

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

KYLE ALEXANDER, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 14-CV-2159-KHV-JPO
)	
BF LABS INC.,)	
)	
Defendant.)	

**DEFENDANT BF LABS INC.’S ANSWER
AND AFFIRMATIVE DEFENSES TO PLAINTIFFS’ COMPLAINT**

Defendant BF Labs Inc., by and through its undersigned counsel, answers Plaintiffs Kyle Alexander and Dylan Symington’s Class Action Complaint as follows:

Introduction¹

1. BF Labs denies the allegations contained in paragraph 1 of the Complaint.

Parties

2. In response to the allegations set forth in Paragraph 2 of Plaintiffs’ Complaint, BF Labs is without sufficient knowledge and information as to the truth of the allegations contained in paragraph 2 concerning Plaintiff Kyle Alexander’s residence and, therefore, denies the same.

3. In response to the allegations set forth in Paragraph 3 of Plaintiffs’ Complaint, BF Labs is without sufficient knowledge and information as to the truth of the allegations contained in paragraph 3 concerning Plaintiff Dylan Symington’s residence and, therefore, denies the same.

4. BF Labs admits the allegations contained in paragraph 4 of the Complaint.

5. BF Labs admits the allegations contained in paragraph 5 of the Complaint.

¹ The headings used in Plaintiffs’ Complaint are set forth in this Answer for the convenience of the reader only. To the extent any of the headings are construed to contain any allegations, they are denied.

Jurisdiction and Venue

6. The allegations in paragraph 6 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, BF Labs denies those allegations.

7. The allegations in paragraph 7 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, BF Labs denies those allegations.

General Allegations

Bitcoin and Bitcoin Mining

8. BF Labs admits the allegations contained in paragraph 8 of the Complaint.

9. BF Labs admits the allegations contained in paragraph 9 of the Complaint.

10. BF Labs admits the allegations contained in paragraph 10 of the Complaint

11. BF Labs admits the allegations contained in paragraph 11 of the Complaint.

12. BF Labs admits the allegations contained in paragraph 12 of the Complaint.

13. BF Labs denies the allegations contained in paragraph 13 of the Complaint.

14. BF Labs admits the allegations contained in paragraph 14 of the Complaint.

The Butterfly Labs Scheme

15. BF Labs admits that BF Labs was formed in July 2011, but denies the rest of the allegations contained in paragraph 15 of the Complaint.

16. BF Labs admits the allegations contained in paragraph 16 of the Complaint.

17. BF Labs admits the allegations contained in paragraph 17 of the Complaint.

18. BF Labs denies the allegations contained in paragraph 18 of the Complaint.

19. BF Labs denies the allegations contained in paragraph 19 of the Complaint.

20. BF Labs admits that at one point (notably *not* within the time frame of either of Plaintiffs' orders), it advertised that its 65nm products were available and in stock, but denies the rest of the allegations contained in paragraph 20 of the Complaint.

21. BF Labs admits the allegations contained in paragraph 21 of the Complaint.

22. BF Labs admits that it made certain representations about respective shipping times of its products but denies the rest of the allegations contained in paragraph 22 of the Complaint.

