

PX
8

**DECLARATION OF KEVIN LEVER
PURSUANT TO 28 U.S.C. § 1746**

I, Kevin Lever, hereby state that I have personal knowledge of the facts set forth below and am competent to testify about them. If called as a witness, I could and would testify as follows:

1. I am over 18 years old. I live in Colorado Springs, Colorado.
2. On or around December, 17, 2013, I purchased two Monarch bitcoin mining machines which were 600 GH/s cards from Butterfly Labs for \$9,378.00.
3. I was familiar with bitcoin mining as an investment vehicle because I had purchased two ASIC machines made by Butterfly Labs on ebay to use to mine (acquire) bitcoins. Soon after putting the machines into use, the increasing difficulty of mining had made them no longer cost-effective to run because of their power consumption as it related to the acquisition of bitcoins, but it did give me an underlying familiarity with the process.
4. In deciding to purchase the two Monarchs, I relied upon my experience and also upon the research about bitcoin mining I had done on the internet in general and on the Butterfly Labs' website in particular. The specifications I read on Butterfly Labs' website for its Monarchs made it seem superior to everything else on the market manufactured by an American company at the time. Also, it was an American company, which I preferred.
5. Relying upon statements Butterfly Labs posted upon its website prior to and at the time of my purchase, I expected delivery of the two Monarchs no later than March 2014.
6. On or around March 7, 2014, I received a "Production Update" email from Butterfly Labs clearly indicating to me that Butterfly Labs represented in it that they would begin shipping the Monarch within four weeks. The email also included an upgrade offer to compensate customers for the delay. A true and correct copy of the email I received from

Butterfly Labs dated March 7, 2014 setting a four-week shipping date and offering an upgrade for the delay is appended hereto as **Attachment A**.

7. On or around March 18, 2014 I received an update from Butterfly Labs notifying me of a free performance upgrade to my existing order, of 400 additional GH/s. This meant that my existing order for two Monarchs was upgraded to Imperial Monarchs. It also offered me 50% off on purchasing two new Monarch mining machines for the then-existing price. A true and correct copy of the email I received from Butterfly Labs on March 18, 2014 offering 50% off is appended hereto as **Attachment B**.

8. Using a bank wire transfer, I purchased two more Monarchs at the 50% discount on or around March 20, 2014 for \$2,272.00, plus a \$25 wire fee. It was represented on the Butterfly Labs website that shipping for these units was imminent. Otherwise, I would not have purchased the two additional Monarchs, because this was highly time-sensitive gear.

9. On or around May 6, 2014 I received a “Monarch Production Update” from Butterfly Labs via email. It stated that the Monarch was designed “with power efficiency in mind but the result of the testing phases have exceeded our expectations. It will be the best on the market in performance.” It further stated that the “Monarch product line will be essentially 3-5X more efficient at any comparable hashrate than the competition. We plan to begin shipping within the next week, but that timeline is still in flux as we adjust the board components to best utilize the chips.” A true and correct copy of the email I received from Butterfly Labs dated May 6, 2014 setting a one-week shipping date is appended hereto as **Attachment C**.

10. I waited until six months had passed from my original order and payment to Butterfly Labs, and three months from my subsequent order, with nary a mining machine in sight before I asked for my money back. Because of the increasing difficulty in bitcoin mining as time

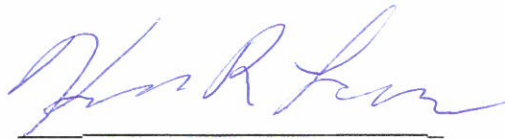
passed, I no longer believed that any of the mining machines I had ordered from Butterfly Labs would be profitable in mining bitcoins even if they were all delivered to me the next day and I ran them continuously. A true and correct copy of the email I received from Butterfly Labs dated June 18, 2014 confirming their receipt of my refund request, which stated in the subject line "Please cancel my order and issue a refund," is appended hereto as **Attachment D**.

