

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

CLAUDIA NEWTON and BRANDY  
LEANDRO, on behalf of themselves and all  
others similarly situated,

Plaintiffs,

v.

R.C. BIGELOW, INC. and DOES 1 through 10,

Defendants.

Case No.: 2:22-cv-5660-LDH-SIL

**ANSWER TO FIRST AMENDED  
CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

**ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANT R.C. BIGELOW, INC.  
TO PLAINTIFFS' FIRST AMENDED CLASS ACTION COMPLAINT**

Defendant R.C. Bigelow, Inc. (“Defendant” or “Bigelow”), by and through its undersigned counsel, hereby answers the putative First Amended Class Action Complaint (“Amended Complaint”) filed by Plaintiffs Claudia Newton and Brandy Leandro (collectively, “Plaintiffs”), on behalf of themselves and all others similarly situated (“Putative Class”). Bigelow denies the allegations in the Amended Complaint, unless expressly admitted below.

**INTRODUCTION<sup>1</sup>**

1. Defendant admits that it has sold tea products to consumers in the State of New York, but denies the remaining allegations of paragraph 1.
2. Defendant denies the allegations of paragraph 2.
3. Defendant denies the allegations of paragraph 3.

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<sup>1</sup> Bigelow repeats the headings set forth in the Amended Complaint in order to simplify comparison of the Amended Complaint and this Answer. By doing so, Bigelow makes no admission regarding any fact expressly or implicitly alleged in those headings, and, for avoidance of doubt, denies any such allegation unless it is expressly admitted in this Answer.

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

5. Paragraph 5 is a legal contention to which no answer is required. To the extent required, Defendant denies the allegations of paragraph 5.

### **JURISDICTION AND VENUE**

6. Defendant admits that Plaintiffs have filed this case as a putative class action. Defendant lacks sufficient information to form a belief as to the truth as to the allegations in paragraph 6, and on such basis denies the allegations.

7. Defendant admits that it has sold products in New York to New York consumers. Defendant lacks sufficient information to form a belief as to the truth as to the remaining allegations in paragraph 7, and on such basis denies the allegations.

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 the allegations.

### **PARTIES**

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 the allegations.

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 the allegations.

11. Defendant admits that it is a private corporation headquartered in Fairfield, Connecticut and that its products are sold by third party retailers such as retail outlets and grocery stores throughout the State of New York and the United States. Defendant lacks sufficient information to form a belief as to the truth as to the remaining allegations in paragraph 11, and on such basis denies the allegations.

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 the allegations.

### **FACTUAL ALLEGATIONS**

#### **A. The Class Products.**

13. Defendant admits that Plaintiffs have alleged certain products and representations to be at issue in the case and denies all other allegations on paragraph 13.

14. Defendant admits that Plaintiffs have alleged certain products and representations to be at issue in the case and denies all other allegations of paragraph 14.

15. Defendant admits that Plaintiffs have alleged certain products and representations to be at issue in the case and that the allegations of paragraph 15 include incomplete depictions of certain of Defendant's product packaging at some point in time. Defendant denies that all of the alleged products contain the alleged representations or that the depictions in paragraph 15 reflect existing packaging or representations. Defendant denies all other allegations of paragraph 15.

#### **B. The Class Products Are Not Manufactured in the USA.**

16. Defendant denies the allegations and characterizations of paragraph 16.

17. Defendant admits that it uses black, green, and oolong tea leaves that are derived from the camellia sinensis plant, which can be located in India, China, and Sri Lanka. Defendant denies all other allegations and characterizations of paragraph 17.

18. Defendant lacks sufficient information to form a belief as to the truth as to the allegations in paragraph 18, and on such basis denies the allegations.

19. Defendant admits that the Charleston Tea Garden is located in Charleston, South Carolina and consists of 127 acres. Defendant denies all other allegations of paragraph 19.

