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6 *Attorneys for Defendants Fei Labs Inc.,*  
 7 *Joseph Santoro, Brianna Montgomery, and*  
 8 *Sebastian Delgado*

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
 11 **COUNTY OF SAN FRANCISCO**

13 JONATHAN SHOMRONI, Individually and  
 on behalf of all others similarly situated,

14 Plaintiff,

16 v.

17 FEI LABS INC., a Delaware Corporation,  
 JOSEPH SANTORO, an Individual,  
 18 BRIANNA MONTGOMERY, an Individual,  
 SEBASTIAN DELGADO, an Individual, and  
 19 DOES 1-10,

20 Defendants.

Case No. CGC-22-598995

**DEFENDANTS FEI LABS INC.,  
 JOSEPH SANTORO, BRIANNA  
 MONTGOMERY AND SEBASTIAN  
 DELGADO'S ANSWER AND  
 AFFIRMATIVE DEFENSES TO  
 PLAINTIFF'S COMPLAINT**

Hon. Ethan P. Schulman  
 Dept. 304

1 Pursuant to Section 430.41(a)(2) of the California Code of Civil Procedure, Defendants Fei  
2 Labs Inc. (“Fei Labs”) and Joseph Santoro, Brianna Montgomery, and Sebastian Delgado (the  
3 “Individual Defendants,” and together with Fei Labs, “Defendants”) hereby answer and deny the  
4 Complaint for Violation of the Securities Act of 1933 filed by named Plaintiff Jonathan Shomroni  
5 (“Lead Plaintiff”) (Dkt. No. 1) (the “Complaint”) and further allege as follows:

6 **GENERAL DENIAL**

7 Pursuant to Section 431.30(d) of the California Code of Civil Procedure, Defendants deny  
8 generally each and every material allegation in Plaintiff’s unverified Complaint, and further deny  
9 each and every purported cause of action set forth in the Complaint against Defendants. Defendants  
10 further specifically deny that Lead Plaintiff, or any alleged Class Members, have been harmed in  
11 any amount or at all as a result of any wrongful act and/or omission on the part of Defendants, and  
12 further deny that Plaintiff is entitled to any of the relief sought by way of the Complaint.

13 Defendants reserve the right to amend, modify, revise or supplement this Answer and to  
14 amend the Affirmative Defenses set forth below and plead such other defenses and take such other  
15 further actions as they may deem proper and necessary in their defense as or after they become  
16 known during or after the course of investigation, discovery, or trial.

17 **AFFIRMATIVE DEFENSES**

18 Defendants set forth the following affirmative defenses. In asserting these affirmative  
19 defenses, Defendants are not assuming the burden to establish any fact or proposition where that  
20 burden is properly imposed on plaintiff. Defendants presently have insufficient knowledge and  
21 information upon which to form a belief as to whether there may be other, as yet unstated, defenses  
22 available to Defendants, and therefore expressly reserve, in accordance with applicable law, the  
23 right to assert any and all additional affirmative and further defenses as appropriate, including  
24 defenses that may be revealed by discovery or otherwise.

25 **FIRST AFFIRMATIVE DEFENSE**

26 **(Lack of Standing)**

- 27 1. Lack of standing bars Lead Plaintiff’s and/or purported Class Members claims.  
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**SECOND AFFIRMATIVE DEFENSE**

**(Lack of Injury or Damage)**

2. Lead Plaintiff and/or purported Class Members are precluded from any recovery asserted in the Complaint because they have sustained no injury or damages whatsoever as a result of any acts committed by Defendants or purportedly chargeable to Defendants.

**THIRD AFFIRMATIVE DEFENSE**

**(Speculative Injury)**

3. Lead Plaintiff and/or purported Class Members fail to allege the specific damages they have suffered, and any damages Lead and/or purported Class Members allege to have suffered from the matters alleged in the Complaint are too remote, uncertain, or speculative to allow recovery.

**FOURTH AFFIRMATIVE DEFENSE**

**(Statute of Limitations)**

4. As to certain purported Class Members, the Complaint, and the purported causes of action alleged therein, are barred by the applicable statutes of limitation.

**FIFTH AFFIRMATIVE DEFENSE**

**(Incorrect Forum)**

5. Lead Plaintiff's claims and/or those of purported Class Members are barred because they agreed to a different forum for the resolution of their claims.

**SIXTH AFFIRMATIVE DEFENSE**

**(Arbitration)**

6. Lead Plaintiff's claims and/or those of purported Class Members are barred because they agreed to arbitrate their claims.

**SEVENTH AFFIRMATIVE DEFENSE**

**(Forum non Conveniens)**

7. The Complaint should be dismissed on grounds of *forum non conveniens*.





1 **TWENTIETH AFFIRMATIVE DEFENSE**

2 **(Failure to Mitigate Damages)**

3 20. Any recovery by Lead Plaintiff and/or purported Class Members is barred, in whole  
4 or in part, by their failure to mitigate their purported damages.

5 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

6 **(Equitable Defenses)**

7 21. Lead Plaintiff's claims and/or those of purported Class Members are barred by the  
8 doctrines of waiver, estoppel, unclean hands and/or laches.

