

177. In answer to Paragraph 177, Defendants deny the allegations

contained therein as untrue.

178. In answer to Paragraph 178, Defendants deny the allegations contained therein as untrue.

179. In answer to Paragraph 179, Defendants deny the allegations contained therein as untrue.

180. In answer to Paragraph 180, Defendants state that the statute speaks for itself. Defendants deny the remaining allegations.

181. In answer to Paragraph 181, Defendants state that the statute speaks for itself.

182. In answer to Paragraph 182, Defendants deny the allegations contained therein as untrue.

183. In answer to Paragraph 183, Defendants neither admit nor deny the allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

184. In answer to Paragraph 184, Defendants deny the allegations contained therein as untrue.

185. In answer to Paragraph 185, Defendants deny that ViSalus is a pyramid scheme. Defendants neither admit nor deny the remaining allegations for the reason they are without sufficient information to have knowledge or form a belief.

186. In answer to Paragraph 186, Defendants deny the allegations contained therein as untrue.

187. In answer to Paragraph 187, Defendants state that the statute speaks for itself.

188. In answer to Paragraph 188, Defendants deny the allegations contained therein as untrue.

189. In answer to Paragraph 189, Defendants state the statute speaks for itself.

190. In answer to Paragraph 190, Defendants state that the statute speaks for itself. Defendants deny the remaining allegations.

191. In answer to Paragraph 191, Defendants state that the statute speaks for itself. Defendants deny the remaining allegations as untrue.

192. In answer to Paragraph 192, Defendant Sarnicola denies that he committed at least two acts of mail and/or wire fraud. Defendants further deny that any of the acts attributed to them in this paragraph constitute mail or wire fraud.

193. In answer to Paragraph 193, Defendants deny the allegations contained therein and deny that scienter can be inferred from the activities described therein.

194. In answer to Paragraph 194, Defendants deny the allegations

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contained therein as untrue.

195. In answer to Paragraph 195, Defendants deny the allegations contained therein as untrue.

196. In answer to Paragraph 196, Defendants deny the allegations contained therein as untrue.

197. In answer to Paragraph 197, Defendants deny the allegations contained therein as untrue.

198. In answer to Paragraph 198, Defendants state that the statute speaks for itself.

199. In answer to Paragraph 199, Defendants neither admit nor deny the allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

200. In answer to Paragraph 200, Defendants deny that ViSalus is a pyramid scheme. Defendants deny the remaining allegations as untrue.

201. In answer to Paragraph 201, Defendants deny the allegations contained therein as untrue.

202. In answer to Paragraph 202, Defendants deny the allegations contained therein as untrue.

203. In answer to Paragraph 203, Defendants deny the allegations contained therein.

204. In answer to Paragraph 204, Defendants deny the allegations contained therein as untrue.

205. In answer to Paragraph 205, Defendants deny that they participated in an illegal pyramid scheme.

206. In answer to Paragraph 206, Defendants neither admit nor deny the allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief, but in further answer deny that the program is illegal.

### **Count Two**

207. In answer to Paragraph 207, Defendants state the statute speaks for itself.

208. Defendants incorporate their responses to paragraphs 1 through 207 as if fully set forth herein.

209. In answer to Paragraph 209, Defendants deny the allegations contained therein as untrue.

210. In answer to Paragraph 210, Defendants deny the allegations contained therein as untrue.

211. In answer to Paragraph 211, Defendants incorporate by reference their prior responses to the allegations in Count I.

212. In answer to Paragraph 212, Defendants are not required to respond to

this allegation since the Ropart Defendants are no longer Defendants in this litigation.

213. In answer to Paragraph 213, Defendant Holley Kirkland denies the allegations contained therein.

214. In answer to Paragraph 214, Defendant Fortner admits that he owns Residual Marketing, but denies the remaining allegations as untrue.

215. In answer to Paragraph 215, Defendants are not required to respond to this allegation since Wealth Builders Management is no longer a Defendant in this litigation.

216. In answer to Paragraph 216, Defendants deny the allegations contained therein as untrue.

217. In answer to Paragraph 217, Defendants deny the allegations contained therein as untrue.

218. In answer to Paragraph 218, Defendants deny that ViSalus is a pyramid scheme. In further answer, Defendants deny every allegation in the form and manner stated.

219. In answer to Paragraph 219, Defendants deny the allegations contained therein as untrue.

220. In answer to Paragraph 220, Defendants deny the allegations contained therein as untrue.



**Count Three**

221. In answer to Paragraph 221, Defendants incorporate by reference their prior responses to the allegations in Count II.