20. Defendant admits that it has owned the Charleston Tea Garden and that the allegations in paragraph 20 include a quote currently on the Charleston Tea Garden website. Defendant denies all other allegations and characterizations of paragraph 20.

21. Defendant denies the allegations and characterizations in paragraph 21.

22. Defendant denies the allegations and characterizations in paragraph 22.

23. Defendant lacks sufficient information to form a belief as to the truth as to the allegations in paragraph 23, and on such basis denies the allegations.

24. Defendant lacks sufficient information to form a belief as to the truth as to the allegations in paragraph 24, and on such basis denies the allegations.

25. Defendant lacks sufficient information to form a belief as to the truth as to the allegations in paragraph 25, and on such basis denies the allegations.

26. Defendant denies the allegations and characterizations in paragraph 26.

**C. The False and Deceptive *Manufactured in USA* Claims Harm Consumers.**

27. Defendant denies the allegations and characterizations in paragraph 27.

28. Defendant denies the allegations and characterizations in paragraph 28.

29. The first sentence of paragraph 29 is a legal contention to which no answer is required, but to the extent required, Defendant denies the allegations. As to the remaining allegations of paragraph 29, Defendant lacks sufficient information to form a belief as to the truth as to the allegations, and on such basis denies the allegations.

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

31. Defendant lacks sufficient information to form a belief as to the truth as to the allegations in paragraph 31, and on such basis denies the allegations.

32. Defendant denies the allegations and characterizations in paragraph 32.

33. Defendant denies the allegations and characterizations in paragraph 33.

34. Defendant denies the allegations and characterizations in paragraph 34.

**CLASS ACTION ALLEGATIONS**

35. Paragraph 35 is a legal contention to which no response is required. However, to the extent a response is required, Defendant denies the allegations of this paragraph, including whether this case and Plaintiff's purported class definition satisfy the requirements of Rule 23.

36. Paragraph 36 is a legal contention to which no response is required. However, to the extent a response is required, Defendant denies the allegations of this paragraph, including whether this case and Plaintiff's purported class definition satisfy the requirements of Rule 23.

37. Paragraph 37 is a legal contention to which no response is required. However, to the extent any is required, Defendant denies the allegations of this paragraph, including Plaintiffs' alleged reservations of rights.

38. Defendant lacks sufficient information to form a belief as to the truth as to the allegations in paragraph 38, and on such basis denies the allegations.

39. Defendant lacks sufficient information to form a belief as to the truth as to the allegations in paragraph 39, and on such basis denies the allegations.

40. Paragraph 40 is a legal contention to which no response is required. However, to the extent a response is required, Defendant denies the allegations of this paragraph, including each subpart (a)-(f).

41. Paragraph 41 is a legal contention to which no response is required. However, to the extent a response is required, Defendant denies the allegations of this paragraph.

42. Paragraph 42 is a legal contention to which no response is required. However, to the extent a response is required, Defendant denies the allegations of this paragraph.

43. Paragraph 43 is a legal contention to which no response is required. However, to the extent a response is required, Defendant denies the allegations of this paragraph.

44. Paragraph 44 is a legal contention to which no response is required. However, to the extent a response is required, Defendant denies the allegations of this paragraph.

45. Defendant denies the allegations and characterizations in paragraph 45.

### **CAUSES OF ACTION**

#### **COUNT I**

#### **Violation of N.Y. Gen. Bus. Law § 349** ***(For the Class)***

46. In response to paragraph 46, Defendant incorporates by reference its responses to each and every allegation in paragraphs 1 to 45 as if fully set forth herein.

47. In response to paragraph 47, Defendant admits that Plaintiffs purport to bring this claim individually and on behalf of a putative class. Defendant denies that any purported class is certifiable or that this lawsuit may be properly maintained as a class action.

48. Paragraph 48 is a legal contention to which no response is required. However, to the extent a response is required, Defendant denies the allegations of this paragraph.

