

# If you joined ViSalus as an Independent Promoter (“IP”) between July 9, 2008, and June 14, 2019, this Notice of Class Action Settlement may affect you.

*A Federal Court ordered the distribution of this Notice to you and others similarly situated. Do not be alarmed; you are not being sued. This is not a solicitation from a lawyer.*

- **Please read this document carefully**—your rights may be affected by the Settlement described below.
- This Notice concerns the Settlement of a class action in a matter pending before the U.S. District Court for the Eastern District of Michigan. The Settlement does not constitute an admission of liability or wrongdoing by the defendants.
- This Notice is not an expression by the Court of any opinion on the merits of the claims and defenses asserted by either side.
- You received a Notice by either email or postcard because you are believed to be a member of the Class and therefore may participate in the Settlement, unless you ask to be excluded as explained below.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>Participate in the Settlement</b>	<p><b>Stay in the class and give up the right to sue the Defendants separately. You do not need to do anything to remain in the Class.</b></p> <p>If you wish to participate in the Settlement and you wish to receive the Benefits Option described below, you do not need to do anything. If you wish to participate in the Settlement and elect the Cash Option described below, you must complete the required Election Form by <b>August 28, 2019</b>. The Election Form may be completed online at <b>www.ViSalusSettlement.com</b>, or mailed to the Settlement Administrator. If you do not timely complete the Election Form, and do not opt out of the Settlement, you will be automatically enrolled in the Benefits Option. By participating in the Settlement, you give up any rights to sue the Defendants separately over the Released Claims, as described below.</p>
<b>Exclude Yourself</b>	<p><b>“Opt out” of the Class. Do not receive any benefit from the Settlement. Keep the right to sue the Defendants separately.</b></p> <p>If you choose to exclude yourself from the Settlement Class (as explained below), you won’t share in any Settlement benefits. But, you will keep your right to sue the Defendants. The deadline to exclude yourself is <b>August 28, 2019</b>.</p>
<b>Object to the Settlement</b>	<p><b>You may object to the Settlement and you may request to appear at the Final Approval Hearing.</b></p> <p>If you object to the Settlement, you remain a member of the Class. The requirements to object to the Settlement are explained below. The deadline to object to the Settlement is <b>August 28, 2019</b>.</p>

- Your rights and options—and the deadlines to exercise them—are explained in this Notice.
- A full copy of the Settlement Agreement, the Plaintiffs’ complaint which names the parties and explains the claims, the Defendants’ answer to the complaint, and other documents filed in this case are available at **www.ViSalusSettlement.com**.

## WHAT THIS NOTICE CONTAINS

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### 1. Why did I receive a Notice?

If you received a Notice by email or postcard, you were identified as an individual who may have joined ViSalus as an Independent Promoter (“IP”) and paid ViSalus more than you have received through the ViSalus sales system. If so, and you meet the Class definition in Section 4 below, you are a member of the Settlement Class and are entitled to benefit from the Settlement, provided that you do not exclude yourself from the Class.

The Court in charge of this class action is the United States District Court for the Eastern District of Michigan, Judge Matthew F. Leitman presiding, in *Kerrigan et al., plaintiffs, v. ViSalus, Inc., et al., defendants*, Civil Case No. 2:14-cv-12693. This Court has ordered this Notice of Class Action Settlement be delivered to you by email.

### 2. What is this lawsuit about?

The Plaintiffs sued the Defendants claiming they lost money because Defendants allegedly violated the federal Racketeer Influenced and Corrupt Organizations Act (RICO) and federal securities laws by selling multi-level marketing distributorships that rewarded recruiting over product sales.<sup>1</sup> The Defendants vigorously denied these allegations and contend that they have no merit because ViSalus sells millions of dollars of weight-loss products, functional foods, and nutritional supplements and primarily compensates IPs only in relation to their product sales. The Court expresses no opinion on the merits of the parties’ respective positions, and neither this Notice nor the fact of the agreed Settlement should be understood to reflect on the merits of the parties’ respective positions.