23. BF Labs denies the allegations contained in paragraph 23 of the Complaint.

24. BF Labs denies the allegations contained in paragraph 24 of the Complaint.

25. BF Labs denies the allegations contained in paragraph 25 of the Complaint.

26. BF Labs denies the allegations contained in paragraph 26 of the Complaint.

27. BF Labs denies the allegations contained in paragraph 27 of the Complaint.

28. BF Labs denies the allegations contained in paragraph 28 of the Complaint.

29. BF Labs denies the allegations contained in paragraph 29 of the Complaint.

30. BF Labs denies the allegations contained in paragraph 30 of the Complaint.

31. BF Labs admits the allegations contained in paragraph 31 of the Complaint.

32. BF Labs denies the allegations contained in paragraph 32 of the Complaint.

33. BF Labs denies the allegations contained in paragraph 33 of the Complaint.

34. BF Labs admits the allegations contained in paragraph 34 of the Complaint.

35. BF Labs admits the allegations contained in paragraph 35 of the Complaint.

36. BF Labs denies the allegations contained in paragraph 36 of the Complaint.

37. BF Labs denies the allegations contained in paragraph 37 of the Complaint, including subparts (a) through (c).

The Representative Plaintiffs' Orders

Kyle Alexander

- 38. BF Labs admits the allegations contained in paragraph 38 of the Complaint.
- 39. BF Labs admits the allegations contained in paragraph 39 of the Complaint.
- 40. BF Labs denies the allegations contained in paragraph 40 of the Complaint.
- 41. BF Labs denies the allegations contained in paragraph 41 of the Complaint.
- 42. BF Labs denies the allegations contained in paragraph 42 of the Complaint.
- 43. BF Labs denies the allegations contained in paragraph 43 of the Complaint.
- 44. BF Labs denies the allegations contained in paragraph 44 of the Complaint.
- 45. BF Labs admits the allegations contained in paragraph 45 of the Complaint.
- 46. BF Labs admits the allegations contained in paragraph 46 of the Complaint.

Dylan Symington

- 47. BF Labs admits the allegations contained in paragraph 47 of the Complaint.
- 48. BF Labs admits the allegations contained in paragraph 48 of the Complaint.
- 49. BF Labs denies the allegations contained in paragraph 49 of the Complaint.
- 50. BF Labs denies the allegations contained in paragraph 50 of the Complaint.
- 51. BF Labs admits the allegations contained in paragraph 51 of the Complaint.
- 52. BF Labs denies the allegations contained in paragraph 52 of the Complaint.
- 53. BF Labs admits the allegations contained in paragraph 53 of the Complaint.

Class Action Allegations

- 54. In response to the allegations set forth in paragraph 54 of the Complaint, BF Labs denies the allegations, but does admit that the Complaint purports to assert an action pursuant to

Federal Rule of Civil Procedure 23(a) and 23(b)(3) on behalf of Plaintiffs and a class as defined in Paragraph 54.

55. BF Labs denies the allegations contained in paragraph 55 of the Complaint, including subparts (a) through (d) and each of their subparts.

56. BF Labs denies the allegations contained in paragraph 56 of the Complaint.

57. BF Labs denies the allegations contained in paragraph 57 of the Complaint, including subparts (a) through (f).

**Count I: Violation of the Kansas Consumer Protection Act,
K.S.A. §§ 50-626, 50-67 [sic], 50-634**

58. BF Labs incorporates by reference its responses to paragraph 1 through 57 above as if fully set forth herein.

59. BF Labs admits the allegations contained in paragraph 59 of the Complaint.

60. BF Labs admits the allegations contained in paragraph 60 of the Complaint.

61. BF Labs admits the allegations contained in paragraph 61 of the Complaint.

62. BF Labs lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 62 of the Complaint and, therefore, denies those allegations.

63. The allegations in paragraph 63 of the Complaint are legal conclusions to which no response is required. To the extent a response is required, BF Labs denies those allegations.

64. BF Labs admits the allegations contained in paragraph 64 of the Complaint.

65. BF Labs denies the allegations contained in paragraph 65 of the Complaint, including subparts (a) through (e).

66. [missing from Plaintiffs' Complaint]

67. [missing from Plaintiffs' Complaint]

68. [missing from Plaintiffs' Complaint]

69. [missing from Plaintiffs' Complaint]

70. BF Labs denies the allegations contained in paragraph 70 of the Complaint, including subparts (a) through (c).

71. BF Labs denies the allegations contained in paragraph 71 of the Complaint.

72. BF Labs denies the allegations contained in paragraph 72 of the Complaint.

73. BF Labs denies the allegations contained in paragraph 73 of the Complaint.

74. BF Labs denies the allegations contained in paragraph 74 of the Complaint.

WHEREFORE, having fully answered Count I of Plaintiffs' Complaint, Defendant BF Labs requests judgment in its favor and against Plaintiffs and dismissal of Plaintiffs Complaint with prejudice, for BF Labs' costs and expenses incurred herein, and for such other and further relief as this Court deems just, proper, and equitable.

Count II: Unjust Enrichment

75. BF Labs incorporates by reference its responses to paragraphs 1 through 74 above as if fully set forth herein.

76. BF Labs admits the allegations contained in paragraph 76 of the Complaint.

77. BF Labs denies the allegations contained in paragraph 77 of the Complaint.

78. BF Labs denies the allegations contained in paragraph 78 of the Complaint.

79. BF Labs denies the allegations contained in paragraph 79 of the Complaint.

80. BF Labs denies the allegations contained in paragraph 80 of the Complaint.

81. BF Labs denies the allegations contained in paragraph 81 of the Complaint.

82. BF Labs denies the allegations contained in paragraph 82 of the Complaint, including subparts (a) through (h).

83. BF Labs denies the allegations contained in paragraph 83 of the Complaint.

84. BF Labs denies the allegations contained in paragraph 84 of the Complaint.

WHEREFORE, having fully answered Count II of Plaintiffs' Complaint, Defendant BF Labs requests judgment in its favor and against Plaintiffs and dismissal of Plaintiffs' Complaint with prejudice, for BF Labs' costs and expenses incurred herein, and for such other and further relief as this Court deems just, proper, and equitable.

