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 R.C. BIGELOW, INC.  
 8

9 UNITED STATES DISTRICT COURT  
 10 CENTRAL DISTRICT OF CALIFORNIA  
 11

12 KIMBERLY BANKS and CAROL  
 13 CANTWELL, on behalf of themselves  
 and all others similarly situated,  
 14

15 Plaintiffs,

16 vs.

17 R.C. BIGELOW, INC., a corporation; and  
 18 DOES 1 through 10, inclusive,  
 19

20 Defendants.

Case No. 2:20-cv-06208 DDP-RAOx

CLASS ACTION

**ANSWER TO FIRST AMENDED  
 CLASS ACTION COMPLAINT**

Complaint filed: July 13, 2020

District Judge: Dean D. Pregerson

Courtroom: 9C

Magistrate Judge: Rozella A. Oliver

Courtroom: 590

21 Defendant R.C. Bigelow, Inc. (“Defendant” or “Bigelow”) answers the First  
 22 Amended Class Action Complaint (“Complaint”) of Plaintiffs Kimberly Banks  
 23 (“Banks”) and Carol Cantwell (“Cantwell”) (collectively “Plaintiffs”) filed August  
 24 20, 2020 and as partially dismissed pursuant to the Court’s order of May 3, 2021  
 25 (Dkt. 22) as follows:

26 To the extent the Complaint attempts to characterize certain alleged facts  
 27 (i.e., by describing conduct, labels, and/or products as “illegal,” “deceptive” and/or  
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1 “unlawful”), Defendant responds generally that such allegations constitute mere  
2 pejoratives or conclusions of law and do not constitute allegations of fact requiring  
3 a response. To the extent such allegations may be construed as allegations of fact,  
4 Defendant objects to and denies each and every such allegation and incorporates  
5 by reference this response in each paragraph below as if fully set forth therein.

6 Defendant further responds that the headings in the Complaint do not  
7 constitute allegations of fact requiring a response, but to the extent the headings  
8 may be construed as allegations of fact, Defendant responds that it is without  
9 sufficient knowledge or information to form a belief as to the truth of the  
10 allegations and on that basis denies each and every such allegation.

11 Except as may be expressly and specifically admitted herein, Defendant  
12 denies each and every allegation alleged in the Complaint, and further denies that  
13 Plaintiffs have suffered any damages by reason of any act, omission, or conduct on  
14 the part of Defendant. Defendant further denies that Plaintiffs are entitled to the  
15 relief sought in the Complaint, or to any relief at all, from Defendant.

16 With respect to the specific paragraphs of the Complaint, Defendant  
17 responds as follows:

18 As to the paragraph prior to the Introduction, Defendant admits that  
19 Plaintiffs have filed this matter as a class action. Defendant denies the remaining  
20 allegations.

21 **INTRODUCTION**

22 1. Defendant admits that it has marketed and sold tea products to  
23 consumers during this time period, but denies the allegations of paragraph 1.

24 2. Defendant denies that Plaintiffs or other similarly situated consumers  
25 made purchasing decisions based on any statements regarding country or origin.  
26 Defendant denies that the products are solely foreign-sourced.

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3. Defendant denies that consumers do not know the truth regarding Defendant’s teas. Defendant denies the remaining allegations of paragraph 3.

4. Paragraph 4 is a legal contention to which no answer is required. To the extent required, Defendant denies the allegations of paragraph 4.

**JURISDICTION AND VENUE**

5. Defendant lacks sufficient information to form a belief as to the truth as to the allegation regarding whether Plaintiffs are California citizens and on such basis denies the allegation. Defendant admits it is a citizen of the state of Connecticut. Defendant denies the remaining allegation of paragraph 5.

6. Defendant lacks sufficient information to form a belief as to the truth as to the allegation regarding whether the Court has personal jurisdiction over it based on minimum contacts, purposeful availment, or traditional notions of fair play and substantial justice. Nonetheless, Defendant is not objecting to personal jurisdiction for purposes of this action, only.