11. A little while later on the same day I received another email from Butterfly Labs denying my refund request stating, "By exercising the 50% voucher offer and placing order # 100108292 you accepted the new terms of sale making the order no longer eligible for a full refund." They suggested that I find a buyer somehow for my "pre-orders, both the original and the additional one made with the voucher" and once I had "completed [my] sale and receive[d] payment, [I could] transfer [my] order to the buyer, using [my] account dashboard." A true and correct copy of the email I received from Butterfly Labs dated June 18, 2014 denying my refund is appended hereto as **Attachment E**.

12. As of November, 2014, I have received no delivery of any machine, not even the ones I ordered in 2013, and no refund.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 12th day of November, 2014, in Colorado Springs, CO.

A handwritten signature in blue ink, appearing to read "Kevin R. Lever", is written over a horizontal line.

Kevin R. Lever

ATTACHMENT A

Lamberton, Peter

From: K. Lever <[REDACTED]>
Sent: Wednesday, November 05, 2014 9:45 PM
To: Lamberton, Peter
Subject: Fwd: BFL News

Mr. Lamberton,

Here's a "Production Update" from Butterfly Labs clearly indicating that they represented that they would begin shipping the Monarch in 4 weeks from the date of their 7 March 2014 Newsletter, along with an upgrade offer to compensate customers for the delay.

-- Kevin Lever

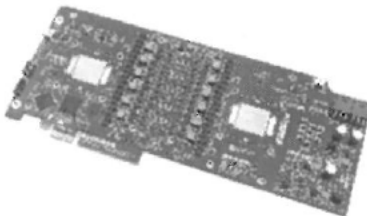
----- Original Message -----

Subject: BFL News
Date: Fri, 7 Mar 2014 19:11:00 +0000
From: BFL News <bfl_news@butterflylabs.com>
Reply-To: BFL News <bfl_news@butterflylabs.com>
To: Kevin <[REDACTED]>



Is this email not displaying correctly?
[View it in your browser.](#)

Monarch Production Update



The initial power consumption numbers for Monarch are in and they're about 20% better than anticipated, meaning we expect the Monarch to consume 0.45W/GH at the chip level. To put this in perspective, this makes the Monarch chip nearly twice as power efficient as compared to our 28nm competition whose products operate between 0.9 and 1.0w per GH at the wall.

Unfortunately to go with the good news is the announcement of a 4 week delay as of today's date. To compensate for this delay, we're offering full refunds or free performance upgrades up to 250% depending on your place

in the queue. You will receive an email shortly clarifying which benefit applies to you.

[Read entire production update post](#)

Performance Upgrade Option

The 'Imperial Monarch' is our performance version of the standard 600 GH/s card. Upgraded cards are capable of performance in the 1 TeraHash range (+/- 20%). This remarkable performance is achieved by using only 'A' grade binned chips from the production line, coupled with performance tuned water blocks cooled with a 120mm radiator. The water block system is closed loop and requires no setup or maintenance.

If you qualify for a free performance upgrade, your Monarch will be automatically upgraded. If you don't qualify, you will be able to purchase the upgrade on our website. Upgrading to the Imperial Monarch will not effect your place in the order queue. Once the upgrade order option is available, an email will be sent to all qualifying customers.



The 'Imperial Monarch' performance upgrade

BitSafe Hardware Wallet Update

What's a BitSafe? The BitSafe is a hardware wallet for secure storage of your bitcoins. Because the BitSafe is a dedicated hardware device which isn't directly exposed to the dangers of the internet, you can enjoy the peace of mind that comes from knowing your coins are safe from the viruses that can infect computers and cell phones.

The BitSafe has been in development for over a year and has gone through many stages of evolution. We've now come to the 3rd prototype stage. It's final form is complete and manufacture of the parts for initial release are underway.



Can I Pre-Order a BitSafe? Frankly, no. We've decided not to offer pre-orders at this time as our production schedule is not yet firm. Once we're closer to release we'll consider allowing pre-orders but we're more likely to make the BitSafe available through stock sales alone.

What can I do with a BitSafe? The BitSafe is a full featured hardware wallet device, meaning it can both send and receive bitcoins as well as provide cold storage backup and restore functions.

