Perkins Coie

2025 | YEAR IN REVIEW

Food & Consumer Packaged Goods Litigation

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Introduction

Perkins Coie Releases 10th Annual Food & Consumer Packaged Goods Litigation Year in Review

In 2025, class-action filings against the consumer packaged goods (CPG) industry continued apace, with more than 200 lawsuits filed. Plaintiffs pressed familiar theories with new intensity, regulators advanced several headline initiatives, and states accelerated rules that affect how brands formulate, label, and package goods.

Throughout 2025, courts continued to refine the "reasonable consumer" standard, especially for "natural," "no artificial," and purity-oriented claims. Microcontaminant allegations remained a focus. Environmental marketing and packaging rules tightened, led by California's recyclability and producer-responsibility measures, while Proposition 65 notices rose for heavy metals and PFAS.

Regulatory activity affecting food, supplements, and personal care added further complexity. 2025 saw activity from FDA, USDA, FTC activity, and new MoCRA-related developments and fast-moving state laws.

This year-in-review highlights the key trends, notable cases and actions, and what they mean for labeling, claims, testing, supply chain controls, and reporting. In addition to this overview, our team monitors filings daily and publishes quarterly reports, client updates, and other thought leadership. Email KHale@perkinscoie.com to learn more.

SECTION 1

Legal Trends in Food and Beverage

Figure 1

FOOD & BEVERAGE CLASS ACTIONS

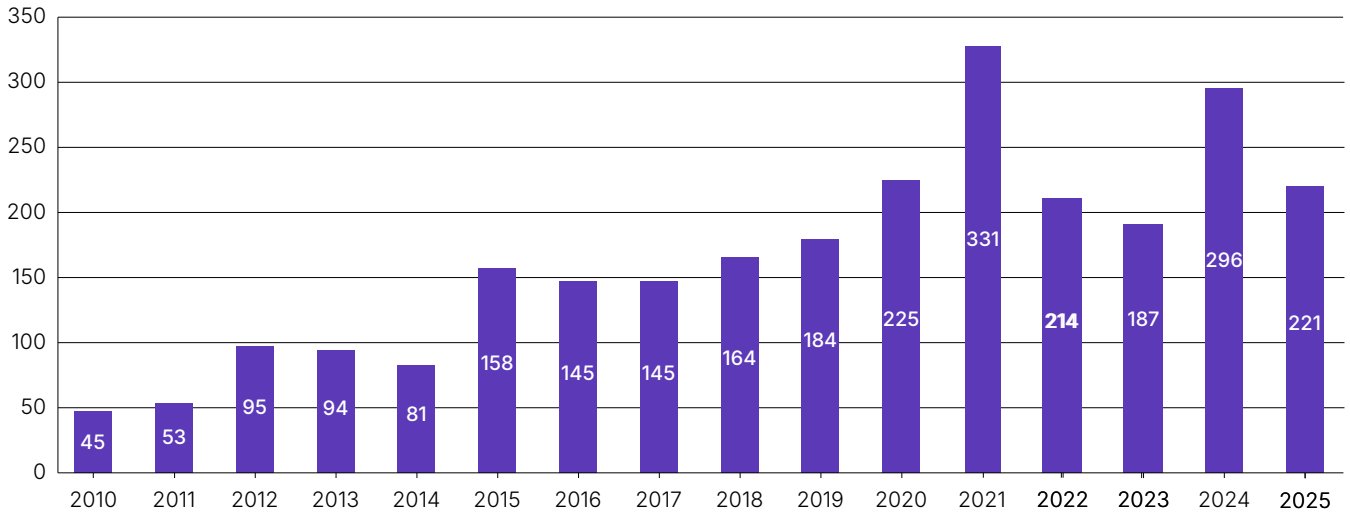
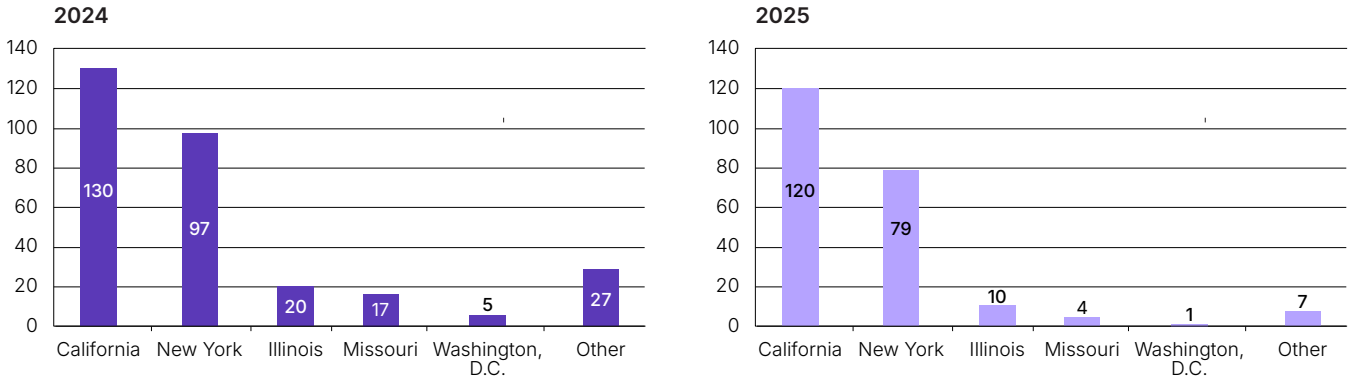


Figure 2

FOOD & BEVERAGE CLASS ACTIONS: FILINGS BY JURISDICTION



Data compiled by Perkins Coie based on a review of dockets from courts nationwide.

Natural Claims

Natural and purity-focused claims remained a central battleground in 2025, with plaintiffs targeting phrases such as "all natural," "no artificial preservatives," "no artificial flavors," and adjacent purity signals (*e.g.*, "nothing artificial ever," "chemical-free," or "made with simple ingredients"). Courts continued to apply the reasonable consumer benchmark to assess whether front-of-pack representations are likely to mislead a significant portion of consumers in context, and plaintiffs tested that standard aggressively against products containing widely used acids, fortifiers, and stabilizers, especially various forms of citric acid, lactic acid, ascorbic acid, tocopherols, and related compounds. *See, e.g., Chrystal Roberts v. HealthPro Brands Inc.*, No. 2:25-cv-07165 (C.D. Cal., removed Aug. 4, 2025); *Billie Powell v. Natural Dairy Products Corp.*, No. 2522-CC00771 (Mo. Cir. Ct., St. Louis Cty., filed Apr. 22, 2025).