7. Defendant admits that venue is proper under the claims currently pled.

**THE PARTIES**

8. Defendant lacks sufficient information to form a belief as to the truth as to the allegations in paragraph 8, and on such basis denies them.

9. Defendant lacks sufficient information to form a belief as to the truth as to the allegations in paragraph 9, and on such basis denies them.

10. Defendant lacks sufficient information to form a belief as to the truth as to the allegations in paragraph 10, and on such basis denies them.

11. Defendant lacks sufficient information to form a belief as to the truth as to the allegations in paragraph 11, and on such basis denies them.

12. Defendant lacks sufficient information to form a belief as to the truth as to the allegations in paragraph 12, and on such basis denies them.

1 13. Defendant admits that it is a private corporation headquartered in  
2 Connecticut. Defendant lacks sufficient information to form a belief as to the truth  
3 as to the remaining allegations in paragraph 13, and on such basis denies them.

4 14. Defendant lacks sufficient information to form a belief as to the truth  
5 as to the allegations in paragraph 12, and on such basis denies them.

6 **FACTUAL ALLEGATIONS**

7 **A. The Products at Issue**

8 15. Defendant admits that Plaintiffs have identified certain products at  
9 issue it sells. Defendant denies all other allegations.

10 16. Admitted.

11 **B. Plaintiff Allege The Products Are Not Manufactured in the USA**

12 17. Defendant denies the allegations in paragraph 17.

13 18. Defendant admits that it uses black, green, and oolong tea leaves that  
14 are derived from the Camellia Sinensis plant, which can be located in Sri Lanka  
15 and India. Defendant denies that its products are solely processed outside of the  
16 United States.

17 19. Defendant denies the allegations and characterizations in paragraph  
18 19.

19 20. Defendant lacks sufficient information to form a belief as to the truth  
20 as to the allegations in paragraph 20, and on such basis denies them.

21 21. Defendant denies that the United States grows a miniscule amount of  
22 Tea. Defendant admits the remaining allegations of paragraph 21 reflect  
23 information found on the Charleston Tea Garden website.

24 22. Defendant admits that it has owned the Charleston Tea Garden.  
25 Defendant lacks sufficient information to form a belief as to the truth as to the  
26 remaining allegations in paragraph 22, and on such basis denies them.

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1 23. Defendant admits that Plaintiffs’ allegation includes language from  
2 the website of the Charleston Tea Garden.

3 24. Defendant admits that Plaintiffs’ allegation includes language from  
4 the Bigelow website.

5 25. Defendant admits that Plaintiffs’ allegation includes language from  
6 the Bigelow website.

7 26. Defendant admits that it uses black, green, and oolong tea leaves that  
8 are derived from the Camellia Sinensis plant, which can be located in Sri Lanka  
9 and India. Defendant denies that its products are solely processed outside of the  
10 United States.

11 27. Defendant admits that Plaintiffs’ allegation includes language from  
12 the Bigelow website.

13 28. Defendant admits that Plaintiffs’ allegation includes language from  
14 the Bigelow website. Defendant denies the remaining allegations and  
15 characterizations in paragraph 28.

16 29. Defendant admits that Plaintiffs’ allegation includes language from  
17 the Bigelow website.

18 30. Defendant denies the allegations and characterizations in paragraph  
19 30.

20 **C. Plaintiffs Allege That The Products’ Packaging is Likely to Deceive**  
21 **Reasonable Consumers**

22 31. Denied.

23 32. Defendant admits the quoted statements in subparts (a) and (b) are  
24 found on some of Defendant’s products but denies that they create any impression  
25 in violation of any law, rule, or regulation.  
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1 33. Defendant admits that Plaintiffs have, on their own, created a defined  
2 term for the statements found in subparts (a) and (b) of Paragraph 32. Defendant  
3 otherwise denies the allegations in the paragraph.

4 34. Defendant admits that the photos found in paragraph 34 reflect a  
5 portion of the packaging of the teas depicted therein.

