

**PX**  
**9**

**DECLARATION OF DAVID BRODSKY  
PURSUANT TO 28 U.S.C. § 1746**

I, David Brodsky, have personal knowledge of the facts below and am competent to testify about them. If called as a witness, I could and would testify as follows:

1. I live in Berkeley, California. I am over 18 years old, and I currently work as a software engineer.
2. On or about June 30, 2013, I purchased a 5-gigahash “Jalapeño” Bitcoin mining machine from Butterfly Labs. In total, I paid \$308 for my order—\$274 for the machine, and \$34 for shipping and handling. I paid for my order by credit card, and used Paypal to process the payment. I received confirmation of my order from Butterfly Labs later that day by email. A true and correct copy of my order confirmation from Butterfly Labs is attached here as **Attachment A**.
3. When I placed my order with Butterfly Labs, I expected to receive my Bitcoin mining machine within a few weeks. The product order page had an expected shipping time listed in a timescale of weeks.
4. On or about July 2, 2013, I noticed from postings that were several pages deep in the Butterfly Labs product support forum that the Jalapeño Bitcoin mining machines seemed to be backlogged by about 300 days. That same day, I emailed Butterfly Labs to ask if the backlog information I had seen online was accurate. In my email, I included my order number so that the company could check the status of my order. A true and correct copy of my July 2 email to Butterfly Labs is attached here as **Attachment B**.
5. On or about July 9, 2013, I received an email response from Butterfly Labs. In the email, a representative who identified herself as Abbey said the delay of approximately 300 days was “relatively accurate,” but that the company was “working hard to catch up.” A

true and correct copy of Butterfly Labs' delay confirmation email is attached here as **Attachment C**.

6. I thought a 300-day delay was incredibly unfair. So, on or about July 14, 2013, I emailed Butterfly Labs to express my concern about the delay. In my email, I noted that the current projected delivery time was five times longer than the original timeline. I then asked the company to either refund me my money or upgrade my order to the most modern hardware available by the time I made it to the end of the order queue. I included a link to the FTC online ordering guidelines in my email. A true and correct copy of my July 14 refund request is attached here as **Attachment D**.
7. By early November 2013, I had not received a response from Butterfly Labs as to my refund request. So, on or about November 12, 2013, I sent the company another email. In my email, I told the company that I was sending one final refund request before filing complaints with law enforcement. I also reiterated that, per the FTC's Mail or Telephone Order Merchandise Trade Regulation Rule, the company was required to honor a customer's request for refund before a product was shipped. A true and correct copy of my November 12 refund request is attached here as **Attachment E**.
8. On or about November 20, 2013, I received an email from Butterfly Labs telling me that "all sales are final" and that "refunds w[ould] not be processed." A true and correct copy of Butterfly Labs' November 20 refusal to issue me a refund is attached here as **Attachment F**.
9. Later that same day, I emailed Butterfly Labs to reiterate that the company seemed to be violating FTC guidance and that I planned to file law enforcement complaints. A true and correct copy of my November 20 follow-up email is attached here as **Attachment G**.

10. I filed a complaint against the company with the Federal Trade Commission on or about November 21, 2013.
11. I ultimately received my Butterfly Labs Jalapeño Bitcoin mining machine in or about mid-December 2013. The machine appeared to function for a while, but stopped working after less than a week of operation. On or about December 17, 2013, I emailed Butterfly Labs to report that my mining machine was broken and to again request a refund. A true and correct copy of my December 17 refund request is attached here as **Attachment H**.
12. The next day, I discovered the machine was not working due to a faulty power adapter I had received with my order. On or about December 18, 2013, I emailed Butterfly Labs to inform the company that the power adaptor was the problem and ask to return the adaptor they had sent me for a refund or exchange. I did not receive a response to this request until the company emailed me exchange instructions on or about February 10, 2014. A true and correct copy of my correspondence with Butterfly Labs about the faulty power adaptor is attached here as **Attachment I**.
13. By the time I received my Butterfly Labs Bitcoin mining equipment, it was essentially obsolete. I estimate that, at the time I received the unit, its value per day had declined by more than 80 percent.
14. Personal identifying information, such as phone numbers, email addresses, and street addresses, has been redacted from the Attachments to this Declaration.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the statements made in this declaration are true and correct.