222. In answer to Paragraph 222, Defendant Sarnicola denies the allegations contained therein as untrue.

223. In answer to Paragraph 223, Defendant Sarnicola denies the allegations contained therein as untrue.

224. In answer to Paragraph 224, Defendant Sarnicola denies the allegations contained therein as untrue.

225. In answer to Paragraph 225, Defendant Sarnicola denies the allegations contained therein as untrue.

226. In answer to Paragraph 226, Defendant Sarnicola denies the allegations contained therein as untrue.

227. In answer to Paragraph 227, Defendant Sarnicola denies the allegations contained therein as untrue.

228. In answer to Paragraph 228, Defendant Sarnicola denies the allegations contained therein as untrue.

229. In answer to Paragraph 229, Defendant Sarnicola denies the allegations contained therein as untrue.

**Count Four**

230-236. This Count is not directed at any of the Defendants who are filing this Answer, and therefore, does not require a response from these Defendants.

**Count Five**

237-240. This Count is not directed at any of the Defendants who are filing this Answer, and therefore, does not require a response from these Defendants.

**Count Six**

241. In answer to Paragraph 241, Defendant Sarnicola denies the allegations contained therein as untrue.

242. In answer to Paragraph 242, the statute speaks for itself.

243. In answer to Paragraph 243, Defendant Sarnicola denies the allegations contained therein as untrue.

244. In answer to Paragraph 244, Defendant Sarnicola denies that the Compensation Plan contains misrepresentations, and neither admits nor denies the remaining allegations for the reason he is without sufficient information to have knowledge or form a belief.

245. In answer to Paragraph 245, Defendant Sarnicola denies the allegations contained therein as untrue.

246. In answer to Paragraph 246, Defendant Sarnicola denies that ViSalus is an illegal pyramid scheme, and neither admits nor denies the remaining

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allegations for the reason he is without sufficient information to have knowledge or form a belief.

247. In answer to Paragraph 247, Defendant Sarnicola denies the allegations contained therein as untrue.

### **Count 7**

248. Defendants incorporate their responses to paragraphs 1 through 247 as if fully set forth herein.

249. This paragraph requires no response.

250. In answer to Paragraph 250, Defendants neither admit nor deny the allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

251. In answer to Paragraph 251, Defendants deny the allegations contained therein as untrue.

252. In answer to Paragraph 252, Defendants deny the allegations contained therein as untrue.

253. In answer to Paragraph 253, Defendants deny the allegations contained therein as untrue.

254. In answer to Paragraph 254, Defendant Sarnicola denies the allegations contained therein as untrue.

255. In answer to Paragraph 255, Defendants deny the allegations

contained therein as untrue.

### **Count Eight**

256-261. This Count is not directed at any of the Defendants who are filing this Answer, and therefore, does not require a response from these Defendants.

### **Count Nine**

262. Defendants incorporate their responses to paragraphs 1 through 261 as if fully set forth herein.

263. This paragraph requires no response.

264. In answer to Paragraph 264, Defendants neither admit nor deny the allegations contained therein for the reason they are without sufficient information to have knowledge or form a belief.

265. In answer to Paragraph 265, Defendants deny the allegations contained therein as untrue.

266. In answer to Paragraph 266, Defendants deny the allegations contained therein as untrue.

267. In answer to Paragraph 267, Defendants deny the allegations contained therein as untrue.

### **Count Ten**

268-274. This Count is not directed at any of the Defendants who are filing this Answer, and therefore, does not require a response from these Defendants.

**Count Eleven**

275-279. This Count is not directed at any of the Defendants who are filing this Answer, and therefore, does not require a response from these Defendants.

WHEREFORE, Defendants Michael Craig, Aaron Fortner, Rachel Jackson, Timothy Kirkland, Holley Kirkland, Jason O'Toole, Kyle Pacetti, Jr., Lori Petrilli, Nick Sarnicola, Frank Varon, and Tara Wilson pray that this Honorable Court dismiss Plaintiffs' Second Amended Complaint and award Defendants their costs and attorney fees.