### 3. What is a class action?

In a class action, one or more individuals are the class representatives who sue on behalf of a class. Once a court resolves the issues for the class representatives or approves the settlement for the class, it resolves the matter for all class members, except for those who request exclusion by opting out. Here, the class action was filed by Class Representatives Timothy Kerrigan, Lori Mikovich, and Ryan Valli. Each of these representatives was deposed, was required to answer discovery, and has consulted with Class Counsel throughout the litigation of the case. They each spent many hours that were not required of other Class Members. For their effort on behalf of the Class, Class Counsel intends to ask the Court to award \$15,000.00 to Timothy Kerrigan and \$10,000.00 each to Lori Mikovich and Ryan Valli.

<sup>1</sup> The Defendants include ViSalus, Inc.; Nick Sarmicola; Robert Goergen, Sr.; Todd Goergen; Ryan Blair; Blake Mallen; Frank Varon; Kyle Pacetti, Jr.; Michael Craig; Timothy Kirkland; Holley Kirkland; Aaron Fortner; Rachel Jackson; Tara Wilson; Anthony Lucero; Rhonda Lucero; Jake Trzcinski; Gary J. Reynolds; Kevin Merriweather; Ropart Asset Management Fund I, LLC; Ropart Asset Management Fund II, LLC; Living Trust Dated 9/30/1991 f/b/o Robert B. Goergen; OCD Marketing, Inc.; Power Couple, Inc.; Arrive By 25, Inc.; BAM Ventures, Inc.; Gooder, LLC; Red Letters, LLC; M-Power Path, Inc.; A Berry Good Life, Inc.; Network Dynamics America Corp.; Freedom Legacy, LLC; Residual Marketing, Inc.; Got Heart Global, Inc.; Jaketrz, Inc.; Mojos Legacy, LLC; Beachlifestyle Enterprises, LLC; Wealth Builder International; Prospex Automated Wealth Systems, Inc.; 9248-2587 Quebec, Inc.; Jason O’Toole; and Lori Petrilli. All deny any liability to the Class.

#### 4. How do I know if I am part of the Settlement?

On June 14, 2019, the Court certified the following Settlement Class:

All current or former independent promoters (“IPs”) of ViSalus who reside in the United States or Canada that lost money as an IP between **July 9, 2008**, and **June 14, 2019**. In determining whether a Settlement Class member lost money as an IP between **July 9, 2008**, and the **June 14, 2019**, the following calculation was used:

- a. \$49.00 of the cost of any ViSalus promoter system purchased (regardless of additional amounts spent above \$49.00); plus
- b. the costs spent on Vi-Net; plus
- c. all renewal fees paid by the IP; minus
- d. all commissions received by the IP; minus
- e. the value of all free product received by the IP (including, but not limited to, free products received as part of the *3 for Free* promotion); and minus
- f. the value of all Vi Points earned by the IP.

The Court has excluded any individual who profited from ViSalus’ IP Program (that is, made more money as a ViSalus IP than the individual paid to ViSalus). If you received a Notice by email or postcard, you were identified as a Class Member based on ViSalus’ records.

Unless you exclude yourself, you will be part of the Class, and you will be bound by the release of claims in the Settlement. This means that if the Settlement is approved, you cannot sue, continue to sue, or be a party of any lawsuit against ViSalus, the Defendants, or the other Released Persons asserting a “Released Claim,” as defined below. It also means that the Court’s order approving the Settlement and the judgment in this case will apply to you and legally bind you. The “Released Claims” that you will not be able to assert include any manner of actions, causes of action, suits, accounts, claims, demands, controversies, judgments, obligations, injuries, damages, and liabilities of any nature, whenever or however incurred, including claims for costs, fees, expenses, penalties, and attorneys’ fees, whether class or individual, known or unknown, suspected or claimed, that Plaintiffs or any Class Member ever had, now has, or hereafter can, shall, or may have, directly, representatively, derivatively, or in any other capacity against any of the Released Persons, whether in law or equity or otherwise, arising out of or relating to any conduct, act, or omission of any of the Released Persons related to the conduct or similar conduct alleged or that could have been alleged in this litigation, including, but not limited to, any actions for fraud, federal and state securities fraud, misrepresentations, violations of 18 U.S.C. § 1962(c) and (d), consumer fraud, common law or statutory conversion, negligence, unjust enrichment, breach of contract, or other conduct or omissions relating to the IP Program or payments related thereto or Plaintiffs’ and Class Members’ transactions and interactions with Defendants regarding their status as an IP of ViSalus.