Count III: Negligent Misrepresentation

85. BF Labs incorporates by reference its responses to paragraphs 1 through 84 above as if fully set forth herein.

86. BF Labs denies the allegations contained in paragraph 86 of the Complaint.

87. BF Labs denies the allegations contained in paragraph 87 of the Complaint.

88. BF Labs denies the allegations contained in paragraph 88 of the Complaint.

89. BF Labs denies the allegations contained in paragraph 89 of the Complaint.

90. BF Labs denies the allegations contained in paragraph 90 of the Complaint.

91. BF Labs denies the allegations contained in paragraph 91 of the Complaint.

92. BF Labs denies the allegations contained in paragraph 92 of the Complaint.

93. BF Labs denies the allegations contained in paragraph 93 of the Complaint.

WHEREFORE, having fully answered Count III of Plaintiffs' Complaint, Defendant BF Labs requests judgment in its favor and against Plaintiffs and dismissal of Plaintiffs' Complaint with prejudice, for BF Labs' costs and expenses incurred herein, and for such other and further relief as this Court deems just, proper, and equitable.

Count IV: Conversion

94. BF Labs incorporates by reference its responses to paragraphs 1 through 93 above as if fully set forth herein.

95. In response to the allegations set forth in paragraph 95 of Plaintiff's Complaint, BF Labs is without sufficient knowledge and information as to the truth of the allegations contained in paragraph 95 and, therefore, denies the same.

96. BF Labs denies the allegations contained in paragraph 96 of the Complaint.

97. BF Labs denies the allegations contained in paragraph 97 of the Complaint.

98. BF Labs denies the allegations contained in paragraph 98 of the Complaint.

99. BF Labs denies the allegations contained in paragraph 99 of the Complaint.

100. The allegation in paragraph 100 of the Complaint is a legal conclusions to which no response is required. To the extent a response is required, BF Labs denies those allegations.

101. BF Labs denies the allegations contained in paragraph 101 of the Complaint.

102. BF Labs denies the allegations contained in paragraph 102 of the Complaint.

103. BF Labs denies the allegations contained in paragraph 103 of the Complaint.

104. BF Labs denies the allegations contained in paragraph 104 of the Complaint.

105. BF Labs denies the allegations contained in paragraph 105 of the Complaint.

WHEREFORE, having fully answered Count IV of Plaintiffs' Complaint, Defendant BF Labs requests judgment in its favor and against Plaintiffs and dismissal of Plaintiffs' Complaint with prejudice, for BF Labs' costs and expenses incurred herein, and for such other and further relief as this Court deems just, proper, and equitable.

106. Defendant BF Labs denies each and every allegation contained in Plaintiffs' Complaint not specifically admitted herein, and denies that Plaintiffs are entitled to any of the relief prayed for in the "WHEREFORE" clause of Plaintiffs' Complaint.

AFFIRMATIVE DEFENSES

Defendant BF Labs states the following for its affirmative defenses to Plaintiffs' Complaint:

1. Plaintiffs' claims are barred as Plaintiffs accepted the terms of their pre-order and understood that all sales were final and that there was a backlog of orders and production and delivery of any order may take two months or longer.

2. Plaintiffs' claims are barred because BF Labs "FAQ" website states it reserves "the right to handle refund requests on a case by case basis" and pre-ordered products are non-refundable as is clearly stated at the time of purchase.

3. Plaintiffs' claims are barred because Plaintiffs understood that deliveries may take two months or more after order.

4. Plaintiffs' claims are barred because Plaintiffs expressly agreed to a pre-order arrangement, knowing delay would be two months or longer and BF Labs was unable to make any representation regarding the length of delay.

5. Plaintiffs' claims are barred as the products in question are designed and manufactured in accordance with the standards in the industry.

6. Plaintiffs' claims are barred because the products in question underwent burn testing for a minimal amount of time and had not be assigned to a customer order at the time of the burn testing.