6 **D. Plaintiffs Allege The Manufactured in the USA Representations Harm**  
7 **Consumers**

8 35. Defendant lacks sufficient information to form a belief as to the truth  
9 as to the allegations in paragraph 35, and on such basis denies them.

10 36. Defendant lacks sufficient information to form a belief as to the truth  
11 as to the allegations in paragraph 36, and on such basis denies them.

12 37. Defendant lacks sufficient information to form a belief as to the truth  
13 as to the allegations in paragraph 37, and on such basis denies them.

14 38. Denied.

15 39. Denied.

16 40. This paragraph is a legal contention to which no response is required.  
17 However, to the extent any is required, Defendant denies the allegations of this  
18 paragraph.

19 41. Defendant admits that Plaintiffs’ allegation includes a quote from the  
20 Charleston Tea Garden website. Defendant denies all other allegations in  
21 paragraph 41.

22 42. Denied.

23 **CLASS ACTION ALLEGATIONS**

24 43. This paragraph is a legal contention to which no response is required.  
25 However, to the extent any is required, Defendant denies the allegations of this  
26 paragraph, including denying whether this case satisfies class action treatment and  
27 whether the subclasses are properly stated.  
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1 44. This paragraph is a legal contention to which no response is required.  
2 However, to the extent any is required, Defendant denies the allegations of this  
3 paragraph, including denying whether this case satisfies class action treatment and  
4 whether the subclasses are properly stated.

5 45. This paragraph is a legal contention to which no response is required.  
6 However, to the extent any is required, Defendant denies the allegations of this  
7 paragraph, including Plaintiffs’ alleged reservation of rights.

8 46. Defendant lacks sufficient information to form a belief as to the truth  
9 as to the allegations in paragraph 46, and on such basis denies them.

10 47. Defendant lacks sufficient information to form a belief as to the truth  
11 as to the allegations in paragraph 47, and on such basis denies them.

12 48. This paragraph is a legal contention to which no response is required.  
13 However, to the extent any is required, Defendant denies the allegations of this  
14 paragraph, including each subpart (a)-(f).

15 49. Denied.

16 50. This paragraph is a legal contention to which no response is required.  
17 However, to the extent any is required, Defendant denies the allegations of this  
18 paragraph.

19 51. This paragraph is a legal contention to which no response is required.  
20 However, to the extent any is required, Defendant denies the allegations of this  
21 paragraph.

22 52. This paragraph is a legal contention to which no response is required.  
23 However, to the extent any is required, Defendant denies the allegations of this  
24 paragraph.

25 53. Denied.

26 **FIRST CLAIM FOR RELIEF**  
27 **Violation of Cal. Bus & Prof Code § 17533.7**  
28 ***(For the Classes)***

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1           54. In response to paragraph 54, Defendant incorporates by reference its  
2 responses to each and every allegation in the foregoing paragraphs as if fully set  
3 forth herein.

4           55. This paragraph is a legal contention to which no response is required.  
5 However, to the extent any is required, Defendant denies the allegations of this  
6 paragraph.

7           56. In response to paragraph 56, Defendant admits that Plaintiffs purport  
8 to bring this claim individually and on behalf of the members of the California  
9 class. Defendant specifically denies that any purported class is certifiable or that  
10 this lawsuit may be properly maintained as a class action.

11           57. Denies.

12           58. Defendant denies the allegations and characterizations in paragraph  
13 58.

14           59. This paragraph is a legal contention to which no response is required.  
15 However, to the extent any is required, Defendant denies the allegations of this  
16 paragraph.

17           60. This paragraph is a legal contention to which no response is required.  
18 However, to the extent any is required, Defendant denies the allegations of this  
19 paragraph.

20           61. This paragraph is a legal contention to which no response is required.  
21 However, to the extent any is required, Defendant denies the allegations of this  
22 paragraph.

23           62. Denied.

24           63. Denied.