49. Defendant denies the allegations and characterizations in paragraph 49.

50. Defendant denies the allegations and characterizations in paragraph 50.

51. Defendant denies the allegations and characterizations in paragraph 51.

52. Defendant denies the allegations and characterizations in paragraph 52.

53. Defendant denies that Plaintiffs or the putative class members have suffered injuries caused by Defendant. Defendant lacks sufficient information to form a belief as to the truth as to the remaining allegations in paragraph 53, and on such basis denies the allegations.

54. Defendant denies that it acted unlawfully, or that Plaintiffs or the putative class members were harmed or injured or entitled to any of the relief requested in paragraph 54.

**COUNT II**  
**Violation of N.Y. Gen Bus. Law § 350**  
***(For the Class)***

55. In response to paragraph 55, Defendant incorporates by reference its responses to each and every allegation in paragraphs 1 to 45 as if fully set forth herein.

56. In response to paragraph 56, Defendant admits that Plaintiffs purport to bring this claim individually and on behalf of a putative class. Defendant denies that any purported class is certifiable or that this lawsuit may be properly maintained as a class action.

57. Paragraph 57 is a legal contention to which no response is required. However, to the extent a response is required, Defendant denies the allegations of this paragraph.

58. Paragraph 58 is a legal contention to which no response is required. However, to the extent a response is required, Defendant denies the allegations of this paragraph.

59. Defendant denies the allegations and characterizations in paragraph 59.

60. Defendant denies the allegations and characterizations in paragraph 60.

61. Defendant denies the allegations and characterizations in paragraph 61.

62. Defendant denies the allegations and characterizations in paragraph 62.

63. Defendant denies the allegations and characterizations in paragraph 63.

64. Defendant denies that Plaintiffs or the putative class members have been injured as a direct and proximate result of violations by Defendant. Defendant lacks sufficient information to form a belief as to the truth as to the remaining allegations in paragraph 64, and on such basis denies the allegations.

65. Defendant denies that it acted unlawfully, or that Plaintiffs or the putative class members were harmed or injured or entitled to any of the relief requested in paragraph 65.

**COUNT III**  
**Breach of New York Express Warranty**  
**N.Y. U.C.C. § 2-313**  
***(For the Class)***

66. In response to paragraph 66, Defendant incorporates by reference its responses to each and every allegation in paragraphs 1 to 45 as if fully set forth herein.

67. In response to paragraph 67, Defendant admits that Plaintiffs purport to bring this claim individually and on behalf of a putative class. Defendant denies that any purported class is certifiable or that this lawsuit may be properly maintained as a class action.

68. Paragraph 68 is a legal contention to which no response is required. However, to the extent a response is required, Defendant denies the allegations of this paragraph.

69. Defendant denies the allegations and characterizations in paragraph 69.

70. Defendant denies the allegations and characterizations in paragraph 70.

71. Defendant denies the allegations and characterizations in paragraph 71.

72. Defendant denies the allegations and characterizations in paragraph 72.

73. Defendant lacks sufficient information to form a belief as to the truth as to the remaining allegations in paragraph 73, and on such basis denies the allegations.

74. Defendant denies that Plaintiffs or the putative class members have been injured and deserve to recover any damages.

75. Defendant lacks sufficient information to form a belief as to the truth as to the remaining allegations in paragraph 75, and on such basis denies the allegations.

**COUNT IV**  
**Common Law Fraud**  
***(For the Class)***

76. In response to paragraph 76, Defendant incorporates by reference its responses to each and every allegation in paragraphs 1 to 45 as if fully set forth herein.



77. In response to paragraph 77, Defendant admits that Plaintiffs purport to bring this claim individually and on behalf of a putative class. Defendant denies that any purported class is certifiable or that this lawsuit may be properly maintained as a class action.