Executed in Berkeley, California, on September 25, 2014.



David Brodsky

# **Attachment A**



David Brodsky <[REDACTED]@gmail.com>

# Butterfly Labs - Bitcoin Mining Hardware: New Order # 100069387

1 message

Sales at Butterfly Labs <office@butterflylabs.com>  
To: David Brodsky <[REDACTED]@gmail.com>

Sun, Jun 30, 2013 at 4:02 PM



## Hello, David Brodsky

Thank you for your order from Butterfly Labs - Bitcoin Mining Hardware. Once your package ships we will send an email with a link to track your order. You can check the status of your order by [logging into your account](#). If you have any questions about your order please contact us at [office@butterflylabs.com](mailto:office@butterflylabs.com) or call us at 913-271-6744 Monday - Friday, 8am - 5pm PST.

Your order confirmation is below. Thank you again for your business.

### Your Order #100069387 (placed on June 30, 2013 5:45:39 PM CDT)

#### Billing Information:

David Brodsky  
[REDACTED]  
Berkeley, California, [REDACTED]  
United States  
T: [REDACTED]

#### Payment Method:

PayPal  
  
Payer Email:  
[REDACTED]@gmail.com

#### Shipping Information:

David Brodsky  
[REDACTED]  
Berkeley, California, [REDACTED]  
United States  
T: [REDACTED]

#### Shipping Method:

Standard Shipping - Only

Item	SKU	Qty	Subtotal
5 GH/s Bitcoin Miner	BF0005G	1	\$274.00
Subtotal			\$274.00
Shipping & Handling			\$34.00
<b>Grand Total</b>			<b>\$308.00</b>

Thank you, **Butterfly Labs - Bitcoin Mining Hardware**

# **Attachment B**



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## Estimated Arrival

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David Brodsky <[REDACTED]@gmail.com>  
To: office@butterflylabs.com

Tue, Jul 2, 2013 at 6:52 PM

Hello!

By the images posted on your forum it appears that the current Jalapeño backlog is ~300 days. Is this accurate?

For reference my order number is:  
**#100069387**

Cheers!

David

# **Attachment C**

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**Butterfly Labs Inc** <office@butterflylabs.com>  
To: David Brodsky <[REDACTED]@gmail.com>

Tue, Jul 9, 2013 at 2:21 PM

Hi David,

That is relatively accurate. We are working hard to catch up though. Continue to check Jody's Blog to monitor our progress. Thank you for your patience and understanding.

Best Wishes,  
Abbey  
BF Labs, Inc.

For Jody's Customer Service Blog, and more, please visit our new BFL Forums at  
<[https://forums.butterflylabs.com/blogs/bfl\\_jody/](https://forums.butterflylabs.com/blogs/bfl_jody/)>

On Tue, Jul 2, 2013 at 8:52 PM, David Brodsky <[REDACTED]@gmail.com> wrote:  
[Quoted text hidden]

# **Attachment D**

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**David Brodsky** <[REDACTED]@gmail.com>  
To: Butterfly Labs Inc <office@butterflylabs.com>

Sun, Jul 14, 2013 at 1:16 PM

I feel an estimated shipping time 5x that stated on the product / order page is unfair business practice. Especially because you have shipping lag information available, but not accurately present on the product or order page.

Do you have a policy of transferring my credit towards modern hardware once I've reached the end of the queue? If you don't, I'd like to request a refund per the [FTC online ordering guidelines](#).

Thank you in advance for your time,

David

[Quoted text hidden]

# **Attachment E**

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David Brodsky <[REDACTED]@gmail.com>  
To: Butterfly Labs Inc <office@butterflylabs.com>

Tue, Nov 12, 2013 at 8:49 AM

Hey Butterfly,

After receiving no answer from your end for the past four months, **I'm writing one final request for refund (order #100069387) before I file reports with my local police department and the FBI's Internet Crime Complaint Center.**

**Refusing to honor a customer's request for refund before shipment occurs is a violation of the FTC's "Mail or Telephone Order Merchandise Trade Regulation Rule":**

See section "When you Must Cancel an Order":

<http://business.ftc.gov/documents/bus02-business-guide-mail-and-telephone-order-merchandise-rule>

Butterfly Labs also violates PayPal's own Terms of Service which states pre-sale shipment must be made within 20 days of order:

<https://www.paypal.com/us/webapps/helpcenter/helphub/article/?solutionId=39067&m=SRE>

If you continue to choose to operate criminally, I will respond appropriately.