25           64. Defendant denies that Plaintiffs were harmed. Further, because the  
26 Court has dismissed all claims for equitable relief, no response to paragraph 64 is  
27 required. To the extent any response is required, Defendant denies same.  
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**SECOND CLAIM FOR RELIEF**  
**Violation of California’s Consumers Legal Remedies Act (“CLRA”)**  
**California Civil Code § 1750, *et seq.***  
***(For the California Consumer Subclass)***

65. In response to paragraph 65, Defendant incorporates by reference its responses to each and every allegation in the foregoing paragraphs as if fully set forth herein.

66. In response to paragraph 66, Defendant admits that Plaintiffs purport to bring this claim individually and on behalf of the members of the California class. Defendant specifically denies that any purported class is certifiable or that this lawsuit may be properly maintained as a class action.

67. This paragraph is a legal contention to which no response is required. However, to the extent any is required, Defendant denies the allegations of this paragraph.

68. Denied.

69. Denied.

70. Denied.

71. Denied.

72. Denied.

73. Denied.

74. Denied.

75. Denied.

76. Defendant admits that the Declaration of Kimberly Banks was submitted as Exhibit A to the Complaint. Defendant lacks sufficient information to form a belief as to the truth as to the remaining allegation of paragraph 76 or the contents of the Declaration, and therefore denies them on that basis.

77. Defendant admits that the Letter was received by Bigelow or its agent on the date described. Defendant lacks sufficient information to form a belief as to

1 the truth as to the remaining allegation of paragraph 77 or the contents of the  
2 Letter, and therefore denies them on that basis.

3 78. Defendant admits that the required 30 days has lapsed. Defendant  
4 denies the remaining allegations of paragraph 78 and denies that it has violated the  
5 Consumers Legal Remedies Act.

6 79. Because the Court has dismissed all claims for equitable relief, no  
7 response to paragraph 79 is required. To the extent any response is required,  
8 Defendant denies same.

9 **THIRD CLAIM FOR RELIEF**  
10 **Violation of California’s False Advertising Law (“FAL”),**  
11 **California Business & Professions Code § 17500, *et seq.***  
***(For the Classes)***

12 80. In response to paragraph 80, Defendant incorporates by reference its  
13 responses to each and every allegation in the foregoing paragraphs as if fully set  
14 forth herein.

15 81. Because the Court has dismissed this claim, no response to paragraph  
16 81 is required. To the extent any response is required, Defendant denies same.

17 82. Because the Court has dismissed this claim, no response to paragraph  
18 82 is required. To the extent any response is required, Defendant denies same.

19 83. Because the Court has dismissed this claim, no response to paragraph  
20 83 is required. To the extent any response is required, Defendant denies same.

21 84. Because the Court has dismissed this claim, no response to paragraph  
22 84 is required. To the extent any response is required, Defendant denies same.

23 85. Because the Court has dismissed this claim, no response to paragraph  
24 85 is required. To the extent any response is required, Defendant denies same.

25 86. Because the Court has dismissed this claim, no response to paragraph  
26 86 is required. To the extent any response is required, Defendant denies same.  
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**FOURTH CLAIM FOR RELIEF**  
**Violation of California’s Unfair Competition Law (“UCL”),**  
**California Business & Professions Code § 17200, *et seq.***  
***(For the Classes)***

87. In response to paragraph 87, Defendant incorporates by reference its responses to each and every allegation in the foregoing paragraphs as if fully set forth herein.

88. Because the Court has dismissed this claim, no response to paragraph 88 is required. To the extent any response is required, Defendant denies same.

89. Because the Court has dismissed this claim, no response to paragraph 89 is required. To the extent any response is required, Defendant denies same.

90. Because the Court has dismissed this claim, no response to paragraph 90 is required. To the extent any response is required, Defendant denies same.

91. Because the Court has dismissed this claim, no response to paragraph 91 is required. To the extent any response is required, Defendant denies same.

92. Because the Court has dismissed this claim, no response to paragraph 92 is required. To the extent any response is required, Defendant denies same.

93. Because the Court has dismissed this claim, no response to paragraph 93 is required. To the extent any response is required, Defendant denies same.

94. Because the Court has dismissed this claim, no response to paragraph 94 is required. To the extent any response is required, Defendant denies same.