For more information and to get on the BitSafe mailing list, visit our [BitSafe webpage](#).

[Friend on Facebook](#) | [Follow on Twitter](#) | [+1 on Google+](#) | [Forward to a friend](#)

Copyright © 2012 Butterfly Labs, All rights reserved.

You are receiving this email because you have ordered or expressed interest in Butterfly Labs products.

Our mailing address is:

Butterfly Labs

PO Box 413671

Kansas City, MO 64141-3761

[unsubscribe from this list](#) | [update subscription preferences](#)

ATTACHMENT B

Lamberton, Peter

From: K. Lever <[REDACTED]>
Sent: Wednesday, November 05, 2014 9:47 PM
To: Lamberton, Peter
Subject: Fwd: BFL News

Mr. Lamberton,

Here's the March 18 update from Butterfly Labs.

-- Kevin Lever

----- Original Message -----

Subject:BFL News
Date:Tue, 18 Mar 2014 20:15:04 +0000
From:BFL News <bfl_news@butterflylabs.com>
Reply-To:BFL News <bfl_news@butterflylabs.com>
To:Kevin <[REDACTED]>



Is this email not displaying correctly?
[View it in your browser.](#)

Production update

Please Read this email. It contains information about your Butterfly Labs order.

Dear Kevin,

We recently sent out a newsletter detailing our production status. If you haven't read the status update you can view it here.

<https://forums.butterflylabs.com/announcements/4414-monarch-information-2.html#post77863>

To recap:

- Power and performance will be 20% better than expected
- There is a short delay in chip production
- Customers are being compensated for this delay based on order date.

The reason for this follow up email is to clarify which benefits apply to you*.

Delay Benefits:

- Free performance upgrade to the 1 TH Imperial Monarch version of the product you ordered. (400 additional GH/s)
- A 50% off voucher for an additional 600 GH standard Monarch card at the end of the queue.

How do I get my free upgrade? You don't have to do anything to get the upgrade. It will automatically be added to your order.

How do I get my free extra Monarch(s)? Just log into your [account](#) and claim your free extras. A voucher code will be added to your dashboard which you can use to claim your 50% off Monarch. Just place a new order for a 600 GH/s Monarch and enter the voucher code in the checkout. Shipping/Hosting is not included. This voucher offer will expire once we begin shipping Monarchs so you'll want to get your new order into the queue right away.

We hope to keep you as a customer and that's why we are offering you 115% more product than you ordered, free of charge. This is an extra \$1,842 worth of hashing gear.

If you have any questions, please don't hesitate to contact us.

Thank you
Butterfly Labs

*This is a courtesy email to inform you of the special benefits you may qualify for based on your purchase history and automated way we attributed this offer to your order. For official confirmation, please log into your dashboard which is the authoritative reference for your account

 [Friend on Facebook](#) |  [Follow on Twitter](#) |  [+1 on Google+](#) |  [Forward to a friend](#)

Copyright © 2014 Butterfly Labs, All rights reserved.

You are receiving this email because you have ordered or expressed interest in Butterfly Labs products.

Our mailing address is:

Butterfly Labs
11770 El Monte
Overland Park, KS 66211

[Add us to your address book](#)

[unsubscribe from this list](#) | [update subscription preferences](#)

ATTACHMENT C

Lamberton, Peter

From: K. Lever <[REDACTED]>
Sent: Wednesday, November 05, 2014 9:49 PM
To: Lamberton, Peter
Subject: Fwd: BFL News

Mr. Lamberton,

Here is a 6 May 2014 update, indicating they expected to begin shipping within a week.

