

# QUINN EMANUEL URQUHART & SULLIVAN, LLP Michael E. Liftik (CA Bar No. 232430) Sarah Heaton Concannon (admitted pro hac vice) 1300 I Street, Suite 900 Washington, D.C. 20005 Telephone: (202) 538-8000 michaelliftik@quinnemanuel.com sarahconcannon@quinnemanuel.com 5 [Additional Counsel on Signature Page] 6 Attorneys for Defendants Fei Labs Inc., 7 Joseph Santoro, Brianna Montgomery, and Sebastian Delgado 8 9 SUPERIOR COURT OF THE STATE OF CALIFORNIA 10 11 **COUNTY OF SAN FRANCISCO** 12 JONATHAN SHOMRONI, Individually and Case No. CGC-22-598995 on behalf of all others similarly situated, 14 **DEFENDANTS FEI LABS INC.,** Plaintiff. JOSEPH SANTORO, BRIANNA 15 MONTGOMERY AND SEBASTIAN **DELGADO'S ANSWER AND** 16 v. AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT FEI LABS INC., a Delaware Corporation, 17 JOSEPH SANTORO, an Individual, 18 BRIANNA MONTGOMERY, an Individual, Hon. Ethan P. Schulman SEBASTIAN DELGADO, an Individual, and 19 DOES 1-10, Dept. 304 Defendants. 20 21 22 23 24 25 26 27

Case No. CGC-22-598995

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

## **GENERAL DENIAL**

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

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

#### AFFIRMATIVE DEFENSES

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

#### FIRST AFFIRMATIVE DEFENSE

## (Lack of Standing)

1. Lack of standing bars Lead Plaintiff's and/or purported Class Members claims.

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1	SECOND AFFIRMATIVE DEFENSE		
2	(Lack of Injury or Damage)		
3	2. Lead Plaintiff and/or purported Class Members are precluded from any recovery		
4	asserted in the Complaint because they have sustained no injury or damages whatsoever as a resu		
5	of any acts committed by Defendants or purportedly chargeable to Defendants.		
6	THIRD AFFIRMATIVE DEFENSE		
7	(Speculative Injury)		
8	3. Lead Plaintiff and/or purported Class Members fail to allege the specific damages		
9	they have suffered, and any damages Lead and/or purported Class Members allege to have suffered		
10	from the matters alleged in the Complaint are too remote, uncertain, or speculative to allow		
11	recovery.		
12	FOURTH AFFIRMATIVE DEFENSE		
13	(Statute of Limitations)		
14	4. As to certain purported Class Members, the Complaint, and the purported causes of		
15	action alleged therein, are barred by the applicable statutes of limitation.		
16	<u>FIFTH AFFIRMATIVE DEFENSE</u>		
17	(Incorrect Forum)		
18	5. Lead Plaintiff's claims and/or those of purported Class Members are barred because		
19	they agreed to a different forum for the resolution of their claims.		
20	SIXTH AFFIRMATIVE DEFENSE		
21	(Arbitration)		
22	6. Lead Plaintiff's claims and/or those of purported Class Members are barred because		
23	they agreed to arbitrate their claims.		
24	SEVENTH AFFIRMATIVE DEFENSE		
25	( <u>Forum non Conveniens</u> )		
26	7. The Complaint should be dismissed on grounds of <i>forum non conveniens</i> .		
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1	EIGHTH AFFIRMATIVE DEFENSE		
2	(Extraterritorial Transactions)		
3	8. Lead Plaintiff's claims and/or those of purported Class Members are barred because		
4	their transactions constituted foreign transactions, to which the U.S. securities laws do not apply.		
5	NINTH AFFIRMATIVE DEFENSE		
6	(Failure to State a Claim Upon Which Relief Can Be Granted)		
7	9. The Complaint fails to state facts sufficient to state a claim upon which relief can be		
8	granted.		
9	TENTH AFFIRMATIVE DEFENSE		
10	(Terms of Service)		
11	10. Lead Plaintiff's claims and/or those of purported Class Members are barred, in whole		
12	or in part, by the Fei Terms of Service.		
13	ELEVENTH AFFIRMATIVE DEFENSE		
14	(Waiver and Release)		
15	11. The Complaint, and the purported causes of action alleged therein, are barred to the		
16	extent Lead Plaintiff and/or purported Class Members have waived, released, relinquished or		
17	abandoned any claim for relief against Defendants with respect to the matters that are the subject of		
18	the Complaint.		
19	TWELFTH AFFIRMATIVE DEFENSE		
20	(Failure to Tender Tokens)		
21	12. Lead Plaintiff's claims and/or those of purported Class Members are barred because		
22	they have not adequately tendered their tokens as required by Section 12(a)(1) of the Securities Ac		
23	of 1933.		
24	THIRTEENTH AFFIRMATIVE DEFENSE		
25	(Not Sellers)		
26	13. Lead Plaintiff's claims and/or those of purported Class Members are barred because		
27	none of Defendants are "sellers" to Lead Plaintiff and/or purported Class Members within the		
28	meaning of Section 12(a)(1) of the Securities Act of 1933.		