95. Because the Court has dismissed this claim, no response to paragraph 95 is required. To the extent any response is required, Defendant denies same.

96. Because the Court has dismissed this claim, no response to paragraph 96 is required. To the extent any response is required, Defendant denies same.

97. Because the Court has dismissed this claim, no response to paragraph 97 is required. To the extent any response is required, Defendant denies same.

1 98. Because the Court has dismissed this claim, no response to paragraph  
2 98 is required. To the extent any response is required, Defendant denies same.

3 99. Because the Court has dismissed this claim, no response to paragraph  
4 99 is required. To the extent any response is required, Defendant denies same.

5 **FIFTH CLAIM FOR RELIEF**  
6 **Breach of Express Warranty**  
7 **California Commercial Code § 2313**  
8 ***(For the Classes)***

9 100. In response to paragraph 100, Defendant incorporates by reference its  
10 responses to each and every allegation in the foregoing paragraphs as if fully set  
11 forth herein.

12 101. In response to paragraph 101, Defendant admits that Plaintiffs purport  
13 to bring this claim individually and on behalf of the members of the California  
14 class. Defendant specifically denies that any purported class is certifiable or that  
15 this lawsuit may be properly maintained as a class action.

16 102. This paragraph is a legal contention to which no response is required.  
17 However, to the extent any is required, Defendant denies the allegations of this  
18 paragraph.

19 103. Defendant denies the allegations and characterizations in paragraph  
20 103.

21 104. Denied.

22 105. Denied.

23 106. Denied.

24 107. Denied.

25 108. Denied.

26 109. Defendant lacks sufficient information to form a belief as to the truth  
27 as to the allegations in paragraph 109, and on such basis denies them.  
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**SIXTH CLAIM FOR RELIEF**  
**Breach of Implied Warranty**  
**California Commercial Code § 2314**  
*(For the Classes)*

110. In response to paragraph 110, Defendant incorporates by reference its responses to each and every allegation in the foregoing paragraphs as if fully set forth herein.

111. In response to paragraph 111, Defendant admits that Plaintiffs purport to bring this claim individually and on behalf of the members of the California class. Defendant specifically denies that any purported class is certifiable or that this lawsuit may be properly maintained as a class action.

112. This paragraph is a legal contention to which no response is required. However, to the extent any is required, Defendant denies the allegations of this paragraph.

113. This paragraph is a legal contention to which no response is required. However, to the extent any is required, Defendant denies the allegations of this paragraph.

114. This paragraph is a legal contention to which no response is required. However, to the extent any is required, Defendant denies the allegations of this paragraph.

115. Denied.

116. Denied.

117. Denied.

**SEVENTH CLAIM FOR RELIEF**  
**Intentional Misrepresentation**  
*(For the Classes)*

118. In response to paragraph 118, Defendant incorporates by reference its responses to each and every allegation in the foregoing paragraphs as if fully set forth herein.

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119. In response to paragraph 119, Defendant admits that Plaintiffs purport to bring this claim individually and on behalf of the members of the California class. Defendant specifically denies that any purported class is certifiable or that this lawsuit may be properly maintained as a class action.

120. Denied.

121. Denied.

122. Denied.

123. Denied.

124. Denied.

125. Denied.

**EIGHTH CLAIM FOR RELIEF**  
**Negligent Misrepresentation**  
*(For the Classes)*

126. In response to paragraph 126, Defendant incorporates by reference its responses to each and every allegation in the foregoing paragraphs as if fully set forth herein.

127. In response to paragraph 127, Defendant admits that Plaintiffs purport to bring this claim individually and on behalf of the members of the California class. Defendant specifically denies that any purported class is certifiable or that this lawsuit may be properly maintained as a class action.

128. Denied.

129. Denied.

130. Denied.

131. Denied.

132. Denied.

133. Denied.

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**NINTH CLAIM FOR RELIEF**  
**Quasi Contract/Unjust Enrichment/Restitution**  
*(For the Classes)*

134. In response to paragraph 134, Defendant incorporates by reference its responses to each and every allegation in the foregoing paragraphs as if fully set forth herein.