-- Kevin Lever

----- Original Message -----

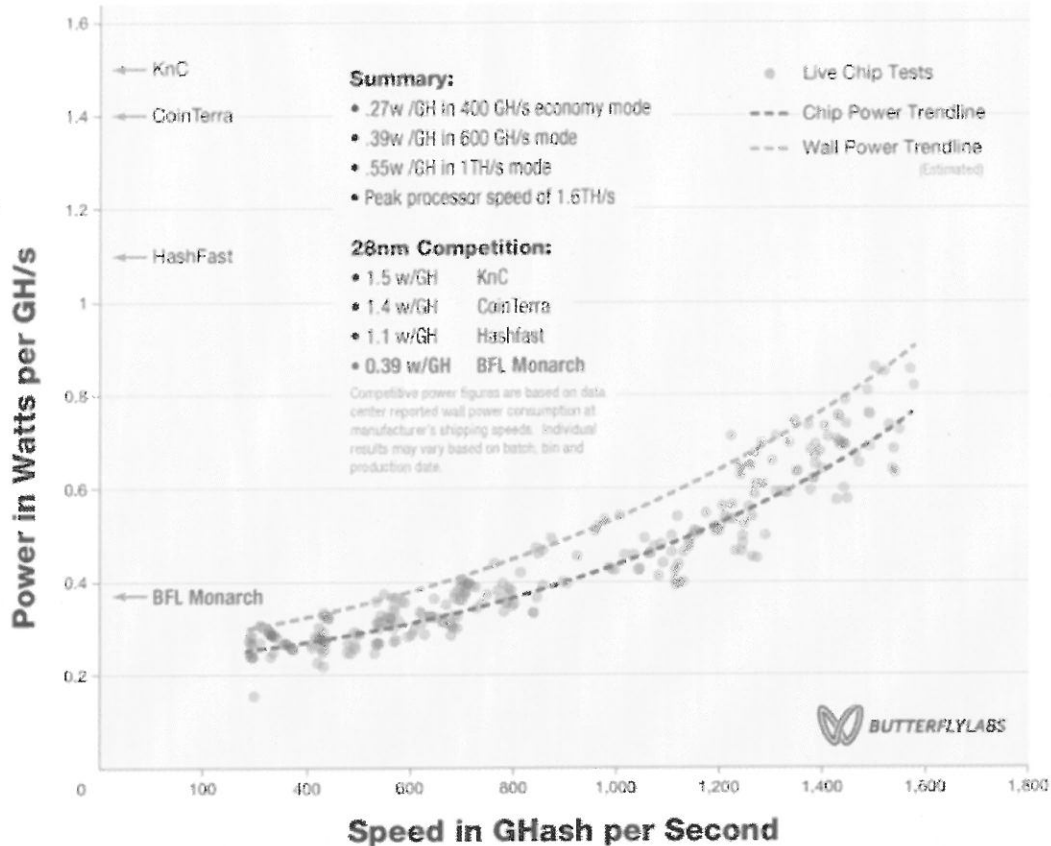
Subject:BFL News
Date:Tue, 6 May 2014 23:28:49 +0000
From:BFL News <bfl_news@butterflylabs.com>
Reply-To:BFL News <bfl_news@butterflylabs.com>
To:Kevin <[REDACTED]>



Is this email not displaying
correctly?
[View it in your browser.](#)

Monarch Production Update

BFL 28nm Monarch Performance Power vs Speed



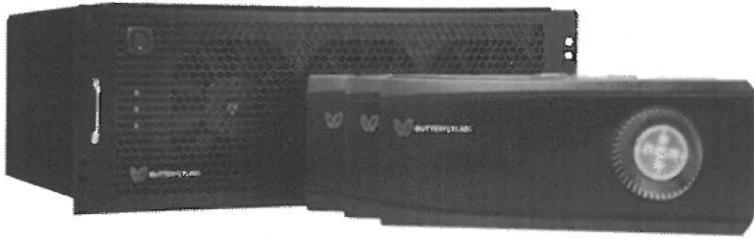
We designed the Monarch with power efficiency in mind but the results of the testing phases have exceeded our expectations. It will be the best on the market in performance.

At our nominal speed for the Monarch, 600 GH/s, power consumption is about .3W/GH at the chip level. We expect it to draw around 235W (0.39W/GH) at the wall. The Monarch can be overclocked to approximately 800 GH/s per chip, or 1.6 TH total per board with specialized cooling. The Imperial Monarch is expected to consume about 550W at the wall at 1 TH/s. Keep in mind, these numbers are from chip level testing.