2025 Litigation Themes

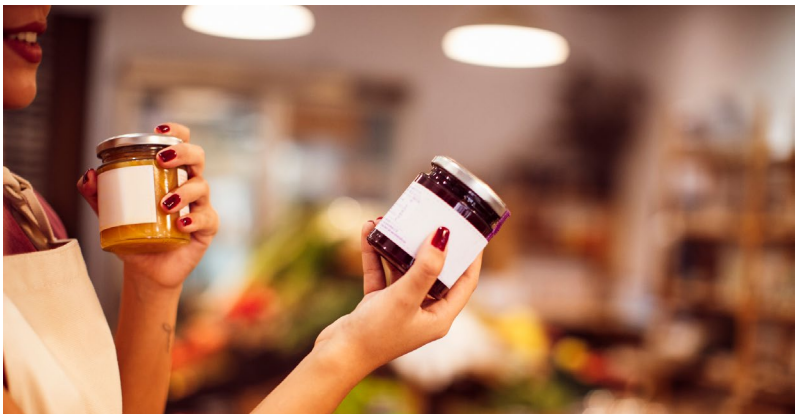
A dominant theme in 2025 was the contention that the presence of ingredients alleged to be "synthetic" or "preservatives" rendered "all natural" or "no artificial preservatives" claims deceptive, even when those ingredients served multiple functions and appeared in modest amounts. Complaints frequently focused on

citric acid and ascorbic acid as purported synthetic preservatives that contradicted "natural" or "no preservatives" messaging on breads, snacks, juices, and sauces, with suits spanning New York, California, Missouri, and Illinois. Plaintiffs challenged "All Natural" or "No Preservatives" claims on juice beverage pouches in *Alyssa Flexer v. Kraft Heinz Food Company*, No. 1:25-cv-00414 (E.D.N.Y., filed Jan. 24, 2025), and on water enhancers in *Lyndsay Wallace v. ALDI Inc.*, No. 25-LA-0100 (Ill. Cir. Ct., St. Clair Cnty., filed Jan. 17, 2025), based on the presence of citric or ascorbic acid. Allegations targeted "Made with Ingredients from Natural Sources" and "natural" positioning in Smucker's fruit spreads in *Adina Ringler v. The J.M. Smucker Company*, No. 2:25-cv-01138 (C.D. Cal., filed Feb. 10, 2025) and Sun Luck sauces in *Yolanda Pitre v. Allied Old English Inc.*, No. 25-cv-02115 (N.D. Cal., filed Feb. 28, 2025) on the same theory. As seen in many of these same cases, a parallel thread in 2025 challenged "all natural" claims where labels or brand lines invoked "natural" positioning yet allegedly included ingredients characterized as synthetic. *See, e.g., Alyssa Flexer*, No. 1:25-cv-00414 (E.D.N.Y., filed Jan. 24, 2025), *v. Kraft Heinz Food Company*; *Lyndsay Wallace v. ALDI*, No. 25-LA-0100 (Ill. Cir. Ct., St. Clair Cnty., filed Jan. 17, 2025); *Dan Deforest, et al. v. Dole Packaged Foods*, No. 30-2025-01465589 (Cal. Super. Ct., Orange Cnty., filed Mar. 6, 2025); *Adina Ringler v. The J.M. Smucker Company*, No. 2:25-cv-01138 (C.D. Cal., filed Feb. 10, 2025). Plaintiffs targeted these statements based on the presence of citric acid and, in some cases, other fortified vitamins, as incompatible with the claimed naturalness. New York suits against Ceres fruit juices similarly alleged "100% Natural" was inconsistent with the presence of ascorbic acid. (*See, e.g., Kisha Fenty v. Pepsico Inc.*, No. 0157384/2025 (N.Y. Sup. Ct., New York Cnty., filed June 11, 2025).

Beyond acids, plaintiffs trained attention on other compounds when purity claims were in play. Actions asserted that "no artificial preservatives" was undermined by tocopherols, broadening the universe of "artificial" beyond allegedly synthetic additives. These pleadings underscore the continuing ambiguity—and litigation risk—surrounding how "natural," "artificial," and "preservative" are interpreted in the marketplace.

"Natural" vs. "Plant-Based": Distinct Concepts, Converging Claims Pressure

Although "natural" relates to process and ingredient characterization, and "plant-based" speaks to ingredient source, 2025 filings show that plaintiffs sometimes blur these categories, challenging plant-forward or "simple ingredients" branding through the same "synthetic ingredient" lens. For example, suits attacked "Made With Simple Ingredients" claims for fruit ice pops as implying a "better-for-you" composition inconsistent with predominantly sugar-and-water formulations, positioning simplicity as a kind of naturalness proxy. *See, e.g., Latonya Wright v. Jonny Pops LLC*, No. 534696/2025 (N.Y. Sup. Ct., Kings Cnty., filed Oct. 5, 2025). The convergence of these theories signals continued risk whenever labels imply minimal processing, simplicity, or absence of artificial inputs.



While these complaints highlight plaintiffs' willingness to probe technical flavor and function relationships, they also reflect the broader phenomenon of stretching "natural" semantics to encompass multifunctional ingredients.

Practical Implications

The 2025 docket confirms that purity claims invite granular scrutiny of multifunctional ingredients—especially acids and fortifiers—regardless of their ubiquity or low inclusion rates. Plaintiffs' consistent approach is to construe terms like "all natural," "no preservatives," "no artificial ingredients," "100% natural flavors," and "made with simple ingredients" strictly, then argue that the presence or functional role of an ingredient such as citric

acid, ascorbic acid, lactic acid, or tocopherols defeats the promise. Because these theories were deployed across breads, snacks, beverages, sauces, and spreads, the risk is category-agnostic and tied more to the claim language than to the product type. Furthermore, while not all are classic "all natural" labels, these cases reflect how plaintiffs fuse lifestyle and naturalness motifs to challenge overall product messaging.

At the same time, actions that conflate "natural" with "plant-based" or "simple" reinforce that front-of-pack messaging is read holistically and that adjacent cues (*e.g.*, fruit imagery, "simple ingredients," or lifestyle badges) can be invoked to support a reasonable-consumer deception theory even where a "natural" word does not appear verbatim. This holistic reading was evident in suits challenging flavor claims framed as "100% natural."