78. Defendant denies the allegations and characterizations in paragraph 78.

79. Defendant denies the allegations and characterizations in paragraph 79.

80. Defendant denies the allegations and characterizations in paragraph 80.

81. Defendant denies the allegations and characterizations in paragraph 81.

82. Defendant denies the allegations and characterizations in paragraph 82.

83. Defendant denies the allegations and characterizations in paragraph 83.

84. Defendant denies that Plaintiffs or the putative class members have suffered economic losses and other general and specific damages as a direct and proximate result of conduct of Defendant, or that they are entitled to interest.

**COUNT V**  
**Intentional Misrepresentation**  
***(For the Class)***

85. In response to paragraph 85, Defendant incorporates by reference its responses to each and every allegation in paragraphs 1 to 45 as if fully set forth herein.

86. In response to paragraph 86, Defendant admits that Plaintiffs purport to bring this claim individually and on behalf of a putative class. Defendant denies that any purported class is certifiable or that this lawsuit may be properly maintained as a class action.

87. Defendant denies the allegations and characterizations in paragraph 87.

88. Defendant denies the allegations and characterizations in paragraph 88.

89. Defendant denies the allegations and characterizations in paragraph 89.

90. Defendant denies the allegations and characterizations in paragraph 90.

91. Defendant denies the allegations and characterizations in paragraph 91.

92. Defendant denies that Plaintiffs or the putative class members have suffered economic losses and other general and specific damages as a direct and proximate result of conduct of Defendant, or that they are entitled to interest.

### **PRAYER FOR RELIEF**

Defendant denies that the Plaintiffs or the putative class are entitled to any relief or remedy whatsoever, including, without limitation, any other relief sought in the unnumbered “WHEREFORE” paragraph and all subparts A to H thereto contained on pages 24 and 25 of the Amended Complaint. Defendant also specifically denies that Plaintiffs or the putative class are entitled to restitution or injunctive relief.

### **JURY DEMAND**

Defendant demands a trial by jury on all issues so triable.

### **GENERAL DENIAL**

Each and every allegation in the Amended Complaint that is not admitted, including any allegations arguably contained in headings or sub-headings, is expressly denied.

### **AFFIRMATIVE DEFENSES**

In addition, and without assuming any burden of proof that would not otherwise be placed on Defendant, Defendant asserts the following affirmative defenses pursuant to Rule 8(c) of the Federal Rules of Civil Procedure:

#### **FIRST AFFIRMATIVE DEFENSE**

#### **SECOND AFFIRMATIVE DEFENSE FAILURE TO STATE A CLAIM**

The Amended Complaint fails to state a claim upon which relief can be granted.

**THIRD AFFIRMATIVE DEFENSE**  
**LACHES**

The Amended Complaint is barred by the doctrine of laches.

**FOURTH AFFIRMATIVE DEFENSE**  
**UNCLEAN HANDS**

The Amended Complaint is barred by the doctrine of unclean hands.

**FIFTH AFFIRMATIVE DEFENSE**  
**PUFFERY**

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

**SIXTH AFFIRMATIVE DEFENSE**  
**REASONABLE CONSUMER**

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

**SEVENTH AFFIRMATIVE DEFENSE**  
**VOLUNTARY PAYMENT DOCTRINE**

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

**EIGHTH AFFIRMATIVE DEFENSE**  
**FAILURE TO MITIGATE**

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

**NINTH AFFIRMATIVE DEFENSE**  
**LACK OF PRIVITY**

The claims of Plaintiffs and Putative Class are barred, in whole or in part, to the extent Defendant was not in privity with Plaintiffs and the Putative Class.

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

Any finding of compensatory liability under the consumer protection laws of New York

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

**ELEVENTH AFFIRMATIVE DEFENSE**  
**NO ECONOMIC HARM**

Plaintiff and the Putative Class did not suffer any economic harm and are therefore precluded from monetary recovery under the consumer protection laws of New York.

**TWELFTH AFFIRMATIVE DEFENSE**  
**SAFE HARBOR**

The claims of Plaintiffs and Putative Class 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.

