

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is made effective on the date on which it is fully executed (the “Effective Date”) between Environmental Research Center Inc. (“ERC”) and ViSalus, Inc. (“ViSalus”). ERC and ViSalus are referred to individually as a “Party” and collectively as the “Parties.” The Parties agree as follows:

1. This Agreement is limited to this Matter, which is defined as all claims and allegations related to the Notice of Violations of California Health & Safety Code §25249.5, *et seq.* (also known as “Proposition 65”) that ERC served on ViSalus and Blyth, Inc. on January 18, 2013 (the “Notice”), and with respect to the products identified below (the “Covered Products”).

- **ViSalus Sciences Vimnunity For Occasional Immunity Support**
- **ViSalus Sciences Neuro Smart Energy Lemon Lift**
- **ViSalus Sciences Neuro Smart Energy Raspberry Boost**

2. ViSalus denies the claims asserted in the Notice and denies that the Covered Products require warnings under Proposition 65. The Parties enter into this Agreement in order to achieve a settlement of the disputed claims as stated in Section 1 for the purpose of avoiding prolonged litigation. Nothing in this Agreement shall be construed as an admission of ERC or ViSalus of any fact, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by ViSalus of any fact, issue of law or violation of law. Nothing in this Agreement or any document referred to herein, shall be construed as giving rise to any presumption or inference of admission or concession by ViSalus or ERC as to any fault, wrongdoing or liability whatsoever. The Parties agree that Section 2 shall not diminish or otherwise affect the obligations, responsibilities, and duties of the Parties under this Agreement.

3. In consideration of the following covenants of ViSalus, and the other conditions contained in this Agreement, ERC provides its release as set forth in Section 6 below:

a. Any Covered Products that are manufactured on and after 180 days following the Effective Date (the “Compliance Date”) that ViSalus thereafter sells in the State of California or distributes into the State of California¹ shall either (1) contain no more than 0.5 micrograms of lead per day (based on testing performed pursuant to Section 3.c) when the maximum suggested daily dose is taken as directed on the Covered Product’s label or (2) be accompanied by a warning that states as follows (the “Warning Statement”):

“WARNING: This product contains lead, a chemical known to the State of California to cause [cancer and] birth defects or other reproductive harm.”

¹ As used in this Settlement Agreement and Release, the term “distribute into the State of California” shall mean to directly ship a Covered Product into California for sale in California or to sell a Covered Product to a distributor that Defendant knows will sell the Covered Product in California.

The words "cancer and" shall be included in the Warning Statement only if the maximum recommended daily dose causes an exposure to more than 15 micrograms of lead when taken as directed on the Covered Product's label.

b. The Warning Statement, if required under Section 3.a., shall be prominent and displayed securely on the cap, the label, the unit packaging, or by a sticker securely affixed to the Covered Products with such conspicuousness, as compared with other words, statements, or designs so as to render it likely to be read and understood by an ordinary individual purchasing or using the Covered Products. The word "**WARNING**" shall be in all capital letters and in bold print. Apart from the Warning Statement, no additional statement discussing Proposition 65 or lead may be stated within the same physical location as the Warning that appears on the cap, label, unit packaging, or sticker, as applicable.

c. Prior to the Compliance Date, and for three (3) consecutive years thereafter at least once per year, ViSalus shall arrange for the lead testing of five (5) randomly-selected samples of five separate lots (or from the maximum number of lots that are available for testing if there are fewer than five (5) lots available) for each Covered Product to confirm whether the maximum recommended daily dose on the label contains no more than 0.5 micrograms of lead when taken pursuant to the directions on the Covered Product's label. For purposes of this Agreement, daily lead exposure levels shall be measured in micrograms, and shall be calculated using the following formula: micrograms of lead per gram of product, multiplied by grams of product per serving of the product (using the largest serving size appearing on the product label), multiplied by servings of the product per day (using the largest number of servings in a recommended dosage appearing on the product label), which equals micrograms of lead exposure per day. ViSalus shall test samples in the form intended for the end-user to be distributed or sold to California consumers. Upon fifteen (15) days of written request by ERC, ViSalus shall provide ERC with documentation related to testing undertaken pursuant to Section 3.c, and shall include the lot identification numbers of the lots tested.