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Looking ahead, the 2025 trendline suggests continued plaintiff focus on reconciling front-label purity messages with back-panel ingredients that serve preservative, flavor, or stability functions.

Microcontaminants

Microcontaminant litigation remained active in 2025, with courts continuing to scrutinize the sufficiency of consumer protection claims involving heavy metals, PFAS, phthalates, and microplastics in food and beverage products. Several 2025 rulings highlight a judicial trend toward requiring more robust factual allegations, but the ongoing filings against companies demonstrate that microcontaminant litigation remains a significant trend.

In *In Re Trader Joe's Company Dark Chocolate Litigation*, No. 3:23-cv-0061 (S.D. Cal., Mar. 27, 2025), a California federal court granted Trader Joe's motion for summary judgment. The court held that Trader Joe's "did not have exclusive knowledge that the dark chocolate bars contained or had a material risk of containing heavy metals," a requirement under New York, Washington, and Illinois consumer protection laws. The court further agreed with Trader Joe's that the presence—or risk of the presence—of heavy metals in dark chocolate products is reasonably knowable to consumers given decades of widespread publicity.

Courts have also addressed claims involving microplastics. In *John Daly, et al. v. The Wonderful Company, LLC*, No. 1:24-cv-01267 (N.D. Ill., Mar. 3, 2025), the court granted Fiji Water's motion to dismiss, finding that plaintiffs do not plausibly allege the products actually contain microplastics. The Illinois federal court explained that expecting consumers to have tested their own water for microplastics might be unreasonable since the product has likely been consumed, but the suit's claims could perhaps have been sufficient if they pointed to "relatively contemporaneous" testing of other Fiji Water. Instead, the suit references testing of different bottled water brands and points to a "less than definitive" study that also does not include Fiji Water in proposing a mechanism by which microplastics enter the product. The court cautioned:

> "Allowing a suit of this type to proceed on this basis would basically open the door to enabling any purchaser of any consumable product to file a lawsuit simply saying, 'I bought product X, and it contains microplastics' (or 'forever' chemicals, or heavy metals, or whatever) and thereby get past a motion to dismiss and into discovery and class certification proceedings. Given the context ... plausibility requires more."

Nevertheless, these types of claims continued to be brought throughout 2025. For example, in *Enya Kolker v. Badia Spices, Inc.*, No. 1:25-cv-03099 (E.D.N.Y., filed June 4, 2025), the plaintiff challenged the marketing and labeling of ginger and cinnamon products. She alleged the products are deceptively promoted as safe for consumption, citing representations such as "only the finest quality spices." The plaintiff claimed that the products were contaminated with lead and that this fact was omitted from the products' labeling.

These claims are not limited to heavy metals. For example, in *Caron James v. Primal Nutrition, LLC*, No.

1:25-at-00469 (E.D. Cal., filed June 6, 2025), the plaintiff alleged that Primal Kitchen Avocado Oil is misleadingly labeled as "Pure," "Pure Quality Tested," and "Non-GMO Project Verified." The complaint claims these representations are deceptive because EPA-accredited lab testing found phthalates in the oil, and all avocado oil is non-GMO since no GMO version exists on the market.

Serving Size

Serving size litigation also remained active in 2025, with plaintiffs continuing to bring cases, based on allegedly deceptive serving sizes. These lawsuits typically assert that product labels overstate the number of servings or misrepresent serving sizes, resulting in consumers purportedly receiving less than advertised. However, these theories remain unproven and are subject to significant judicial scrutiny.

For example, in *Thomas Harvey v. WK Kellogg Co., Walmart Inc.*, No. 2:25-cv-03984 (E.D.N.Y., filed July 16, 2025), the plaintiff alleged that the labeling of Kellogg's Froot Loops with Marshmallows cereal was deceptive because it allegedly overstated the number of servings and misrepresented the serving size, in violation of New York's General Business Law (GBL) §§ 349 and 350, as well as breach of warranty and unjust enrichment. Similarly, in *Lori Sciarabba v. Post Consumer Brands, LLC*, No. 7:25-cv-09315 (S.D.N.Y., filed Nov. 7, 2025), the plaintiff claimed the labeling of Honey-Comb cereal allegedly misstated the number of servings and understated nutrition values per serving, relying on independent testing that purportedly showed the product contained fewer servings than advertised. These claims are asserted under New York GBL §§ 349 and 350, breach of express warranty, the Magnuson-Moss Warranty Act, and unjust enrichment.

Courts, however, have been skeptical of these serving size theories, particularly at the class certification stage. On November 26, 2025, the U.S. Court of Appeals for the Eighth Circuit issued a significant opinion in *In Re Folgers Coffee Marketing*, No. 24-2830 (8th Cir., Nov. 26, 2025), reversing class certification on predominance grounds. The court found that "a significant portion of the proposed class was not misled by the challenged statements," noting that many class members did not read, care about, or share the plaintiff's interpretation of the statements. As a result, determining injury would require individualized inquiries, undermining the efficiencies of class treatment. The court also rejected the argument that all class members were injured by higher prices allegedly caused by the statements, reasoning that this would improperly allow uninjured consumers to recover.

The Eighth Circuit's decision is consistent with other courts that have found issues of reliance and causation present substantial obstacles to class certification in serving size and similar consumer protection cases. Overall, while serving size litigation remains a focus for plaintiffs, courts continue to approach these claims with skepticism and require robust evidence before allowing them to proceed on a classwide basis.

Protein Litigation

In 2025, consumers brought several lawsuits targeting front-of-pack protein claims, alleging that defendants violated applicable regulations by failing to provide the Protein Digestibility-Corrected Amino Acid Score (PDCAAS) percent Daily Value (%DV) on the Nutrition Facts panel (NFP). Pursuant to 21 C.F.R. § 101.9, a product that makes a front-of-pack statement about the amount of protein in the product must also list the PDCAAS-corrected %DV on the NFP. The PDCAAS-corrected %DV "represents the percent of the protein that can be digested by the human body, based on the types of amino acid in the product." *Nacarino v. Kashi Co.*, 584

F. Supp. 3d 806, 808 n.1 (N.D. Cal. 2022), aff'd, 77 F.4th 1201 (9th Cir. 2023), and abrogated on other grounds by *Rausch v. Flatout, Inc.*, 660 F. Supp. 3d 855 (N.D. Cal. 2023) (citing § 101.9(c)(7)(ii)). In other words, it represents the quality (*e.g.*, digestibility) of the protein. *Id.*

But if the product does not make a front-of-pack protein statement, the %DV can be left blank. Thus, plaintiffs claim several products that advertised a specific quantum of protein on the front label but allegedly failed to include the required PDCAAS-corrected %DV on the NFP faced litigation.

