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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

LORI WAKEFIELD, individually and on behalf of all others similarly situated, Plaintiff, vs. **VISALUS, INC**., a Nevada corporation, Defendant.	CASE NO. 3:15cv01857-BR DEFENDANT'S AMENDED ANSWER AND DEFENSES TO FIRST AMENDED COMPLAINT

Pursuant to Rule 8(b) of the Federal Rules of Civil Procedure, Defendant ViSalus, Inc. ("ViSalus") submits this Amended Answer and Affirmative Defenses to the "First Amended Class Action Allegation Complaint" [Dkt. 36] (the "Complaint") by Plaintiff Lori Wakefield ("Plaintiff"), on behalf of herself and putative class members.

ViSalus denies the allegations in the introductory, unnumbered paragraph on page 2 of

the Complaint.

1. In response to paragraph 1 of the Complaint, ViSalus admits that it is a multi-level marketing company, that it distributes a product that contains soy protein, and that it has described its product as "the shake mix that tastes like a cake mix.." ViSalus denies all remaining allegations in paragraph 1 of the Complaint.

2. ViSalus denies the allegations in paragraph 2 of the Complaint.

3. ViSalus denies the allegations in paragraph 3 of the Complaint.

4. ViSalus denies the allegations in paragraph 4 of the Complaint.

5. ViSalus denies the allegations in paragraph 5 of the Complaint.

6. In response to paragraph 6 of the Complaint, ViSalus admits that Plaintiff filed the instant lawsuit, but ViSalus denies any wrongdoing and denies Plaintiff or any putative class members are entitled to any of the relief requested.

7. ViSalus lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7 and therefore denies the same.

8. ViSalus admits the allegation in paragraph 8 of the Complaint.

9. In response to paragraph 9 of the Complaint, ViSalus admits that jurisdiction is proper, but denies any wrongdoing and denies Plaintiff is entitled to any of the relief requested.

10. In response to paragraph 10 of the Complaint, ViSalus admits that venue is proper, but denies any wrongdoing and denies Plaintiff is entitled to any of the relief requested.

11. In response to paragraph 11 of the Complaint, ViSalus affirmatively states that it sells shakes and various wellness products through a multi-level sales structure. ViSalus distributors can earn compensation for promoting and selling the product. ViSalus denies the remainder of the allegations in paragraph 11 of the Complaint.

12. The allegations in paragraph 12 of the Complaint are legal conclusions, to which no response is required. To the extent a response is required, ViSalus denies the allegations in paragraph 12 of the Complaint.

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13. In response to paragraph 13 of the Complaint, ViSalus affirmatively states that it trains its independent contractors on how to sell its products, and distributes manuals and other training materials and programs to provide its independent contractors guidelines for marketing and distributing its products. ViSalus further monitors and reviews the compliance of its independent contractors with ViSalus policies and procedures as well as the laws and regulations applicable to its business. ViSalus denies the remaining allegations in paragraph 13 of the Complaint.

14. ViSalus denies the allegations in paragraph 14 of the Complaint.

15. ViSalus denies the allegations in paragraph 15 of the Complaint.

16. ViSalus denies the allegations in paragraph 16 of the Complaint.

17. ViSalus lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17 and therefore denies the same.

18. ViSalus denies the allegations in paragraph 18 of the Complaint.

19. ViSalus lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 19 and therefore denies the same.

20. In response to the first sentence of paragraph 20 of the Complaint, ViSalus admits that Plaintiff signed up to be a ViSalus affiliate in February 2013, but denies the remainder of the allegations in the first sentence of paragraph 20. ViSalus denies the remaining allegations in paragraph 20 of the Complaint.

21. ViSalus lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21 and therefore denies the same.

22. ViSalus lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22 and therefore denies the same.

23. ViSalus lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 23 and therefore denies the same.

24. ViSalus lacks knowledge or information sufficient to form a belief as to the truth

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of the allegations in paragraph 24 and therefore denies the same.

25. ViSalus lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 25 and therefore denies the same.

26. ViSalus denies the allegations in paragraph 26 of the Complaint.

27. ViSalus denies the allegations in paragraph 27 of the Complaint.

28. ViSalus denies the allegations in paragraph 28 of the Complaint and denies that class certification is appropriate.

29. ViSalus denies the allegations in paragraph 29 of the Complaint.

30. ViSalus denies the allegations in paragraph 30 of the Complaint.

31. ViSalus denies the allegations in paragraph 31 of the Complaint.

32. ViSalus denies the allegations in paragraph 32 of the Complaint.

33. ViSalus denies the allegations in paragraph 33 of the Complaint.

34. ViSalus denies the allegations in paragraph 34 of the Complaint.

35. ViSalus denies the allegations in paragraph 35 of the Complaint.

36. ViSalus denies the allegations in paragraph 36 of the Complaint.

37. ViSalus denies the allegations in paragraph 37 of the Complaint.

38. In response to paragraph 38 of the Complaint, ViSalus incorporates all of the previous admissions, denials and allegations set forth above as if fully set forth herein.