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1	FOURTEENTH AFFIRMATIVE DEFENSE		
2	(No Primary Liability)		
3	14. Lead Plaintiff's claims and/or those of purported Class Members are barred because		
4	they cannot establish the primary liability necessary to assert control person liability under Section		
5	15 of the Securities Act of 1933.		
6	FIFTEENTH AFFIRMATIVE DEFENSE		
7	(No Control Person Liability)		
8	15. Lead Plaintiff's claims and/or those of purported Class Members are barred because		
9	each Individual Defendant alleged to be a control person under Section 15 of the Securities Act of		
10	1933 acted in good faith and did not directly or indirectly induce the act or acts constituting the		
11	alleged violations and causes of action.		
12	SIXTEENTH AFFIRMATIVE DEFENSE		
13	(Not Securities)		
14	16. Lead Plaintiff's claims and/or those of purported Class Members are barred because		
15	FEI and TRIBE tokes are not securities as defined under the federal securities laws.		
16	SEVENTEENTH AFFIRMATIVE DEFENSE		
17	(Failure to Use Interstate Commerce)		
18	17. Lead Plaintiff's claims and/or those of purported Class Members are barred to the		
19	extent that the alleged offer or sale of a security did not involve the use of interstate commerce of		
20	the mails.		
21	EIGHTEENTH AFFIRMATIVE DEFENSE		
22	(Ratification)		
23	18. The alleged causes of action are barred, in whole or in part, because of ratification		
24	agreement, assent, acquiescence or consent to Defendants' alleged conduct.		
25	NINETEENTH AFFIRMATIVE DEFENSE		
26	(In pari delicto)		
27	19. Lead Plaintiff's claims and/or those of purported Class Members are barred, in whole		
28	or in part, under the doctrine of in pari delicto.		

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 controlle		
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, the		
16	each other Defendant is entitled to have the amount recoverable against them abated, reduced, of		
17	7 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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1	THIRTIETH AFFIRMATIVE DEFENSE		
2	(Adequacy of Remedy At Law)		
3	30. Lead Plaintiff's claims and/or those of the purported Class Members are barred, in		
4	whole or in part, by the existence of sufficient remedies at law.		
5	THIRTY-FIRST AFFIRMATIVE DEFENSE		
6	(No Prejudgment Interest)		
7	31. No basis in contract, case law, or statute exists for Lead Plaintiff's and/or the		
8	purported Class Members' claim for prejudgment interest.		
9	THIRTY-SECOND AFFIRMATIVE DEFENSE		
10	(No Costs)		
11	32. No basis in contract, case law, or statute exists for Lead Plaintiff's and/or the		
12	purported Class Members' claim for attorneys' fees and costs of suit, including expert fees.		
13	THIRTY-THIRD AFFIRMATIVE DEFENSE		
14	(Waiver of Class Action)		
15	33. Lead Plaintiff's claims and/or those of the purported Class Members may not be		
16	maintained as a class action because Lead Plaintiff waived the right to participate in a class action		
17	lawsuit against Defendants.		
18	THIRTY-FOURTH AFFIRMATIVE DEFENSE		
19	(Class Action Inappropriate)		
20	34. With respect to each and every allegation of the Complaint as they relate to the		
21	request for class certification, class certification is not appropriate including because there is a lack		
22	of:		
23	(a) numerosity;		
24	(b) commonality or community of interest;		
25	(c) typicality;		
26	(d) an ascertainable class;		
27	(e) adequate representation;		
28	(f) appropriateness of relief to the putative class as a whole;		
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1	(g)	predominance of common questions over questions affecting individual class
2		members;
3	(h)	substantial benefit to the litigants and the court; and
4	(i)	superiority of a class action to other available methods for fair and efficient
5		adjudication.
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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 Cla	ass Members;	
7	3.	That the Complaint be dismissed with prejudice;	
8	4.	That Defendants be aw	arded their costs of suit, including reasonable attorneys' fees;
9	and		
10	5.	For such other relief as	this Court deems just and proper.
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12	Date:	September 26, 2022	Respectfully submitted,
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14			<u>/s/ Michael Liftik</u> Michael E. Liftik (CA Bar No. 232430)
15			Sarah Heaton Concannon (admitted <i>pro hac vice</i> ) 1300 I Street, Suite 900
16			Washington, D.C. 20005
17			Telephone: (202) 538-8000 michaelliftik@quinnemanuel.com
18			Emily C. Kapur (CA Bar No. 306724)
19			555 Twin Dolphin Dr., 5th Fl. Redwood Shores, California 94065
20			Telephone: (650) 801-5000 emilykapur@quinnemanuel.com
21			
			Brenna D. Nelinson ( <i>pro hac vice</i> forthcoming) 51 Madison Avenue, 22nd Floor
22			New York, New York 10010 Telephone: (212) 849-7000
23			brennanelinson@quinnemanuel.com
24			Attorneys for Defendants Fei Labs Inc.,
25			Joseph Santoro, Brianna Montgomery, and Sebastian Delgado
26			
27			
28			