Additionally, many lawsuits targeted vegan or plant-based products which derived their protein from non-animal ingredients, such as pea protein, rice protein, or nuts. The allegations that are commonly included in these complaints are: (1) the product is misbranded and deceptive because it makes a protein content claim on the front label but fails to disclose the PDCAAS-corrected %DV, thereby giving the impression that all of the protein is being absorbed or digested by the body; and (2) the omission is deceptive because it misleads the reasonable consumer about the quality and amount of protein per serving in the product. *See, e.g., Taylor v. Dave's Killer Bread, Inc.*, No. 23 C 16439, 2025 WL 71762, at *2 (N.D. Ill. Jan. 10, 2025). In these lawsuits, consumers also often allege that plant-based proteins are inherently a "lower quality" protein and have lower PDCAAS scores than animal-based proteins. *See, e.g., Aykut Sarayli v. Huel, LTD.*, No 5:25-cv-02406 (N.D. Cal., filed March 10, 2025).

Flavoring/Ingredient Claims

"No" and "Free From" Artificial Flavors or Preservatives

2025 intensified the campaign against "no artificial preservatives/flavors" and related "free from" claims, with plaintiffs often pairing them with "all natural" claims. These cases particularly focus on multifunction ingredients—especially citric acid, sodium citrate, ascorbic acid, tocopherols, sodium phosphate, and silicon dioxide—alleged to act as synthetic preservatives, a pattern that grew from 2024 and spread across snacks, beverages, shelf-stable meals, and pet food in 2025. Compared to 2024, filings have been geographically broad, with New York and California serving as hubs for near-identical complaints brought by repeat firms across numerous brands, suggesting copy-and-paste strategies and coordinated sweeps of product lines.

On the merits, 2025 produced mixed outcomes, with frequent skirmishes at the early stages over ingredient functionality and artificiality. For example, the U.S. District Court for the Southern District of Illinois dismissed a "No Artificial Flavors, Colors, or Preservatives" claim where the defendant's bagel dip contained citric acid. The court found the plaintiff's allegations lacked factual support to plausibly claim that the citric acid used in the dips was artificial, noting that the assertions were "purely speculative" and "conclusory." *Vineyard v. La Terra Fina USA, LLC*, No. 3:24-cv-00704-NJR (S.D. Ill. Mar. 31, 2025).

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However, the U.S. District Court for the Southern District of New York held that a cheddar snack's "No Artificial Flavors or Preservatives" could be plausibly misleading. The court rejected preemption arguments and relied on *Mantikas*-style reasonable consumer principles that consumers need not look to the back label to correct an affirmatively misleading front-label statement in *Ward v. Pepperidge Farm, Inc.*, 2025 WL 958319 (S.D.N.Y. Mar. 31, 2025). Of note, the Northern District of Illinois came to a similar conclusion. *See, e.g., Slowinski v. Drip Drop Hydration, Inc.*, 2025 WL 524118 (N.D. Ill. Feb. 18, 2025) (dismissing Illinois False Claims Act and unjust enrichment claims due to pleading failures but holding common law fraud claim survived because determining "the necessity and functionality in-fact of the citric acid at the motion to dismiss stage is inappropriate"). Another New York court likewise expressed a concern about factual issues, this time at summary judgment, in a "No Preservatives" case relating to tea and juice products. In *Ashour v. Arizona Beverages USA LLC*, 2025 WL 961682 (S.D.N.Y. March 28, 2025), the court granted the defendant's summary judgment motion on the California Consumers Legal

Remedies Act and express warranty claims based on the plaintiff's continued purchases after learning about the presence of citric acid. It denied summary judgment on New York GBL claims, citing factual disputes over price premium and reliance.

"100%" and "Pure"

Against a 2024 backdrop, courts in 2025 sharpened focus on reasonable consumers' interpretation of ambiguous or qualified language. In "100%" and "pure" cases, courts focused on juxtaposed front-label purity promises against the presence of preservatives or nonconforming ingredients revealed by laboratory testing. Particularly, filings in 2025 targeted juice, alcohol, and oil products. *See, e.g., Lakema Tate v. Welch Foods, Inc.*, No. 1:25-cv-10596 (D. Mass., filed Mar. 12, 2025) ("100% Grape Juice" with potassium metabisulfite); *Lionel Correa v. Sun Tropics, Inc.*, No. 3:25-cv-05500 (N.D. Cal., filed Jun. 30, 2025) ("100% Juice" with ascorbic acid); *Jacqueline Jackson v. Diageo North America, Inc.*, No. 3:25-cv-05654 (N.D. Cal., filed Jul. 4, 2025) ("100% agave" tequila with non-agave alcohols); *Nabil Haschemie v. Cinco Spirits Group LLC*, No. 1:25-cv-23864-KMM (S.D. Fla., filed Aug. 27, 2025) (same as *Jackson*).

Several key rulings came down in favor of defendants. For example, the U.S. District Court for the Eastern District of California dismissed a putative class action alleging the defendant deceptively labeled and marketed its avocado oil as "pure" avocado oil, when it was allegedly adulterated with other oils. The court concluded a reasonable consumer would not be misled by the product's label, however, because it did not explicitly state that the oil was "pure" or "100%" avocado oil, only that it was "Refined Avocado Oil." To the extent the defendant's website represented the product was "pure," that claim was not found on the label. *Hawkins v. Walmart, Inc.*, 766 F.Supp.3d 1036 (E.D. Cal. Feb. 13, 2025). Later in the year, the same district court likewise dismissed a similar suit where the defendant *had* labeled its avocado oil as "Pure" and "Pure Quality Tested," even though independent testing allegedly found the product contained phthalates. The court concluded that the plaintiff fell short of Rule 9(b)'s particularity requirement because the allegations relied on a third-party blog post that lacked sufficient detail about the testing methodology, the laboratory, and the specific results. This rendered plaintiff's claims too conclusory. This ruling follows in marked contrast to the U.S. Court of Appeals for the Ninth Circuit's recent opinion in *Scheibe v. ProSupps USA, LLC*, 141 F.4th 1094 (9th Cir. 2025), which otherwise lowered the plaintiff's bar on testing allegations. *James v. Primal Nutrition, LLC*, 2025 WL 3228135 (E.D. Cal. Nov. 19, 2025); *but see Seper v. NTC Marketing Inc.*, 2025 WL 2687001 (S.D. Ill. Sept. 19, 2025) (concluding reasonable consumers could be misled by a "100% pineapple juice" claim on a label even though the ingredient list disclosed citric acid).