**SEYBURN KAHN, P.C.**

/s/ Barry M. Rosenbaum (P26487)

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*Attorneys for Promoter and Entity*

*Defendants*

Dated: April 25, 2016

**AFFIRMATIVE DEFENSES**

NOW COME Defendants Michael Craig, Aaron Fortner, Rachel Jackson, Timothy Kirkland, Holley Kirkland, Jason O'Toole, Kyle Pacetti, Jr., Lori Petrilli, Nick Sarnicola, Frank Varon, and Tara Wilson, by and through their attorneys,

Seyburn, Kahn, P.C., and for their Affirmative Defenses to Plaintiffs' Second Amended Complaint states as follows:

1. Plaintiffs have failed to state a claim upon which relief can be granted.
2. Plaintiffs' claims are barred by the applicable statute of limitations.
3. Plaintiffs' claims are barred by the equitable doctrines of estoppel, waiver, payment, accord and satisfaction, laches, waiver, and/or unclean hands.
4. Plaintiffs' claims are barred, in whole or in part, due to a lack of any cognizable injury or damages legally compensable at law.
5. Plaintiffs' claims are barred, in whole or in part, for lack of standing.
6. Defendants never made any misrepresentations to Plaintiffs.
7. Any alleged promises that Plaintiffs claim Defendants made, while denied by Defendants, would nevertheless constitute non-enforceable future promises.
8. Plaintiffs' claims are 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 Defendants.
9. Plaintiffs' claims are barred because the documents and statements allegedly issued by Defendants 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 distributor.

10. 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.

11. Plaintiffs' claims are barred, in whole or in part, because no act, conduct or omission of Defendants was a factor in bringing about any injury, damage or loss purportedly sustained by Plaintiffs, nor was any act or omission of Defendants a contributing cause thereof.

12. Plaintiffs' claims are 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.

13. Plaintiffs' claims are barred, in whole or in part, by the doctrines of res judicata, collateral estoppel, and/or other similar doctrines of preclusion.

14. Plaintiffs' claims are barred, in whole or in part, because at all relevant times Defendants' conduct was in good faith.

15. The business judgment rule protects Defendants' decision making and conduct.

16. Plaintiffs' claims are 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.

17. Plaintiffs' claims are barred, in whole or in part, to the extent that they are based on non-actionable puffing.

18. Plaintiffs' claims are barred, in whole or in part, by release of the asserted claims.

19. Plaintiffs' claims are barred, in whole or in part, because any representations or statements alleged to have been made by Defendants 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 Defendants' conduct was lawful.

20. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs seek relief to which they are not entitled.

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

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



23. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs failed to seek such rescission in a timely manner.

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

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

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

27. Plaintiffs' claims are barred, in whole or in part, because it alleges "damages" that were caused by Plaintiffs' own acts, or by the acts of third parties, for which Defendants are not responsible or liable.

28. Plaintiffs' claims are barred, in whole or in part, because recovery in favor of Plaintiffs would result in Plaintiffs' unjust enrichment.

29. As to each and every claim asserted by Plaintiffs, they 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.

30. Plaintiffs' Second Amended Complaint, and each claim for relief alleged against Defendants, 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.

31. While Defendants deny 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.

32. Plaintiffs have no actual damages.

33. Plaintiffs cannot prove damages without speculation and conjecture.

34. Plaintiffs' damages, if any, were the result of intervening and superseding causes.

35. Plaintiffs' damages, if any, were not caused by Defendants.

36. Plaintiffs' damages, if any, were caused by Plaintiffs themselves and/or by third-parties, but not by Defendants.

37. Plaintiffs' claim for damages is excessive.

38. Defendants did not knowingly agree to a scheme involving the operation or management of a RICO enterprise.

39. Defendants did not engage in a scheme to defraud Plaintiffs.

40. Defendants did not have a meeting of the minds amongst themselves to commit any fraudulent act.

Defendants specifically reserve the right to assert any additional affirmative defenses that may become apparent during the course of discovery.

WHEREFORE, Defendants Michael Craig, Aaron Fortner, Rachel Jackson, Timothy Kirkland, Holley Kirkland, Jason O'Toole, Kyle Pacetti, Jr., Lori Petrilli, Nick Sarnicola, Frank Varon, and Tara Wilson pray that this Honorable Court dismiss Plaintiffs' Second Amended Complaint and award Defendants their costs and attorney fees.

**SEYBURN KAHN, P.C.**

/s/ Barry M. Rosenbaum (P26487)

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*Attorneys for Promoter and Entity*

*Defendants*

Dated: April 25, 2016

**CERTIFICATE OF SERVICE**

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

**SEYBURN KAHN, P.C.**

/s/ Barry M. Rosenbaum (P26487)

Barry M. Rosenbaum (P26487)