7. Plaintiffs' claims are barred because untested products are not finished goods and could not be customers' equipment.

8. Plaintiffs' claims are barred pursuant to K.S.A. 84-2-501, in that the products in question were not identified in any contract at the time of the pre-order.

9. Plaintiffs' claims are barred because burn testing was done to warrant the product as fit and suitable for the purposes for which it is sold.

10. Plaintiffs' claims are barred because BF Labs exercised reasonable care to prevent and promptly correct any delays that Plaintiffs complains of.

11. Plaintiffs' alleged damages request cannot be sustained as unconscionable.

12. Each and every claim contained in Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

13. Plaintiffs' claims for damages are barred in whole or in part because Plaintiffs have suffered no damages.

14. Plaintiffs' claims are barred in whole or in part based on the doctrine of election of remedies.

15. Plaintiffs' claims are barred by reason of Plaintiffs' breaches or failures to perform conditions precedent or subsequent.

16. Plaintiffs' claims are barred for the reason that any actions or inactions of BF Labs were economically justified.

17. Plaintiffs' claims are barred by reason of Plaintiffs' unclean hands.

18. Plaintiffs' alleged damages, which are denied, were caused by intervening and superseding acts over which BF Labs had no control or right of control, thereby barring or diminishing Plaintiffs' alleged right of recovery.

19. The damages claimed by Plaintiffs are not recoverable, in whole or in part, under Kansas or federal law.

20. Plaintiffs' claims are barred by a prior settlement and/or release of those claims or are barred to the extent Plaintiffs have entered into an accord and satisfaction or otherwise compromised their claims.

21. In further answer to Plaintiffs' Complaint and by way of Affirmative Defense, Defendant adopts all Affirmative Defenses available to it under the Kansas Uniform Commercial Code or any other Uniform Commercial Code enacted by a state whose substantive law controls in this action.

22. Defendant's actions were neither the cause in fact nor the proximate cause of Plaintiffs' injuries, if any.

23. Defendant is entitled to the benefit of all defenses and presumptions contained in, or arising from, any product liability act and/or Kansas Uniform Commercial Code.

24. The alleged damages sustained by Plaintiffs were the result of Plaintiffs' own comparative fault or any other "fault" pursuant to K.S.A. 60-258a and, accordingly, Plaintiffs are barred from recovery or limited in their recovery.

25. Plaintiffs' claims are barred, in whole or in part, by the equitable doctrines of waiver and estoppel.

26. Plaintiffs' claims are barred by the doctrine of justification.

27. Plaintiffs' claims are barred, in whole or in part, by the doctrine of ratification.

28. Plaintiffs' claims are barred by all applicable statutes of limitation.

29. Plaintiffs' claims are barred, in whole or in part, pursuant to First Amendment of the United States Constitution and similar applicable state constitutional provisions.

30. Plaintiffs' claims are barred by the doctrine of spoliation and the failure to properly preserve evidence necessary to the proper and just determination of this action.

31. Plaintiffs' claims are barred to the extent Plaintiffs entered into an accord and satisfaction or otherwise compromised their claims.

32. Plaintiffs' claims are barred by the doctrines of repudiation and anticipatory breach.

33. Plaintiffs' claims are barred to the extent Plaintiffs prevented BF Labs from performing.

34. Plaintiffs' claims are barred based on Plaintiffs' rejection of goods, as well as Plaintiffs' revocation of acceptance of goods.

35. Plaintiffs' claims are barred by the doctrine of mistake.

36. Plaintiffs have failed to mitigate their damages, if any, or otherwise take reasonable steps to minimize or prevent the damages Plaintiffs claims to have suffered. Plaintiffs also, once they realized a claim existed, were under an obligation to minimize their alleged loss, if any. As a result, any recovery against Defendant should be barred, reduced, or offset accordingly.

37. Plaintiffs' damages should be reduced as an offset by any amount received by any other payment to mitigate damages.

38. BF Labs reserves the right to amend its Answer to assert additional defenses, affirmative or otherwise, that may arise or become known through the course of further investigation or discovery.

WHEREFORE, having fully answered Plaintiffs' Complaint, Defendant BF Labs respectfully requests that this Court enter judgment in its favor and against Plaintiffs, dismiss Plaintiffs' Complaint with prejudice, and award BF Labs' its costs, expenses and attorneys' fees, and for such other and further relief as the Court deems just, proper, and equitable.

Respectfully submitted,

/s/ James M. Humphrey

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CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

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/s/ James M. Humphrey

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