9 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

10 **(Lack of Causation)**

11 22. Lead Plaintiff's claims and/or those of purported Class Members are barred because  
12 no wrongful conduct attributable to Defendants was the cause-in-fact or proximate cause of any  
13 injury or damage that they purportedly sustained. To the extent that Lead Plaintiff and/or purported  
14 Class Members sustained any injury or damage as alleged in the Complaint, which is denied, any  
15 such injury or damage was caused and brought about by other factors, including, but not limited to,  
16 economic factors and/or the acts, conduct or omissions of individuals and/or entities other than  
17 Defendants.

18 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

19 **(Third Party Liability)**

20 23. The Complaint and each and every purported claim therein are barred by the doctrine  
21 of third party liability. If Lead Plaintiff and/or purported Class Members sustained any loss, injury,  
22 or damages, equitable or legal, these were contributed to by, incurred as a result of, and directly and  
23 proximately caused by the breach, acts, omissions, negligence, recklessness, failure to exercise due  
24 care, and/or intentional acts of one or more third parties, not Defendants.

25 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

26 **(Good Faith)**

27 24. Lead Plaintiff's claims and/or those of purported Class Members are barred in whole  
28 or in part because at all times Defendants acted in good faith and with no knowledge of or reasonable

1 ground to believe in the existence of the facts by reason of which the liability of the controlled  
2 person is alleged to exist.

3 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

4 **(Reasonable Procedures)**

5 25. The alleged causes of action are barred, in whole or in part, because at all relevant  
6 times Defendants maintained reasonable procedures to assure compliance with the relevant laws.

7 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

8 **(Industry Standards)**

9 26. The alleged causes of action are barred, in whole or in part, because the alleged  
10 conduct of which Lead Plaintiff complains comported with the prevailing business practices and  
11 standards of the industry at issue.

12 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

13 **(Comparative Fault)**

14 27. Other defendants and/or their agents and employees were comparatively at fault and,  
15 should Lead Plaintiff and/or purported Class Members recover damages against any Defendant, then  
16 each other Defendant is entitled to have the amount recoverable against them abated, reduced, or  
17 eliminated.

18 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

19 **(Offset)**

20 28. If Defendants are found in some manner responsible to Lead Plaintiff and/or the  
21 purported Class Members for the matters alleged in the Complaint, any such injury, damage, or  
22 other costs are barred to the extent they are offset, in full or in part, by payments made to Lead  
23 Plaintiff and/or purported Class Members in connection with any other legal action or negotiated  
24 settlement in connection with or relating to the allegations set forth in the Complaint.

25 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

26 **(Unjust Enrichment)**

27 29. Lead Plaintiff and/or the purported Class Members would be improperly and unjustly  
28 enriched were they allowed to recover any or all relief claimed to be due.



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- (g) predominance of common questions over questions affecting individual class members;
- (h) substantial benefit to the litigants and the court; and
- (i) superiority of a class action to other available methods for fair and efficient adjudication.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Defendants pray for a judgment as follows:

- 3 1. That Lead Plaintiff and the purported Class Members take nothing by reason of the  
4 Complaint;
- 5 2. That judgment be entered in favor of Defendants and against Lead Plaintiff and the  
6 purported Class Members;
- 7 3. That the Complaint be dismissed with prejudice;
- 8 4. That Defendants be awarded their costs of suit, including reasonable attorneys' fees;
- 9 and
- 10 5. For such other relief as this Court deems just and proper.

11  
12 Date: September 26, 2022 Respectfully submitted,

13 */s/ Michael Liftik*

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Joseph Santoro, Brianna Montgomery, and  
Sebastian Delgado*

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15 *Joseph Santoro, Brianna Montgomery, and*  
*Sebastian Delgado*

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

17 **COUNTY OF SAN FRANCISCO**

18 JONATHAN SHOMRONI, Individually and  
19 on behalf of all others similarly situated,

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24 BRIANNA MONTGOMERY, an Individual,  
25 SEBASTIAN DELGADO, an Individual, and  
DOES 1-10,

26 Defendants.

Case No. CGC-22-598995

**PROOF OF SERVICE**

Hon. Ethan P. Schulman  
Dept. 304

Date: September 26, 2022

1 I, Isabel Redleaf Peraza, am over the age of 18 and not a party to the above captioned  
2 action. My business address is Quinn Emanuel Urquhart & Sullivan, 1300 I Street NW, Suite 900,  
3 Washington, DC 20005. My electronic service address is ryangorman@quinnemanuel.com.

4 On September 26, 2022, I served true and correct copies of the following documents,  
5 which were filed with the Court on September 26, 2022:

- 6 • *Defendants Fei Labs Inc., Joseph Santoro, Brianna Montgomery and Sebastian*  
7 *Delgado's Answer and Affirmative Defenses to Plaintiff's Complaint* on the interested  
8 parties in this action, as follows:

9 **By File&ServeXpress:** I caused said documents to be transmitted by File&ServeXpress to the  
10 persons set forth in the attached Service List.

11 I declare under penalty of perjury of the laws of the state of California that the foregoing is  
12 true and correct.

13 Executed on this 26th day of September, 2022, in Washington, DC.

14  
15 Dated: September 26, 2022

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

17 By /s/ Isabel Peraza  
Isabel Peraza

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**SERVICE LIST**

*Jonathan Shomroni v. Fei Labs Inc. et al, Case No. CGC-22-598995*

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