

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

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

Plaintiffs,

v.

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

Defendants.

CASE NO.: 2:20-cv-06208-DDP (RAOx)

**FINAL JURY INSTRUCTIONS**

**JURY INSTRUCTION NO. 29: CORPORATIONS AND PARTNERSHIPS—  
FAIR TREATMENT**

All parties are equal before the law and a corporation like Bigelow is entitled to the same fair and conscientious consideration by you as any party.

**JURY INSTRUCTION NO. 30: LIABILITY OF CORPORATION—SCOPE  
OF AUTHORITY NOT IN ISSUE**

Under the law, a corporation is considered to be a person. It can only act through its employees, agents, directors, or officers. Therefore, a corporation is responsible for the acts of its employees, agents, directors, and officers performed within the scope of authority.

**JURY INSTRUCTION NO. 18A: CLASS ACTION**

As the Court has previously instructed you, a class action is a lawsuit that has been brought by one or more plaintiffs on behalf of a larger group of people who have similar legal claims. All of these people together are called a “class.” Plaintiffs bring this action as the class representatives.

In a class action, the claims of many individuals can be resolved at the same time instead of requiring each member to sue separately. Because of the large number of claims that are at issue in this case, not everyone in the class has testified. You may assume that the evidence at trial applies to all class members, who are referred to in these instructions as Plaintiffs. All members of the class will be bound by the result of this trial. In this case, the Class consists of the following:

All persons who purchased at least one 18/20 count box of Bigelow Earl Grey Black Tea Caffeine, Green Tea Caffeine, Constant Comment Black Tea Caffeine, Green Lemon Tea Caffeine, Vanilla Chai Black Tea Caffeine, English Tea Time Black Tea Caffeine, Spiced Chai Black Tea Caffeine, French Vanilla Black Tea Caffeine, or Vanilla Caramel Black Tea Caffeine, labeled as “Manufactured in the USA 100% American Family Owned,” at a retail store in the State of California from October 17, 2017 to the present.

These nine Bigelow tea products are referred to the “Class Products.”

**JURY INSTRUCTION NO. 31: ADDITIONAL INSTRUCTIONS OF LAW**

As the Court has previously instructed you, the Court has already made two findings on the issue of Bigelow’s liability in this case. You must accept these findings.

First, the Court has ruled that the “Manufactured in the USA 100%” statement is literally false. There is no substantive difference between the terms “made” and “manufactured” for the purposes of a CLRA claim involving alleged misrepresentations of United States origin.

However, you will be asked to decide whether Bigelow knew that the “Manufactured in the USA 100% American Family Owned” statement was false, or whether Bigelow made the statement recklessly and without regard for its truth, when it printed it on the Class Products’ packaging.

Second, the Court has ruled that the “Manufactured in the USA 100%” statement is material to consumers—i.e., that it is important to them in making the decision to purchase the Class Products.

However, you will be asked to decide what amount of damages, if any, Plaintiffs are entitled to.

**JURY INSTRUCTION NO. 32: CLRA**

Plaintiffs claim that Bigelow engaged in unfair methods of competition and unfair or deceptive acts or practices in a transaction that resulted in the sale or lease of goods or services to a consumer, and that Plaintiffs were harmed by Bigelow's violation. The remaining elements of Plaintiffs' CLRA claim are:

1. That Plaintiffs purchased Class Products for personal, family, or household purposes;
2. That Plaintiffs were harmed; and
3. That Plaintiffs' harm resulted from Bigelow's conduct.

**JURY INSTRUCTION NO. 33: BREACH OF EXPRESS WARRANTY**

Plaintiffs claim that they were harmed because Bigelow represented, by words, that the Class Products were “Manufactured in the USA 100% American Family Owned” but the Class Products were not as represented. The remaining elements of Plaintiffs’ breach of express warranty claim are:

1. That Plaintiffs were harmed; and
2. That Plaintiffs’ harm resulted from Bigelow’s conduct.

**JURY INSTRUCTION NO. 34: FRAUD**

Plaintiffs claim that Bigelow made a false representation that harmed them. To establish this claim, Plaintiffs must prove all of the following:

1. That Bigelow knew that the claim “Manufactured in the USA 100% American Family Owned” was false when Bigelow made it, or that Bigelow made the representation recklessly and without regard for its truth;
2. That Bigelow intended for Plaintiffs to rely on the representation;
3. That Plaintiffs were harmed; and
4. That Plaintiffs’ harm resulted from Bigelow’s conduct.



**JURY INSTRUCTION NO. 35: COMPENSATORY DAMAGES**

It is the duty of the Court to instruct you about the measure of damages. By instructing you on damages, the Court does not mean to suggest for which party your verdict should be rendered.

If you find for Plaintiffs on their claims against Bigelow, you must determine Plaintiffs' damages. Plaintiffs have the burden of proving damages by a preponderance of the evidence. Damages means the amount of money that will reasonably and fairly compensate Plaintiffs for any injury you find was caused by Bigelow. It is for you to determine what damages, if any, have been proved. Your award must be based upon evidence and not upon speculation, guesswork or conjecture.

**JURY INSTRUCTION NO. 36: PUNITIVE DAMAGES**

If you decide that Bigelow's conduct caused Plaintiffs harm, you must decide whether that conduct justifies an award of punitive damages. The amount, if any, of punitive damages will be an issue decided later.