135. Because the Court has dismissed this claim, no response to paragraph 135 is required. To the extent any response is required, Defendant denies same.

136. Because the Court has dismissed this claim, no response to paragraph 136 is required. To the extent any response is required, Defendant denies same.

137. Because the Court has dismissed this claim, no response to paragraph 137 is required. To the extent any response is required, Defendant denies same.

138. Because the Court has dismissed this claim, no response to paragraph 138 is required. To the extent any response is required, Defendant denies same.

139. Because the Court has dismissed this claim, no response to paragraph 139 is required. To the extent any response is required, Defendant denies same.

140. Because the Court has dismissed this claim, no response to paragraph 140 is required. To the extent any response is required, Defendant denies same.

**PRAYER FOR RELIEF**

Defendant denies that Plaintiffs are entitled to any relief or remedy whatsoever, including, without limitation, any other relief sought in the unnumbered “WHEREFORE” paragraph, including all subparts thereto, contained on pages 32 and 33 of the Complaint. Defendant specifically denies that Plaintiffs are entitled to restitution or injunctive relief, which the Court expressly dismissed.

**DEMAND FOR JURY TRIAL**

Defendant admits that Plaintiffs have demanded a trial by jury. Defendant demands a trial by jury on all issues so triable.

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**GENERAL DENIAL**

Any and all allegations not expressly admitted herein are hereby denied.

**AFFIRMATIVE DEFENSES**

Pursuant to Rule 8(c) of the Federal Rules of Civil Procedure, Defendant sets forth the following affirmative defenses:

**FIRST AFFIRMATIVE DEFENSE**  
**FAILURE TO STATE A CLAIM**

The Complaint fails to state a claim upon which relief can be granted because, among other reasons, Defendant makes truthful, qualified, non-misleading claims regarding the domestic manufacturing of its products as acknowledged on the face of the Complaint; the Complaint fails to allege facts sufficient to support a conclusion that the labels on the products at issue are or were false or misleading, or violate any federal or state labeling regulations; and the Complaint fails to allege facts sufficient to support a conclusion that Plaintiffs suffered any damages as a result of any act or omission on the part of Defendant.

**SECOND AFFIRMATIVE DEFENSE**  
**FIRST AMENDMENT**

Application of Cal. Bus. & Prof. Code § 17533.7 in the manner advanced by Plaintiffs to prohibit truthful, non-misleading commercial speech would violate the First Amendment to the Constitution of the United States of America.

**THIRD AFFIRMATIVE DEFENSE**  
**DORMANT COMMERCE CLAUSE**

Application of Cal. Bus. & Prof. Code §§ 17500 et seq. and 17533.7; and Cal. Civ. Code § 1750 et seq. in the manner advanced by Plaintiffs to prohibit truthful, non-misleading commercial speech would violate the dormant commerce clause of the United States Constitution.



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**FOURTH AFFIRMATIVE DEFENSE**  
**LACHES**

The Complaint is barred by the doctrine of laches.

**FIFTH AFFIRMATIVE DEFENSE**  
**UNCLEAN HANDS**

The Complaint is barred by the doctrine of unclean hands.

**SIXTH AFFIRMATIVE DEFENSE**  
**PUFFERY**

Each of the causes of action alleged in the Complaint fails because Defendant’s packaging constitutes, at most, non-actionable puffery.

**SEVENTH AFFIRMATIVE DEFENSE**  
**REASONABLE CONSUMER**

Each of the causes of action alleged in the Complaint fails because a reasonable consumer would not likely to be deceived.

**EIGHTH AFFIRMATIVE DEFENSE**  
**VOLUNTARY PAYMENT DOCTRINE**

Each of the causes of action alleged in the Complaint is barred by the voluntary payment doctrine to the extent Plaintiffs voluntarily purchased the products at issue knowingly and intelligently and without mistake of fact.