"Made With," "Real," and Predominant Ingredients

In 2025, courts reinforced the defense-friendly trend from 2024 in predominant-ingredient cases, which often target "made with" and "real" claims when the represented ingredient is present but not the principal component. Absent unambiguous front-label cues, courts remained willing to dismiss such lawsuits on reasonable consumer and other grounds. In a notable ruling likely to shape 2026 briefing, the Eastern District of California dismissed with prejudice a suit challenging "Made with Real Cheese" claims on dry dinner products because the statement was literally true. Further, the court noted the claim did not suggest cheese was predominant, and any ambiguity was resolved by the ingredient list. *Daniels v. Eagle Family Foods Group, LLC*, 797 F.Supp.3d 1154 (E.D. Cal. July 17, 2025). This is a significant win for the "literal truth" and

"back label" defenses that have otherwise been chipped away by courts in recent years.

Likewise, the Southern District of New York granted summary judgment to the defendant in a "Made with Olive Oil" suit alleging that plant-based butter products were deceptively labeled as being made predominantly with olive oil. The court dismissed the suit because the plaintiff failed to prove he actually purchased a product at issue or that he suffered injury, in the form of a price premium or otherwise—underscoring the importance of plaintiff's burden to show standing and injury at all stages. *Clemmons v. Upfield US Inc.*, 667 F.Supp.3d 5 (S.D.N.Y. Mar. 28, 2025).

Filings continued to press the predominance theory in 2025 by pairing "made with" and "real" statements with reinforcing imagery. *See, e.g., Arthur Raphael v. Schwan's Consumer Brands, Inc.*, No. 501934/2025 (N.Y. Lewis Cty. Sup. Ct., filed Jan. 18, 2025) (cheesecake "Made with Real Cream Cheese," with image of cream cheese, despite sour cream being the more prominent ingredient); *Rebecca Gomez v. Dreyer's Grand Ice Cream, Inc.*, No. 1:25-cv-10549 (N.D. Cal., filed Dec. 9, 2025), (frozen fruit bars labeled "Made with Real Fruit" and depicting fruit imagery suggest the product is healthy and predominantly made of fruit).

Relative to 2024, 2025's defense outcomes proved stronger on the merits where defendants relied on literally true front-label claims, ingredient lists to resolve ambiguity, and standing/injury proof standards, keeping these disputes more defense-friendly than other emerging theories, like the "no preservatives" docket.

Slack Fill

While the first half of 2025 included many lawsuits involving slack fill-related claims, there was a slight decrease in filings of slack fill-related lawsuits by the end of 2025. Slack fill is the term used to describe the difference between the amount of empty space inside a package or container and the actual product inside. Additionally, where a container "does not allow the consumer to fully view its contents, [it is] considered to be filled as to be misleading if it contains nonfunctional slack fill." Cal. Bus. & Prof. Code § 12606.2(c); 21 C.F.R. § 100.100(a). Slack fill is "nonfunctional" when the empty space in a package or container is "filled to less than its capacity for reasons" apart from those enumerated in the statute, otherwise known as the "safe harbor provisions." The common arguments alleged by consumers are: (1) the product packaging is misleading because it leads the consumer to believe they are purchasing more product than they receive, and (2) the product contains nonfunctional slack fill.

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The cases brought in 2025 targeted packaged food, including chips, candies/dried fruit, and baking mixes. The divide between chips, candies, and similar products on one end and baking mixes on the other held strong, though, as courts continued to draw a distinction between those two categories. Specifically, courts appeared to grant motions to dismiss more often where the case involved baking mixes. For example, in a 2025 notable ruling, the court in *Cantu v. Gen. Mills, Inc.* reinforced the distinction that "baking mixes are different from boxes of candy and bags of pretzels," and further held that a reasonable consumer of baking mixes looks for "'how much prepared [final product] the mix ultimately produces,'" and thus would not be misled by the size of the product's package. No. CV 24-10664-GW-PDX, 2025 WL 942609, at *4, *6 (C.D. Cal. Mar. 21, 2025), adopted, No. CV 24-10664-GW-PDX, 2025 WL 942610 (C.D. Cal. Mar. 24, 2025). However, in general, many courts remained reluctant to grant motions to dismiss for slack fill cases due to the fact-specific nature of such cases. *See, e.g., Oh v. Banana Joe, Inc.*, No. 2:24-CV-03926-AB-E, 2025 WL 1036638, at *4 (C.D. Cal. Apr. 3, 2025).

SECTION 2

Legal Trends in Environmental, Social, and Governance (ESG)

Legal Trends in Environmental, Social, and Governance (ESG)

The U.S. environmental, social, and governance (ESG) regulatory environment has shifted over the past year, moving away from a more coordinated federal approach toward a patchwork of state-driven requirements. This transition accelerated in 2025, when the SEC withdrew its legal defense of the climate disclosure rule. At the same time, the U.S. Department of Labor reinstated the pecuniary rule, requiring retirement plan fiduciaries to focus solely on financial returns, rather than social or environmental considerations.

With federal oversight receding, California has stepped into a leadership role, setting *de facto* national standards for large corporations. Senate Bill (SB) 253 remains in force, obligating companies with more than $1 billion in annual revenue doing business in California to report Scope 1 and Scope 2 emissions by August 2026. Although SB 261 is currently paused due to a Ninth Circuit injunction, the California Air Resources Board continues to enforce emissions reporting under SB 253. As a result, multinational companies with operations in California must maintain robust ESG data tracking to retain access to the California market.

In contrast, nearly 20 states—led by Texas and Florida—have advanced "Anti-ESG" policies. These states have enacted anti-boycott laws that prohibit state pension funds and government entities from working with financial institutions that prioritize ESG goals or "boycott" fossil fuel and firearms industries. This divergence has created a complex compliance landscape, where adherence to California's ESG laws could theoretically result in blacklisting in states with anti-ESG statutes. Many companies have responded by adopting a "greenhushing" strategy: maintaining internal sustainability efforts to satisfy global investors while minimizing public ESG branding to avoid political and legal risks in domestic markets.