#### 5. Do I have a lawyer in this case?

Yes, if you remain in the Class. The Court has appointed these attorneys and their respective firms to act as Class Counsel:

Andrew Kochanowski  
Lance C. Young  
Sommers Schwartz, P.C.  
1 Towne Square  
Ste. 1700  
Southfield, MI 48076  
www.sommerspc.com

Matthew Prebeg  
Prebeg, Abbott & Faucett, LLP  
8441 Gulf Freeway  
Ste. 307  
Houston, TX 77017  
www.pfalawfirm.com

Edward Wallace  
Mark Miller  
Wexler Wallace LLP  
55 W. Monroe Street  
Suite 3300  
Chicago, IL 60603  
www.wexlerwallace.com

More information about these attorneys and firms is available on their websites or by calling **855-543-5391** toll-free. As part of the Settlement, Class Counsel will be applying for an award of their fees and expenses of up to \$4,265,000.00, which is subject to approval by the Court. ViSalus has agreed to pay the fees and expenses awarded by the Court in an amount not to exceed \$4,265,000.00, but ViSalus and the other Defendants take no position on any such award of fees and costs or how it should be allocated among Class Counsel. You will not be directly charged for the services of Class Counsel. However, if you want your own lawyer, you may hire one at your own expense.

## 6. What is the status of the case?

After substantially denying Defendants' motions to dismiss Plaintiffs' claims for violations of the Racketeer Influenced Corrupt Practices Act (RICO) and federal securities laws and after the substantial completion of fact and expert discovery, the parties agreed to mediate the case, which eventually led to the Settlement. Although both the Plaintiffs and the Defendants continue to believe in the merits of their respective cases, they agreed that compromising the claims under the terms of the Settlement is in the best interests of the Defendants and the Class. The Settlement provides that every Class Member that remains part of the Class will receive certain benefits, including an opportunity to make more money by selling ViSalus' products to new customers. Alternatively, Class Members may elect to terminate their relationship with ViSalus and receive a cash payment. If the Court approves the Settlement, Class Members will be entitled to receive the benefits provided by the Settlement, they will no longer be able to bring claims against the Defendants related to the claims in this case, and the litigation will be over. The Court is scheduled to hold a public hearing to address final approval of the Settlement on **October 1, 2019, at 10:00 a.m.** at the U.S. District Courthouse for the Eastern District of Michigan Southern Division, Courtroom 127, 600 Church Street, Flint, MI 48502.

## 7. What are the Cash Option and Benefit Option?

Under the terms of the Settlement, you may do nothing and be automatically enrolled in the **Benefits Option**. Under the Benefits Option, each participating Class Member will receive the following:

- a. 25% Commission Rate on all sales (both first-time sales and subsequent sales) personally made by the Class Member to customers who purchase product from ViSalus for the first time after final approval of the Settlement (i.e., new customers) for one (1) year from final approval of the Settlement ("Final Approval");
- b. 35% Product Discount on up to \$1,000.00 in product purchases made by the Class Member at Normal IP (i.e., wholesale) prices for one (1) year from Final Approval (up to \$1,000.00 in product purchases for only \$650.00);
- c. Free re-enrollment as an IP on the Basic enrollment track (no purchase necessary) for one (1) year from Final Approval;
- d. Free event registration for one (1) event, if any are held, for one (1) year from Final Approval of the Settlement Agreement, and if none are held within one (1) year, then free event registration for the next held event, if held within eighteen (18) months from Final Approval; and
- e. Free Vi-Net Pro Subscription for:
  - (i) one (1) year from Final Approval for all Settlement Class Members who choose the free re-enrollment listed in Section 7(c) above and who previously paid for Vi-Net Pro; or
  - (ii) six (6) months from Final Approval for all Settlement Class Members who choose the free re-enrollment listed in Section 7(c) above and who did not previously pay for Vi-Net Pro.