**THIRTEENTH AFFIRMATIVE DEFENSE**  
**SPECULATIVE DAMAGES**

The claims of Plaintiffs and Putative Class are barred, in whole or in part, because the damages sought by Plaintiffs and the Putative Class are speculative, remote, and/or impossible to ascertain.

**FOURTEENTH AFFIRMATIVE DEFENSE**  
**CLASS ACTION**

The claims of Plaintiffs and Putative Class 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.

**FIFTEENTH 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.

**SIXTEENTH AFFIRMATIVE DEFENSE**  
**COMMERCIALLY REASONABLE MANNER**

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

**SEVENTEENTH AFFIRMATIVE DEFENSE**  
**PUNITIVE DAMAGES**

An award of punitive damages based on conduct outside of this jurisdiction would impose unreasonable state limitations on interstate commerce in violation of the Commerce Clause and would be in violation of the Supreme Court's holding in *State Farm v. Campbell*, 538 U.S. 408 (2003).

**EIGHTEENTH AFFIRMATIVE DEFENSE**  
**PUNITIVE DAMAGES**

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

**NINETEENTH AFFIRMATIVE DEFENSE**  
**PUNITIVE DAMAGES**

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

**TWENTIETH AFFIRMATIVE DEFENSE**  
**PUNITIVE DAMAGES**

Any calculation or award of punitive damages against Defendant based in whole or in part upon Defendant's alleged conduct toward non-parties is unconstitutional and constitutes a taking of Defendant's property without due process. *Philip Morris USA v. Williams*, 549 U.S.

346 (2007).

**TWENTY-FIRST AFFIRMATIVE DEFENSE**  
**STATUTES OF LIMITATION**

Each of the causes of action alleged in the Amended Complaint is barred to the extent that Plaintiffs and the Putative Class seek relief based on acts or omissions by Defendant or products purchased by Plaintiffs or the Putative Class prior to the applicable limitations periods.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**  
**NOT MATERIAL**

Plaintiffs and the Putative Class are precluded from recovery because the representations, actions or omissions alleged by Plaintiffs and the Putative Class were and are not material to decisions of Plaintiffs and the Putative Class to purchase or consume the subject products.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**  
**CLASS CERTIFICATION IMPROPER**

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

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**  
**CLASS CERTIFICATION IMPROPER**

Plaintiffs' purported class claims are barred because Plaintiffs' definition of the classes is vague, ambiguous, and overly broad, and would include uninjured class members.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**  
**NOT FALSE OR MISLEADING**

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

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**  
**RESERVATION OF ADDITIONAL DEFENSES**

Defendant presently has insufficient knowledge or information on which to form a belief as to whether it may have additional, as yet unstated, affirmative defenses available. Defendant

hereby reserves the right to amend its answer to raise additional affirmative defenses as they become available or apparent to it through discovery in this matter or otherwise.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**  
**LACK OF STANDING**

Plaintiffs lack standing to bring the claims set forth in the Amended Complaint.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**  
**SUBJECT MATTER JURISDICTION**

The Court lacks subject matter jurisdiction over some or all of Plaintiffs' claims.

**TWENTY-NINTH AFFIRMATIVE DEFENSE**  
**SET OFF**

The claims of Plaintiffs and the Putative Class are barred, in whole or in part, because those claims are subject to set-off for the value of the benefits they received.

**THIRTIETH AFFIRMATIVE DEFENSE**  
**NOTICE**

The claims of Plaintiffs and the Putative Class are barred by their failure to provide adequate notice.

**THIRTY-FIRST AFFIRMATIVE DEFENSE**  
**NO BREACH OF DUTY**

Defendant has not breached any duty owed to Plaintiffs or the Putative Class.

**PRAYER**

WHEREFORE, having fully answered Plaintiffs' Amended Complaint, Defendant respectfully prays as follows:

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

**DEMAND FOR JURY TRIAL**

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

Dated: March 17, 2023

**GORDON REES SCULLY MANSUKHANI LLP**  
*Counsel for R.C. Bigelow, Inc.*



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