Extended Producer Responsibility for Packaging: 2025 US Updates

Extended producer responsibility (EPR) for packaging gained significant momentum in 2025, as states operationalized new programs and producers coalesced around a single producer responsibility organization (PRO), the Circular Action Alliance (CAA). CAA has emerged as the designated or expected PRO in most active jurisdictions, streamlining registration, reporting, eco-modulated fee design, and multistate compliance planning. While program details vary by state, common elements include statewide needs assessments, advisory councils, performance targets for recycling and source reduction, and enforcement through registration, reporting, and administrative penalties.

- **California.** CalRecycle restarted rulemaking for SB 54 in March 2025 and issued detailed reporting guidance in September. By year-end, CalRecycle published an updated Covered Material Categories List, including recyclability and composability determinations and initial recycling rate findings—key inputs for producer planning ahead of the expected statewide program launch on January 1, 2027. CAA set a preliminary producer reporting deadline of November 15, 2025. California's statutory requirements include a mandate for the PRO to achieve a 25% packaging source reduction by 2032, with interim milestones beginning in 2027, and a mandate that all covered materials be recyclable or compostable by 2032. There is also a producer requirement to achieve a 65% recycling rate by 2032, with interim milestones starting in 2028.
- **Oregon.** Oregon approved CAA as its PRO in February 2025 and began program implementation in July under SB 582. Producers must pay annual

eco-modulated fees, and the state has set statutory recycling rate goals for plastic packaging and food service tableware—25% by 2028, 50% by 2040, and 70% by 2050.

- **Colorado.** Colorado's program under HB22-1355 continued to mature, with producer preliminary data reporting due in July 2025 and regulatory confirmation of CAA's final plan in December. CAA issued its invoices in January 2026 and will operate under PRO-proposed collection, recycling, and postconsumer recycled content targets approved by the state.
- **Maryland.** Maryland enacted SB 901 in May 2025, which covers packaging and paper products sold, offered for sale, or distributed in the state. It also sets reimbursement rate floors for municipal costs and directs the PRO to propose targets for recycling, reduction, and reuse. The PRO is required to register with the state by July 1, 2026. CAA previously served as the producer representative on the State Producer Responsibility Advisory Council, reflecting its coordination role in program design.
- **Washington.** Washington enacted the Recycling Reform Act (SB 5284) in May 2025, which also covers packaging and paper products. Each producer must appoint a PRO by January 1, 2026, and register by July 1, 2026. The Department of Ecology will publish a statewide list of covered materials deemed recyclable or compostable by October 2026, with statewide rollout expected by 2030.
- **Maine.** Maine refined its program scope in 2025, clarifying definitions of "producer" and "consumer." Producers are expected to register with the selected stewardship organization and report data in May 2026, with startup fees due in September.
- **Minnesota.** The Minnesota Pollution Control Agency (MPCA) confirmed CAA's registration to implement the state's packaging EPR program in February 2025. Producers were required to join an MPCA-registered PRO by July 2025, with a statewide needs assessment scheduled for 2026 and operations expected to begin in early 2029.

The past year brought actionable clarity: California's category-level recyclability and initial recycling rate determinations, Oregon's PRO activation, Colorado's plan approval, and Washington's near-term PRO and material list deadlines. Most states will rely on eco-modulated fees, meaning design changes that increase recyclability or incorporate higher postconsumer recycled content can reduce producer costs. There is significant enforcement risk, and noncompliance can trigger penalties or sales restrictions. Companies with multistate distribution should centralize compliance via CAA where permitted, maintain a deadline calendar, and align data systems to state reporting schemas to avoid last-minute bottlenecks.

> Most states will rely on eco-modulated fees, meaning design changes that increase recyclability or incorporate higher postconsumer recycled content can reduce producer costs.

California SB 343: Truth in Labeling

As of early 2026, California's SB 343, the "Truth in Labeling" law, has entered a critical phase for manufacturers and retailers. On April 4, 2025, CalRecycle published the final results of its Material Characterization Study, establishing the definitive list of materials that meet the "60% threshold"—meaning they are collected and sorted by recycling programs serving at least 60% of California's population. Materials that do not meet this benchmark, including many types of plastic films and specific resin types, are now legally prohibited from using the "chasing arrows" symbol or any unqualified "recyclable" claims.

This data publication triggered an 18-month statutory countdown, setting a firm compliance deadline of October 4, 2026. Products manufactured after this date that do not meet the recyclability criteria must remove the chasing arrows symbol from their packaging. For plastic products, the law also changes how resin identification codes (RICs) are displayed. If a material is not deemed

recyclable, the RIC number can no longer be placed inside a triangular arrow symbol and must instead be placed inside a solid equilateral triangle or another non-misleading shape.

SB 343's impact is amplified by its intersection with California's Plastic Pollution Prevention and Packaging Producer Responsibility Act (SB 54). Throughout 2025 and into 2026, the PRO has begun using SB 343's findings to determine fee structures for brands. Packaging that is not "recyclable" under SB 343 standards is now subject to significantly higher eco-modulated fees, creating dual pressures of legal labeling restrictions and financial penalties. Additionally, any packaging with intentionally added PFAS is automatically disqualified from making any recyclability claims, regardless of whether the base material passed the state's characterization study.

Key Developments in Recycling and Environmental Marketing Litigation

In 2025, several high-profile legal cases and regulatory actions affected how CPG companies approach recycling and environmental marketing claims. These cases reflect a growing expectation that companies must provide clear, accurate, and verifiable information about the environmental impact of their products and practices.