(1) Pursuant to Section 3, any such testing shall be performed by an independent third-party laboratory certified by the California Environmental Laboratory Accreditation Program for the analysis of heavy metals, or an independent third-party laboratory that is registered with the United States Food & Drug Administration. ViSalus may perform this testing itself only if it provides to ERC, proof that its laboratory meets the requirements in this Section 3.c(1). Testing for lead shall be performed using Inductively Coupled Plasma-Mass Spectrometry (ICP-MS) achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing method agreed upon in writing by the Parties. Nothing in this Agreement shall limit ViSalus' ability to conduct or require that others conduct additional testing of the Covered Products, including raw materials used in their manufacture.

(2) For purposes of Section 3, the term "no more than 0.5 micrograms of lead per day" means that the second highest lead detection result of the five (5) samples tested pursuant to Section 3.c. is no more than 0.5 micrograms of lead.

(3) The requirements of Section 3.c are not applicable to any Covered Products for which ViSalus has provided the warning specified in Sections 3.a and 3.b.

(4) ViSalus shall retain copies of its test data for testing performed under Section 3.c for a period of at least five (5) years from the Effective Date.

d. The requirements of Section 3 will only apply to any time in which ViSalus is a "person in the course of doing business," as that term is defined in Health and Safety Code Section 25249.11(b). ViSalus represents that during periods when the Covered Products were placed in the stream of commerce it was a person in the course of doing business because it employed 10 or more employees.

4. ViSalus shall make a total settlement payment of \$92,500.00 ("Total Settlement Amount") to ERC. Sections 4.a-4.d below describe the agreed partition of the Total Settlement Amount.

- a. \$17,592.00 shall be payable as civil penalties pursuant to California Health and Safety Code section 25249.7(b)(1). Of this amount, \$13,194.00 shall be payable to the Office of Environmental Health Hazard Assessment ("OEHHA") and \$4,398.00 shall be payable to Environmental Research Center. California Health and Safety Code section 25249.12(c)(1) & (d). ViSalus shall send both civil penalty payments to ERC's counsel who will be responsible for forwarding the civil penalty.
- b. As a portion of the Total Settlement Amount, \$14,883.00 shall be considered a reimbursement to ERC for its reasonable work and costs incurred associated with the enforcement of Proposition 65 and other expenses and costs incurred as a result of bringing this matter to ViSalus' attention and negotiating a settlement.
- c. \$52,775.00 shall be payable to Environmental Research Center in lieu of further civil penalties, for the day-to-day business activities such as (1) continued enforcement of Proposition 65, which includes work, analyzing, researching and testing consumer products that may contain Proposition 65 chemicals, focusing on the same or similar type of ingestible products that are the subject matter of the current action; (2) the continued monitoring of past consent judgments and settlements to ensure companies are in compliance with Proposition 65
- d. As a portion of the Total Settlement Amount, \$7,250.00 shall be considered reimbursement of attorneys' fees, and shall be payable to Michael Freund.

e. Pursuant to Section 4, ViSalus agrees to remit the Total Settlement Amount of \$92,500.00 to ERC within 5 days of the Effective Date. ViSalus shall make this payment by check made payable to "Environmental Research Center" and sent by first-class registered or certified mail, or overnight delivery, to ERC at: Environmental Research Center, 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108.

f. In the event that ViSalus fails to remit the payment owed under Section 4 of this Settlement Agreement on or before the due date, ViSalus shall be deemed to be in material breach of its obligations under this Settlement Agreement.

5. Except as expressly set forth in Section 4, ViSalus and ERC shall bear any and all of their own costs, expenses, and attorneys' fees related to the Matter.

6. ERC, on behalf of itself, its respective owners, principals, shareholders, officers, directors, employees, agents, affiliates, parents, subsidiaries, servants, heirs, executors, administrators, successors, assigns, and legal representatives, releases and discharges ViSalus, its subsidiaries, parent companies (including Blyth, Inc.), affiliates (including those companies that are under common ownership and/or common control), shareholders, directors, members, managers, officers, employees, attorneys, customers (not including private label customers), distributors, wholesalers, retailers, and all entities and individuals in the stream of commerce, and the predecessors, successors and assigns of any of them (collectively, the "Releasees"), from all claims, actions, suits, demands, liabilities, damages, penalties, fees, costs and expenses (collectively, "Claims") asserted, or that could have been asserted for any alleged violations of Proposition 65, or any other statutory or common law, arising from the failure to provide warnings for any alleged exposures to lead, or for causing alleged exposures to lead, in Covered Products manufactured before the Compliance Date (the "Released Claims").