39. Paragraph 39 of the Complaint is a legal conclusion to which no response is required.

40. Paragraph 40 of the Complaint is a legal conclusion to which no response is required.

41. Paragraph 41 of the Complaint is a legal conclusion to which no response is required.

42. Paragraph 42 of the Complaint is a legal conclusion to which no response is required.

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43. ViSalus denies the allegations in paragraph 43 of the Complaint.

44. ViSalus denies the allegations in paragraph 44 of the Complaint.

45. ViSalus denies the allegations in paragraph 45 of the Complaint.

46. ViSalus denies the allegations in paragraph 46 of the Complaint.

47. In response to paragraph 47 of the Complaint, ViSalus incorporates all of the previous admissions, denials and allegations set forth above as if fully set forth herein.

48. ViSalus denies the allegations in paragraph 48 of the Complaint.

49. ViSalus denies the allegations in paragraph 49 of the Complaint.

50. ViSalus denies the allegations in paragraph 50 of the Complaint.

51. ViSalus denies the allegations in paragraph 51 of the Complaint.

52. ViSalus denies the allegations in paragraph 52 of the Complaint.

53. In response to paragraph 53 of the Complaint, ViSalus incorporates all of the previous admissions, denials and allegations set forth above as if fully set forth herein.

54. ViSalus lacks sufficient information or knowledge to admit or deny the allegations in paragraph 54 of the Complaint and therefore denies those allegations.

55. ViSalus admits the allegations in paragraph 55 of the Complaint, but denies that it has any liability under ORS 646.

56. ViSalus admits the allegations in paragraph 56 of the Complaint, but denies that it has any liability under ORS 646.

57. ViSalus denies the allegations in paragraph 57 of the Complaint.

58. ViSalus denies the allegations in paragraph 58 of the Complaint.

59. ViSalus denies the allegations in paragraph 59 of the Complaint.

60. ViSalus denies the allegations in paragraph 60 of the Complaint.

61. ViSalus denies the allegations in paragraph 61 of the Complaint.

62. ViSalus denies the allegations in paragraph 62 of the Complaint.

63. ViSalus denies all allegations in the Complaint not specifically admitted herein.

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AFFIRMATIVE DEFENSES

ViSalus submits the following affirmative and other defenses without conceding that such defenses are actually affirmative defenses or that it has the burden of persuasion or proof:

1. The Complaint fails to state a claim upon which relief may be granted.

2. ViSalus has at all times complied with the Telephone Consumer Protection Act ("TCPA") and regulations thereunder, and Oregon Revised Statutes Sections 646, *et seq.*

3. Upon information and belief, Plaintiff and putative class members have failed to mitigate their damages.

4. Upon information and belief, Plaintiff's and putative class members' damages, if any, have been proximately caused by the conduct of other persons over whom ViSalus has no control, or by the conduct of Plaintiff and putative class members themselves.

5. Upon information and belief, to the extent Plaintiff and putative class members experienced damages, the damages were caused by an independent intervening cause not attributable to ViSalus.

6. Plaintiff and putative class members cannot meet the statutory requirements to recover damages for willful violation of the TCPA.

7. Upon information and belief, Plaintiff and putative class members cannot meet the statutory requirements to recover damages under Oregon Revised Statutes Sections 646, *et seq.*, as they cannot demonstrate any resulting ascertainable loss of money or property, real or personal.

8. Plaintiff and putative class members lack standing.

9. Upon information and belief, Plaintiff and putative class members' claims are barred by estoppel, laches, assumption of risk and/or waiver.

10. Upon information and belief, Plaintiff's and putative class members' claims are barred by the statute of limitations.

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11. Upon information and belief, any damages to which Plaintiff and putative class members are entitled (and they are not entitled to any), such sums are subject to offset by the amounts Plaintiff and putative class members owe ViSalus.

12. To the extent Plaintiff's claims or the claims of any putative class member arise out of their rights, duties and obligations as a ViSalus "Promoter," this Court lacks subject matter jurisdiction because pursuant to the ViSalus Policies & Procedures, such claims can only be resolved by the Circuit Court of Oakland County, State of Michigan, or the federal court in Detroit, Michigan.

13. The alleged classes fail to meet the requirements for a certified class.

14. ViSalus is entitled to its attorney's fees and costs pursuant to any contracts between ViSalus and Plaintiff and each putative class member, and/or pursuant to ORS 646.638 and any other applicable state statute.

15. ViSalus reserves the right to assert additional affirmative defenses as they may become known through further discovery or otherwise in this action.

WHEREFORE, ViSalus denies that Plaintiff and putative class members are entitled to any of the relief sought in the Complaint, and respectfully requests the Court:

A. Dismiss the Complaint on the merits and with prejudice;

B. Award ViSalus its attorneys' fees and costs pursuant to any contracts between ViSalus and Plaintiff and each putative class member, and/or pursuant to ORS 646.638 and any other applicable state statute; and

///

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C. Award ViSalus any other and further relief this Court deems just and equitable.

Respectfully submitted this 22nd day of February, 2016.

Quarles & Brady LLP

By: /s/ Sarah R. Anchors

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Amended Answer and Defenses to First Amended Complaint on:

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by the following indicated method or methods on the date set forth below:

☒ **CM/ECF system transmission.**

DATED this 22nd day of February, 2016.

/s/ Sarah R. Anchors
Sarah R. Anchors (pro hac vice)

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