At this time, you must decide whether Plaintiffs have proved by clear and convincing evidence that Bigelow engaged in that conduct by fraud. "Fraud" for this purpose means that Bigelow intentionally misrepresented or concealed a material fact and did so intending to harm Plaintiffs.

**JURY INSTRUCTION NO. 28A -- EVIDENCE: AUTHENTICITY AND  
CONDITIONAL ADMISSION**

A party seeking to use a document or other item as evidence (the presenting party) must establish that it is authentic before the court admits it as evidence. To authenticate an item, the presenting party must establish that, more likely than not, the item is what the presenting party claims it is. The court then admits the item as evidence, and jurors may consider it and give it the weight they think it deserves during their deliberations.

However, sometimes parties disagree about an item's authenticity. In other words, a court sometimes finds that a reasonable juror could conclude that the item is what the presenting party claims it is, yet a reasonable juror could also conclude that the item is not what the presenting party claims it is. When this situation occurs, the court cannot admit the item on its own for the jury's consideration. Instead, the court must conditionally admit the item as evidence, and the jury must determine whether the item is authentic before considering or rejecting the item as evidence.

This circumstance exists in this case with respect to purported retail sales spreadsheets. Plaintiffs offered the spreadsheets into evidence and believe they have provided support for the conclusion that they are the retail sales data spreadsheets produced by IRI. However, Bigelow presented competing evidence that Bigelow believes supports the conclusion that the spreadsheets are not the retail sales spreadsheets produced by IRI.

In light of this dispute, the court has conditionally admitted the spreadsheets into evidence. This means that you may consider the spreadsheets as evidence during your deliberations only if you first find that the spreadsheets are more likely than not what Plaintiffs claim they are. If you instead find that the spreadsheets are, more likely than not, something other than what Plaintiffs claim, then you must disregard the spreadsheets during your deliberations.

**JURY INSTRUCTION NO. 37: DUTY TO DELIBERATE**

Before you begin your deliberations, elect one member of the jury as your presiding juror. The presiding juror will preside over the deliberations and serve as the spokesperson for the jury in court.

You shall diligently strive to reach agreement with all of the other jurors if you can do so. Your verdict must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all of the evidence, discussed it fully with the other jurors, and listened to their views.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not be unwilling to change your opinion if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right or change an honest belief about the weight and effect of the evidence simply to reach a verdict.

**JURY INSTRUCTION NO. 38: CONSIDERATION OF EVIDENCE—  
CONDUCT OF THE JURY**

Because you must base your verdict only on the evidence received in the case and on these instructions, I remind you that you must not be exposed to any other information about the case or to the issues it involves. Except for discussing the case with your fellow jurors during your deliberations.

Do not communicate with anyone in any way and do not let anyone else communicate with you in any way about the merits of the case or anything to do with it. This includes discussing the case in person, in writing, by phone, tablet, computer, or any other means, via email, via text messaging, or any internet chat room, blog, website or application, including but not limited to Facebook, YouTube, Twitter, Instagram, LinkedIn, Snapchat, TikTok, or any other forms of social media. This applies to communicating with your family members, your employer, the media or press, and the people involved in the trial. If you are asked or approached in any way about your jury service or anything about this case, you must respond that you have been ordered not to discuss the matter and to report the contact to the court.

Do not read, watch, or listen to any news or media accounts or commentary about the case or anything to do with it, although I have no information that there will be news reports about this case; do not do any research, such as consulting dictionaries, searching the Internet, or using other reference materials; and do not make any investigation or in any other way try to learn about the case on your own. Do not visit or view any place discussed in this case, and do not use Internet programs or other devices to search for or view any place discussed during the trial. Also, do not do any research about this case, the law, or the people involved—including the parties, the witnesses or the lawyers—until you have been excused as jurors. If you happen to read or hear anything touching on this case in the media, turn away and report it to me as soon as possible.

1       These rules protect each party's right to have this case decided only on  
2 evidence that has been presented here in court. Witnesses here in court take an oath  
3 to tell the truth, and the accuracy of their testimony is tested through the trial  
4 process. If you do any research or investigation outside the courtroom, or gain any  
5 information through improper communications, then your verdict may be influenced  
6 by inaccurate, incomplete or misleading information that has not been tested by the  
7 trial process. Each of the parties is entitled to a fair trial by an impartial jury, and if  
8 you decide the case based on information not presented in court, you will have  
9 denied the parties a fair trial. Remember, you have taken an oath to follow the rules,  
10 and it is very important that you follow these rules.

11       A juror who violates these restrictions jeopardizes the fairness of these  
12 proceedings, and a mistrial could result that would require the entire trial process to  
13 start over. If any juror is exposed to any outside information, please notify the court  
14 immediately.

**JURY INSTRUCTION NO. 39: COMMUNICATION WITH COURT**

If it becomes necessary during your deliberations to communicate with me, you may send a note through the clerk, signed by any one or more of you. No member of the jury should ever attempt to communicate with me except by a signed writing. I will not communicate with any member of the jury on anything concerning the case except in writing or here in open court. If you send out a question, I will consult with the lawyers before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone—including the court—how the jury stands, whether in terms of vote count or otherwise, until after you have reached a unanimous verdict or have been discharged.

**JURY INSTRUCTION NO. 40: RETURN OF VERDICT**

A verdict form has been prepared for you. After you have reached unanimous agreement on a verdict, your foreperson should complete the verdict form according to your deliberations, sign and date it, and advise the clerk that you are ready to return to the courtroom.