1	QUINN EMANUEL URQUHART & SULLIVAN, LLP		
2	Michael E. Liftik (CA Bar No. 232430) Sarah Heaton Concannon ( <i>pro hac vice</i> )		
3	1300 I Street, Suite 900 Washington, D.C. 20005		
4	Telephone: (202) 538-8000		
5	michaelliftik@quinnemanuel.com sarahconcannon@quinnemanuel.com		
6	isabelperaza@quinnemanuel.com		
7	Emily C. Kapur (CA Bar No. 306724) 555 Twin Dolphin Dr., 5th Fl.		
8	Redwood Shores, California 94065		
9	Telephone: (650) 801-5000 emilykapur@quinnemanuel.com		
10	Brenna D. Nelinson ( <i>pro hac vice</i> forthcoming)		
11	51 Madison Avenue, 22nd Fl. New York, New York 10010		
12	Telephone: (212) 849-7000		
13	brennanelinson@quinnemanuel.com		
14	Attorneys for Defendants Fei Labs Inc., Joseph Santoro, Brianna Montgomery, and		
15	Sebastian Delgado		
16	SUPERIOR COURT OF THE ST	TATE OF CALIFORNIA	
17	COUNTY OF SAN FRANCISCO		
18	JONATHAN SHOMRONI, Individually and	Case No. CGC-22-598995	
19	on behalf of all others similarly situated,		
20		PROOF OF SERVICE	
20	Plaintiff,	Hon. Ethan P. Schulman	
21	Plaintiff, v.	Hon. Ethan P. Schulman Dept. 304	
	V.	Hon. Ethan P. Schulman	
21	v. FEI LABS INC., a Delaware Corporation, JOSEPH SANTORO, an Individual,	Hon. Ethan P. Schulman Dept. 304	
21 22	v.  FEI LABS INC., a Delaware Corporation, JOSEPH SANTORO, an Individual, BRIANNA MONTGOMERY, an Individual, SEBASTIAN DELGADO, an Individual, and	Hon. Ethan P. Schulman Dept. 304	
21 22 23	v.  FEI LABS INC., a Delaware Corporation, JOSEPH SANTORO, an Individual, BRIANNA MONTGOMERY, an Individual, SEBASTIAN DELGADO, an Individual, and DOES 1-10,	Hon. Ethan P. Schulman Dept. 304	
21 22 23 24	v.  FEI LABS INC., a Delaware Corporation, JOSEPH SANTORO, an Individual, BRIANNA MONTGOMERY, an Individual, SEBASTIAN DELGADO, an Individual, and	Hon. Ethan P. Schulman Dept. 304	
<ul><li>21</li><li>22</li><li>23</li><li>24</li><li>25</li></ul>	v.  FEI LABS INC., a Delaware Corporation, JOSEPH SANTORO, an Individual, BRIANNA MONTGOMERY, an Individual, SEBASTIAN DELGADO, an Individual, and DOES 1-10,	Hon. Ethan P. Schulman Dept. 304	

1	I, Isabel Redleaf Peraza, am over the age of 18 and not a party to the above captione		
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		
16			
17	By <u>/s/ Isabel Peraza</u> 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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4	Party	Counsel and Support Personnel	
5	Plaintiff Jonathan Shomroni, Individually and	William R. Restis	
6	on behalf of all others similarly situated	william@restislaw.com	
7		Restis Law Support Personnel	
1		support@restislaw.com	
8		Angus F. Ni angus@afnlegal.com	
9		angus@annegar.com	
10		Hung G. Ta hta@hgtlaw.com	
11		0	
12		Alex Hu Alex@hgtlaw.com	
13		JooYun Kim jooyun@hgtlaw.com	
14		Jooyun@ngtiuw.com	
15			

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