- **California v. Novolex Holdings, Inteplast Group, & Mettler Packaging, No. CGC-25-630237 (Cal. Super. Ct., San Francisco Cty.).** In October 2025, California's attorney general sued these companies for allegedly mislabeling nonrecyclable plastic bags as "recyclable," in violation of SB 270, the Environmental Marketing Claims Act, False Advertising Law, and Unfair Competition Law. The companies settled for $3.35 million in January 2026, agreeing to halt sales of these bags. This case underscores California's SB 343 requirement that "recyclable" means a product is actually accepted by recycling facilities.
- **Della v. Colgate-Palmolive Co., No. 3:23-cv-04086-JCS (N.D. Cal.).** A class action was allowed to proceed over Colgate's "Recyclable Tube" toothpaste packaging. The court found that a reasonable consumer expects "recyclable" to mean the product is actually accepted by local curbside programs, not just theoretically recyclable. This case is ongoing with a pending motion for class certification as of December 2025. This case has prompted many CPG brands to add qualifying disclaimers like "check locally" or "where facilities exist" to their environmental labeling.
- **Tyson Foods, No. 2024-CAB-005935 (D.C. Super. Ct.) and JBS USA, No. 450682/2024 (N.Y. Sup. Ct., New York Cty.) settlements.** In November 2025, Tyson Foods and JBS USA settled allegations of "greenwashing" regarding their climate commitments. Tyson agreed to a five-year moratorium on marketing its products as "net-zero by 2050" or "climate-smart," while JBS USA reclassified its "Net Zero by 2040" pledge as an aspirational goal. These settlements highlight that long-term sustainability targets must be supported by a viable, science-based roadmap and measurable interim progress.
- **Organic Consumers Association v. Calavo Growers, Inc., No. 2024CAB006328 (D.C. Super. Ct.).** In August 2025, the Superior Court for the District of Columbia allowed a case to proceed challenging Calavo's "sustainable" and "responsibly grown" marketing claims, based on alleged environmental harms in Mexico. The court affirmed that domestic consumer protection laws can reach environmental impacts occurring abroad if those impacts contradict "green" representations made to local consumers.
- **Salguero v. Mondelēz International, Inc., 2025 WL 3004534 (N.D. Ill. Oct. 27, 2025).** The court dismissed a class action challenging the "Climate Neutral Certified" labeling on Mondelēz's Zbar products, holding that a factually accurate reference to a third-party certification is not inherently misleading. This decision underscores the defensive value of recognized third-party certification programs.

SECTION 3

Regulatory Developments Affecting the CPG Industry

Regulatory Developments Affecting the CPG Industry

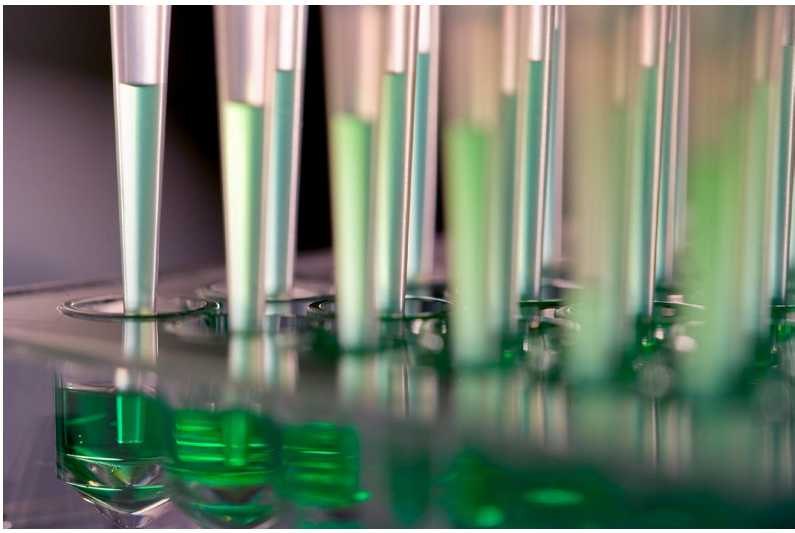
FDA, USDA, and State Food Regulatory Developments

In 2025, the FDA, the U.S. Department of Agriculture (USDA), and various state agencies introduced several regulatory developments that affected the CPG industry. These changes included increased focus on a "Make America Healthy Again" (MAHA) agenda as well as ongoing food safety and enforcement oversight activities regarding an infant botulism outbreak.

- **FDA publishes draft guidance for the industry on labeling of plant-based alternatives to animal-derived foods.** On January 6, 2025, FDA published draft guidance on the labeling of plant-based alternatives to animal-derived foods. This draft guidance outlines recommended best practices for naming plant-based alternatives to eggs, seafood, poultry, meat, and dairy products. In this guidance, FDA recommended the statement of identity for plant-based alternatives should clearly identify the specific plant source(s) of the food and should not imply that any animal source(s) are present or have been used as ingredients. Read more here.

- **MAHA Commission created.** On February 13, 2025, immediately after Robert F. Kennedy Jr. was confirmed and sworn in as secretary of the U.S. Department of Health and Human Services (HHS), an executive order was signed establishing the MAHA Commission. The commission's initial objective is to advise and assist the president on the most effective ways to address the childhood chronic disease crisis. Chaired by the HHS secretary, the commission includes several high-level officials, such as U.S. Secretary of Agriculture Brooke Rollins. Read more here.

- **HHS and FDA announce measures to phase out all petroleum-based synthetic dyes from food.** On April 22, 2025, HHS and FDA announced a series of new measures to phase out certain food colors from the food supply. These actions include establishing a national standard and timeline for the food industry to transition from petrochemical-based dyes to more natural alternatives; initiating the process to revoke authorization for the synthetic colorings Citrus Red No. 2 and Orange B; collaborating with the industry to eliminate certain other dyes; authorizing four new natural color additives; and urging food companies to remove FD&C Red No. 3 ahead of the 2027-2028 deadline.



- **FDA approves three food colors from natural sources.** On May 9, 2025, FDA announced the approval of three new color additive petitions, expanding the range of natural-source colors that manufacturers can safely use in food. The newly approved color additives are: (1) *Galdieria* extract blue, a blue color derived from the unicellular red algae *Galdieria sulphuraria*; (2) butterfly pea flower extract, a blue color that can be used to achieve a variety of shades, including blues, purples, and greens; and (3) calcium phosphate, a white color approved for use in ready-to-eat chicken products, white candy melts, doughnut sugar, and sugar for coated candies.

- **Texas approves the MAHA bill.** On May 26, 2025, the Texas House passed SB 25. Texas Governor Greg Abbott signed the bill into law on June 21. The bill focuses on promoting nutritional awareness and physical health in schools. The bill establishes a nutritional curriculum for students and a Nutrition Advisory Committee to help establish, develop, and maintain nutritional guidance. Additionally, the bill requires manufacturers to either remove prohibited ingredients or include a warning label stating that the

product contains artificial colors, food additives, or other chemical ingredients banned in Canada, the European Union, or the United Kingdom. This bill has faced legal challenge, with a recent lawsuit filed in December 2025. *American Beverage Association et al v. Paxton*, No. 25-cv-00566v (W.D. Tx.).

- **MAHA Commission releases "Make Our Children Healthy Again" report.** On May 22, 2025, the "Make Our Children Healthy Again" report was released, outlining the commission's priorities for improving the health of American children. According to its authors, the report aims to examine the purported root causes of deteriorating child health, including exposure to environmental chemicals and the overuse of technology.