The Monarch product line will be essentially 3 – 5X more efficient at any comparable hashrate than the competition. We plan to begin shipping within the next week, but that timeline is still in flux as we adjust the board components to best utilize the chips.

[Read entire production update post](#)

Monarch Rack Mount System



In other news, the Monarch Rack Mount System is a standard 4U sized data center optimized bitcoin miner based on the Monarch technology. The performance is 3TH/s and it consumes approximately 1,600w; overclocking is possible up to 4TH/s in proper cooling conditions.

Customers who have ordered individual Monarch cards can purchase an empty rackmount case or upgrade an existing monarch card order into a rackmount assembled at the factory. Additionally, you can purchase a rackmount system preloaded with three monarch cards.

Pricing and product ordering will be available next week.

[Friend on Facebook](#) | [Follow on Twitter](#) | [+1 on Google+](#) | [Forward to a friend](#)

Copyright (C) 2014 Butterfly Labs All rights reserved.

You are receiving this email because you have ordered or expressed interest in Butterfly Labs products.

Our mailing address is:

Butterfly Labs
11770 El Monte
Overland Park, KS 66211

[Add us to your address book](#)

[unsubscribe from this list](#) | [update subscription preferences](#)

ATTACHMENT D

Lamberton, Peter

From: K. Lever <[REDACTED]>
Sent: Wednesday, November 05, 2014 9:28 PM
To: Lamberton, Peter
Subject: Fwd: [#ZQX-794-84242]: Please cancel my order and issue a refund

Mr. Lamberton,

Here is the confirmation of BFL's receipt of my refund request.

Their reply will follow.

-- Kevin Lever

----- Original Message -----

Subject: [#ZQX-794-84242]: Please cancel my order and issue a refund
Date: Wed, 18 Jun 2014 13:10:37 -0500
From: Butterfly Labs <office@butterflylabs.com>
Reply-To: office@butterflylabs.com
To: [REDACTED]

[REDACTED],

Thank you for contacting us. This is an automated response confirming the receipt of your ticket. One of our agents will get back to you as soon as possible. For your records, the details of the ticket are listed below. When replying, please make sure that the ticket ID is kept in the subject line to ensure that your replies are tracked appropriately.

Ticket ID: ZQX-794-84242
Subject: Please cancel my order and issue a refund
Department: General
Type: Issue
Status: Open
Priority: Normal

You can check the status of or reply to this ticket online at:
<https://products.butterflylabs.com/supportcenter/index/landing/ticket/ZQX-794-84242>

Kind regards,

Butterfly Labs

Support Center: <https://support.butterflylabs.com/index.php?>

ATTACHMENT E

Lamberton, Peter

From: K. Lever <[REDACTED]>
Sent: Wednesday, November 05, 2014 9:29 PM
To: Lamberton, Peter
Subject: Fwd: [#ZQX-794-84242]: Please cancel my order and issue a refund

Mr. Lamberton,

Here is the reply from BFL regarding my refund request.

-- Kevin Lever

----- Original Message -----

Subject: [#ZQX-794-84242]: Please cancel my order and issue a refund
Date: Wed, 18 Jun 2014 14:04:37 -0500
From: Shawn P <office@butterflylabs.com>
Reply-To: office@butterflylabs.com
To: [REDACTED]

Hello Kevin,

Thank you for contacting us. Unfortunately we can not offer a refund on order #100094531. By exercising the 50% voucher offer and placing order #100108292 you accepted the new terms of sale making the order no longer eligible for a full refund. You do, however have the ability to sell your pre-orders, both the original and the additional one made with the voucher, using our classifieds, or the sales forum of your choice. Once you have completed your sale and receive payment, you can transfer your order to the buyer, using your account dashboard. Thank you for your patience and understanding.

Regards,
Shawn
Butterfly Labs, Inc.
Customer Service

Ticket Details

Ticket ID: ZQX-794-84242
Department: General
Type: Issue
Status: Closed
Priority: Normal

Support Center: <https://support.butterflylabs.com/index.php?/Default>