**NINTH AFFIRMATIVE DEFENSE**  
**FAILURE TO MITIGATE**

The monetary relief sought by Plaintiffs is barred to the extent that they failed to make reasonable efforts to prevent or mitigate any alleged injury or loss.

**TENTH AFFIRMATIVE DEFENSE**  
**LACK OF PRIVITY**

Plaintiffs’ claims are barred, in whole or in part, to the extent Defendant was not in privity with Plaintiffs.

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**ELEVENTH AFFIRMATIVE DEFENSE**  
**CONSUMER PROTECTION LAWS UNDULY VAGUE**

Any finding of compensatory liability under the consumer protection laws of California would violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and of any analogous provision contained in the California constitution because the standards of liability under these consumer protection laws are unduly vague and subjective, and permit retroactive, random, arbitrary, and capricious punishment.

**TWELFTH AFFIRMATIVE DEFENSE**  
**NO ECONOMIC HARM**

Plaintiff and the putative class members did not suffer any economic harm and are therefore precluded from monetary recovery under the consumer protection laws of California.

**THIRTEENTH AFFIRMATIVE DEFENSE**  
**SAFE HARBOR**

Plaintiffs’ claims are barred or limited, in whole or in part, because Defendant’s business practices complied with the law and therefore falls within a safe harbor created by law and were made in good faith.

**FOURTEENTH AFFIRMATIVE DEFENSE**  
**SPECULATIVE DAMAGES**

Plaintiffs’ claims are barred, in whole or in part, because the damages sought by Plaintiffs and the putative class members are speculative, remote, and/or impossible to ascertain.

**FIFTEENTH AFFIRMATIVE DEFENSE**  
**CLASS ACTION**

Plaintiffs’ claims are barred or limited, in whole or in part, because neither this case, nor any part of it, may be certified as a class action pursuant to Federal Rule of Civil Procedure 23 or otherwise.

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**SIXTEENTH AFFIRMATIVE DEFENSE**  
**NO MONEY PAID DIRECTLY TO DEFENDANT**

Plaintiffs’ claims for restitution are barred to the extent that Plaintiffs did not pay money directly to Defendant, and/or Plaintiffs seek a return of monies not in Defendant’s possession.

**SEVENTEENTH AFFIRMATIVE DEFENSE**  
**FAILURE TO PLEAD FRAUD WITH PARTICULARITY**

Plaintiffs’ causes of action sounding in fraud, deception and/or misrepresentation are barred by Plaintiffs’ failure to allege the circumstances and conduct constituting the alleged fraud, deception and/or misrepresentation with particularity.

**EIGHTEENTH AFFIRMATIVE DEFENSE**  
**ADEQUATE REMEDY AT LAW**

The equitable relief sought by Plaintiffs is barred because any damage allegedly suffered by Plaintiffs can be adequately compensated in an action at law for damages, and such claims have been dismissed.

**NINETEENTH AFFIRMATIVE DEFENSE**  
**NO BASIS FOR RESTITUTION**

There is no basis for restitution as Defendant has not been unjustly enriched and such claims have been dismissed.

**TWENTIETH AFFIRMATIVE DEFENSE**  
**COMMERCIALY REASONABLE MANNER**

At all times relevant herein, Defendant conducted itself in a commercially reasonable manner, consistent with the requisites of the Uniform Commercial Code.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**  
**PUNITIVE DAMAGES**

An award of punitive damages based on conduct outside of this jurisdiction

1 would impose unreasonable state limitations on interstate commerce in violation of  
2 the Commerce Clause and would be in violation of the Supreme Court’s holding in  
3 *State Farm v. Campbell*, 538 U.S. 408 (2003).

4 **TWENTY-SECOND AFFIRMATIVE DEFENSE**  
5 **PUNITIVE DAMAGES**

6 Any award of punitive damages would violate Defendant’s guarantees of  
7 due process, equal protection, property, and protection against excessive fines  
8 under the Fourteenth Amendment of the United States Constitution and the  
9 applicable law of this jurisdiction.