ERC also, on behalf of itself, its respective owners, principals, shareholders, officers, directors, employees, agents, affiliates, parents, subsidiaries, servants, heirs, executors, administrators, successors, assigns, and legal representatives, hereby releases the Releasees from any and all known and unknown Released Claims. It is possible that other Claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Covered Products will develop or be discovered. ERC acknowledges that this Agreement is expressly intended to cover and include all such Claims. ERC has full knowledge of the contents of California Civil Code section 1542. ERC waives California Civil Code section 1542 as to any such unknown Released Claims. California Civil Code section 1542 reads as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

ERC acknowledges and understands the significance and consequences of this specific waiver of California Civil Code section 1524.

7. Compliance with the requirements of Section 3 of this Agreement shall be deemed to constitute compliance by any Releasee with Proposition 65 with respect to any lead in the Covered Products.

8. ERC, on its own behalf, on one hand, and ViSalus, on the other hand, release and waive any claims they may have against each other, and their shareholders, officers, directors,

members, managers, employees, agents, representatives, and attorneys (the "Releasees") for all actions or statements made or undertaken by the Releasees in the course of seeking or opposing enforcement of Proposition 65 in connection with the Notice.

9. Nothing in this Release is intended to apply to any occupational or environmental exposures arising under Proposition 65, nor shall it apply to any of ViSalus' products other than the Covered Products.

10. Nothing herein shall be construed as diminishing ViSalus' continuing obligations to comply with Proposition 65.

11. After execution of this Agreement, ERC will submit to the California Attorney General a Report of Settlement. In addition, ERC will provide to the California Attorney General a signed copy of this Agreement. The Parties acknowledge and agree that the Parties shall provide as much information as is reasonably requested by the California Attorney General, or any other governmental agency, regarding this Matter, the Parties' settlement, and this Agreement.

12. This Agreement contains the entire agreement between the Parties with regard to settlement of this Matter, and supersedes all prior or contemporaneous agreements or understandings, written or oral, with regard to the matters set forth in this Agreement. This Agreement may be amended or modified in whole or in part at any time only by an agreement in writing executed by the Parties.

13. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective owners, principals, shareholders, members, managers, affiliates, officers, directors, employees, agents, servants, heirs, executors, successors, and assigns.

14. No inference, assumption or presumption shall be drawn, and no provision of this Agreement shall be construed against any of the Parties, based upon the fact that one of the Parties and/or one of the Parties' attorneys prepared and/or drafted all or any portion of this Agreement. It is conclusively presumed that the Parties participated equally in the preparation and drafting of this Agreement.

15. If any provision, term, or section of this Agreement is found to be invalid, illegal, or unenforceable, then all remaining provisions, terms, or sections shall continue in full force and effect and remain binding on the Parties. If any provision, term, or section of this Agreement is determined to be unenforceable, then such provision, term, or section may be modified so that the unenforceable provision, term, or section is enforceable to the greatest extent possible.

16. This Agreement shall be deemed to have been entered into in the State of California, and governed and interpreted by the laws of the State of California, regardless of the physical locations of the individuals executing this Agreement at the time of execution.

17. The Parties acknowledge that they have a right to consult an attorney and they have consulted their attorneys with respect to the terms and conditions of this Agreement or by signing this Agreement hereby acknowledge they have made the decision not to consult with an

attorney in this Matter. The Parties further acknowledge that they fully understand this Agreement and the effect of signing and executing this Agreement.


18. Any legal action to enforce this Agreement shall be brought in any county of the State of California, any of which is deemed to be the proper venue for such legal action. The prevailing party in any such legal action shall be entitled to recover its attorneys' fees in addition to any other legally recoverable costs.

19. This Agreement may be signed in counterparts, and each counterpart, as well as any facsimile, e-mail, copy of this Agreement, or any other counterpart, shall be deemed to be an original.

20. Each of the individuals who execute this Agreement represents and warrants they have the authority to execute this document and bind the respective Parties to the terms and conditions of this Agreement, and have read, understand, and agree to all the terms and conditions in this Agreement.

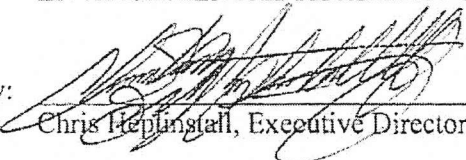
DATED: 2/17/2014

VISALUS, INC.

By: 
John Tolmie
Title: Chief Financial Officer

DATED: 2/15/2014

ENVIRONMENTAL RESEARCH CENTER, INC.

By: 
Chris Heplingfall, Executive Director