David

[Quoted text hidden]

# **Attachment F**



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**ButterflyLabsINC** . <office@butterflylabs.com>  
To: David Brodsky <[REDACTED]@gmail.com>

Wed, Nov 20, 2013 at 3:54 PM

Hi David,

Thank you for contacting Butterfly Labs. According to the terms you agreed to on checkout, all sales are final. Now that shipping of orders has begun, refunds will not be processed.

For more information on our refund policy please visit our FAQ: [www.butterflylabs.com/faq](http://www.butterflylabs.com/faq)

Your order (100069387) is being sent to production today. You should receive an email with your tracking number within the next two weeks.

Sincerely,  
Abbey  
BF Labs, Inc.

For Jody's Customer Service Blog, and more, please visit our new BFL Forums at  
<[https://forums.butterflylabs.com/blogs/bfl\\_jody/](https://forums.butterflylabs.com/blogs/bfl_jody/)>

# **Attachment G**

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David Brodsky <[REDACTED]@gmail.com>  
To: "ButterflyLabsINC ." <office@butterflylabs.com>

Wed, Nov 20, 2013 at 9:43 PM

Abbey,

I appreciate your response, **however the ButterflyLabs terms do not supersede US Law, nor the PayPal Terms of Service.**

From <https://www.ftccomplaintassistant.gov/Details:>

**When You Must Cancel an Order**

You *must* cancel an order and provide a prompt refund when:

- the customer exercises any option to cancel before you ship the merchandise;

I'm sorry Butterfly Labs has put you in this difficult position, Abbey. I'll proceed to file complaints with the appropriate agencies.

David

[Quoted text hidden]

# **Attachment H**

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## Jalapeño Problems

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David Brodsky <[REDACTED]@gmail.com>  
To: rma@butterflylabs.com

Tue, Dec 17, 2013 at 8:40 AM

After waiting six months to receive my order (100069387), I awoke this morning to find my Jalapeño had stopped functioning after less than six full days. It behaves as if it's not plugged in, whether or not it is.

Can I please return the unit for a refund?

David

# **Attachment I**

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David Brodsky <[REDACTED]@gmail.com>  
To: rma@butterflylabs.com

Wed, Dec 18, 2013 at 11:12 AM

After further inspection it appears the power supply you shipped was faulty. Replacing with a quality AC/DC adapter fixed the problem. May I return the included power adapter for a refund / exchange?

[Quoted text hidden]

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ButterflyLabsINC . <office@butterflylabs.com>  
To: David Brodsky <[REDACTED]@gmail.com>

Mon, Feb 10, 2014 at 2:35 PM

Greetings David-

Very sorry to hear about your defective PSU. You will just need to log into the User Dashboard via our website and click on the RMA Request column. Once there, check the order number that pertains to your defective PSU and indicate that you will need one shipped out. Once your request is accepted, a new power supply will be shipped out to you as soon as possible.

Here is a step by step process:

Go to [butterflylabs.com](http://butterflylabs.com)

In the top right, click the Log In button <https://products.butterflylabs.com/customer/account/login/>  
Login with your e-mail and password

On the far left column under My Account is RMA

After clicking that, in the far right there will be a Request New RMA link.

Click that and properly fill out the fields of information required.

Thanks for letting us know about this issue!

Regards,  
Nathan X.  
Butterfly Labs Inc.  
Customer Service

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On Wed, Dec 18, 2013 at 1:12 PM, David Brodsky <[REDACTED]@gmail.com> wrote:

After further inspection it appears the power supply you shipped was faulty. Replacing with a quality AC/DC adapter fixed the problem. May I return the included power adapter for a refund / exchange?

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On Tue, Dec 17, 2013 at 8:40AM, David Brodsky <[REDACTED]@gmail.com> wrote:

After waiting six months to receive my order (100069387), I awoke this morning to find my Jalapeno had stopped functioning after less than six full days. It behaves as if it's not plugged in, whether or not it is.

Can I please return the unit for a refund?

David