In addition, Benefits-Electing Class Members shall continue to receive any other compensation or benefits to which they may be entitled under their existing IP program.

Alternatively, Class Members can elect the **Cash Option** and receive a cash payment by check equal to \$25.00 (\$50.00 in the case of IPs who purchased at least one month of ViSalus Vi-Net Pro web services), subject to possible reduction depending on the number of Class Members choosing this option. The maximum amount to be paid out under the Cash Option to all electing Class Members is \$4,535,000.00. **Class Members who elect the Cash Option shall be terminated as IPs and will no longer be eligible to receive compensation or benefits as IPs.**

If you wish to elect the Cash Option, you must complete and submit the Election Form on or before **August 28, 2019**.

The Election Form is available on this website at [www.ViSalusSettlement.com](http://www.ViSalusSettlement.com). You may also submit it by mail to the Settlement Administrator.

## 8. Where can I find information about the Settlement?

You may find additional information about the case (including Plaintiffs' complaint, the Defendants' answer, and the full Settlement Agreement and Release) on this website at [www.ViSalusSettlement.com](http://www.ViSalusSettlement.com). If you have questions, you should first contact the Settlement Administrator at **855-543-5391**. If the Settlement Administrator cannot answer your question, you may contact Class Counsel. Please do not contact the Court.

## 9. What if I want to exclude myself from the Settlement?

If you do not want to participate in the Settlement, you must send a signed letter to the Settlement Administrator requesting exclusion on or before **August 28, 2019**. If you exclude yourself, you will not get any of the benefits of the Settlement, you will not release your claims, you will continue to be a ViSalus IP, and you will maintain any rights you may have to bring your own proceeding if you so choose. Your request for exclusion should include your name, address, signature, and ViSalus IP number if known.

Requests for exclusion should be mailed to the following address:

ViSalus Settlement Administrator  
P.O. Box 3719  
Portland, OR 97208-3719

## 10. What if I want to object to the Settlement?

Any Class Member who wishes to object to the Settlement must file a written objection with the Court and serve copies of the same on Class Counsel and counsel for ViSalus. If the Class Member wishes to appear before the Court at the Final Approval Hearing, he or she must state so in the written objection. A Class Member may appear through an attorney if he or she so desires.

Class Counsel:  
Andrew Kochanowski  
Sommers Schwartz P.C.  
1 Towne Square, Ste. 1700  
Southfield, MI 48076  
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ViSalus Counsel:  
Edward A. Salanga  
One Renaissance Square  
2 North Central Avenue  
Phoenix, AZ 85004  
[edward.salanga@quarles.com](mailto:edward.salanga@quarles.com)

All written objections must (a) be marked as "Written Objections to Settlement Agreement" in *Kerrigan v. ViSalus*, Civil Action No. 11-cv-12693; (b) state the objector's full name, address, and telephone number; (c) set forth a brief statement regarding the objections; (d) state the reasons for the objections; (e) include copies of any papers that support the objections; (f) include the objector's signature and verification under oath that the objector believes he/she is a Settlement Class member; and (g) if the objector wants to be heard at the Final Approval Hearing, state that the objector intends to appear at the Final Approval Hearing. If an attorney makes the objection, the written objection must provide the attorney's name, address, email address, and telephone number.

The last date for Class Members to object to the Settlement and file a notice of intention to appear at the Final Approval Hearing is **August 28, 2019**.