10 **TWENTY-THIRD AFFIRMATIVE DEFENSE**  
11 **PUNITIVE DAMAGES**

12 An award of punitive damages is improper without consideration of the three  
13 constitutional guideposts of reprehensibility, ratio, and civil penalties. *See State*  
14 *Farm v. Campbell*, 538 U.S. 408 (2003). An award of punitive damages is  
15 improper without judicial review on the basis of objective standards including the  
16 three constitutional guideposts of reprehensibility, ratio, and civil penalties. *See id.*  
17 An award of punitive damages is improper with no limits, including the  
18 constitutional prohibition against punitive damages awards being greater than a  
19 single-digit multiplier of any compensatory damages award. *See id.*

20 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**  
21 **PUNITIVE DAMAGES**

22 Any calculation or award of punitive damages against Defendant based in  
23 whole or in part upon Defendant’s alleged conduct toward non-parties is an  
24 unconstitutional and constitutes a taking of Defendant’s property without due  
25 process. *Philip Morris USA v. Williams*, 549 U.S. 346 (2007).

26 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**  
27 **STATUTES OF LIMITATIONS**

28 Each of the causes of action alleged in the Complaint is barred to the extent

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1 that Plaintiffs and the putative classes seek relief based on acts or omissions by  
2 Defendant or products purchased by Plaintiffs or putative class members prior to  
3 the applicable limitations periods.

4 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**  
5 **NOT MATERIAL**

6 Plaintiffs are precluded from recovery because the representations, actions  
7 or omissions alleged by Plaintiffs were and are not material to Plaintiffs’ decisions  
8 to purchase or consume the subject products.

9 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**  
10 **CLASS CERTIFICATION IMPROPER**

11 The purported classes cannot be certified because the purported classes,  
12 class representatives and/or class counsel fail to meet the numerosity, typicality,  
13 commonality, adequacy, superiority, and predominance requirements for class  
14 actions.

15 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**  
16 **CLASS CERTIFICATION IMPROPER**

17 Plaintiffs’ purported class claims are barred because Plaintiffs’ definition of  
18 the classes is vague, ambiguous, and overly broad, and would include a non-  
19 diminis number of uninjured class members.

20 **TWENTY-NINTH AFFIRMATIVE DEFENSE**  
21 **NOT FALSE OR MISLEADING**

22 No labels for Defendant’s products contain or contained any false or  
23 misleading statement or promises. As such, the product labels are not, and were  
24 not, deceptive, false, misleading, fraudulent, unlawful, or unfair, and were not  
25 intended to mislead or deceive consumers.

26 **THIRTIETH AFFIRMATIVE DEFENSE**  
27 **RESERVATION OF ADDITIONAL DEFENSES**

28 Defendant presently has insufficient knowledge or information on which to

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1 form a belief as to whether it may have additional, as yet unstated, affirmative  
2 defenses available. Defendant hereby reserves the right to amend its answer to  
3 raise additional affirmative defenses as they become available or apparent to it  
4 through discovery in this matter or otherwise.

5 **PRAYER**

6 WHEREFORE, having fully answered Plaintiffs’ First Amended Complaint,  
7 Defendant respectfully prays as follows:

- 8 1. That Plaintiffs take nothing by way of their Complaint;
- 9 2. That judgment be entered in favor of Defendant and against Plaintiffs  
10 on the Complaint as a whole;
- 11 3. That Defendant be awarded costs of suit, including attorneys’ fees and  
12 expert fees, as may be proper under applicable statutes;
- 13 4. That the Court award such other relief as the Court may deem  
14 appropriate.

15 **DEMAND FOR JURY TRIAL**

16 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Defendant  
17 demands a trial by jury of all issues raised by the pleadings which are triable by  
18 jury.

19 Dated: June 16, 2021

GORDON REES SCULLY  
MANSUKHANI

21 By: /s/ Joni B. Flaherty  
22 Timothy K. Branson  
23 Joni B. Flaherty  
24 Patrick J. Mulkern  
25 Attorneys for Defendant  
R.C. BIGELOW, INC.

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