- **FDA unveils enhanced post-market chemical review program for food safety.** On May 15, 2025, FDA announced a comprehensive plan for post-market review of chemicals used in food products. According to the agency's announcement, key elements of the plan include: (1) a modern, evidence-based system for prioritizing chemical reviews; (2) a finalized, systematic post-market review process shaped by stakeholder input; and (3) an updated list of chemicals under review.

- **States continue to ban lab-grown meats.** Following state bans on the sale and manufacture of lab-grown meat in Florida and Alabama in 2024, Montana and Indiana have enacted similar laws. On May 1, 2025, Montana Governor Greg Gianforte signed HB401, prohibiting the sale, distribution, and manufacture of "cell-cultured edible products," defined as meat and related components produced via cell culture rather than from slaughtered animals. On May 6, 2025, Indiana Governor Mike Braun signed HB1425, imposing a two-year moratorium on the sale and manufacture of "cultivated meat products," defined as animal protein grown from extracted animal stem cells to replicate the sensory and nutritional qualities of conventional meat.

- **FDA seeks input on a new method for ranking chemicals in food for post-market assessments.** On June 18, 2025, FDA released a proposed method for ranking chemicals in the food supply and invited public comment. The new approach aims to provide a systematic process for prioritizing chemicals for post-market assessment under the agency's chemical review program. According to the agency's announcement, this proposed method is designed to help FDA focus resources on chemicals that pose the greatest potential public health risks, particularly to sensitive populations, and those of high public concern. The last day to submit comments was July 18, 2025.

- **House bill proposes "high caffeine" warning for beverages.** On March 31, 2025, a bipartisan group in Congress introduced H.R. 2511, also known as the Sarah Katz Caffeine Safety Act. The bill would require warnings on beverages that contain more than 150 milligrams of caffeine. The bill would amend Section 403 of the Food, Drug, and Cosmetic Act (FDCA) to classify foods and supplements with more than 10 mg of caffeine as misbranded unless labels disclose the caffeine content, its source (natural or added), and an advisory on FDA's recommended daily caffeine limit for healthy adults. The bill also directs FDA to define "added caffeine" and review whether caffeine and other stimulants are generally recognized as safe (GRAS).

- **House introduces SAFE Sunscreen Standards Act.** On June 3, 2025, Congress introduced H.R. 3686, the SAFE Sunscreen Standards Act. The bill would modernize the FDCA to improve the regulatory review process for active ingredients in nonprescription sunscreen. The act directs FDA to establish clearer, more flexible standards for evaluating sunscreen ingredients and incorporates nonanimal testing alternatives. Proponents of the bill said that it would allow FDA to embrace new advancements in skin care and expand access to the most advanced sunscreens for Americans. Read more here.

- **FDA proposes revoking more than 50 standards of identity.** In July 2025, FDA proposed revoking more than 50 standards of identity for food products. This included 11 types of canned fruit and vegetable

products, 18 types of dairy products, and 23 other food products, such as certain bakery and noodle products. In announcing the change, FDA Commissioner Marty Makary stated that the agency was revoking these standards to promote a "more judicious use of food standards and agency resources."

- **SNAP food waivers granted in select states.** U.S. Secretary of Agriculture Brooke Rollins approved new waivers amending the definition of foods eligible for purchase through SNAP in certain states. While the details of the waivers vary, the states sought to prohibit purchases with SNAP dollars for soda, low- and no-calorie sodas, fruit and vegetable drinks with less than 50% juice, and candy. USDA has approved SNAP waivers in several states, including Arkansas, Idaho, Utah, Indiana, Iowa, and Nebraska.
- **FDA details guidance agenda.** Last summer, FDA published its Human Foods Program guidance agenda for 2025. The agenda indicates proposed guidance may be forthcoming on topics such as new dietary ingredient notifications, food colors derived from natural sources, and action levels for cadmium and inorganic arsenic in food for babies and young children. Read more here.
- **FDA approves use of new color additive.** On July 14, 2025, FDA announced the use of a new color additive, gardenia (genipin) blue, was safe for its intended uses in certain beverages and candies. FDA requires the color additive to be used at levels consistent with good manufacturing practices. Further, this color additive is produced using soy protein hydrolysate, and soy is a major food allergen. Accordingly, the agency will require an allergen disclosure when this new color additive is used at this time.
- **Federal agencies announce joint request for information regarding so-called ultra-processed foods (UPF).** On July 23, 2025, FDA, USDA, and HHS promulgated a request for information (RFI) seeking comment about so-called UPF. In the RFI, the agencies acknowledged: "There is no single, universally accepted definition of [ultra-processed foods], and the definition of such foods has varied considerably over time." The public comment period was extended, and comments were due before October 23, 2025. The RFI has received more than 5,000 public comments.
- **FDA cracks down on kratom-derivative substance.** On July 29, 2025, FDA formally recommended that 7-hydroxymitragynine (7-OH) be scheduled under the Controlled Substances Act (CSA). 7-OH is a concentrated byproduct of the kratom plant, and FDA is not focused on natural kratom leaf products at this time. FDA considers 7-OH a substance with a high potential for abuse due to its strong binding affinity to opioid receptors, asserting that 7-OH has potency that can exceed morphine. On July 15, 2025, FDA issued multiple warning letters to products containing 7-OH. Read more here.
- **FDA announces public meeting on food allergens.** In September 2025, FDA described its plans to host a three-day virtual public meeting on food allergen thresholds to benefit public health. Among other things, FDA plans to discuss allergen risk assessment and the effect of certain low-level dose exposures—called thresholds—and risk assessments for individuals with food allergies. The agency noted that this public meeting will focus on food allergen thresholds for the major food allergens in the United States, and the concepts and strategies developed

from this event may be considered as FDA addresses other food allergies and intolerances in the future.

- **FTC issues warning letters regarding "Made in the USA" claims.** On July 8, 2025, the Federal Trade Commission (FTC) sent a total of six warning letters to companies and online marketplaces regarding "Made in the USA" claims. The warning letters cautioned these companies to discontinue claims or provide substantiation that the products at issue are in fact "all or virtually all" made in the United States. The warning letters to online marketplaces outlined FTC's current thinking on "Made in the USA" claims and how they might apply to third-party sellers on those marketplaces.
- **California passes law on so-called UPF.** On September 16, 2025, the California Legislature passed AB 1264. Governor Gavin Newsom signed the bill on October 8, 2025, and its provisions will take effect over time. Among other things, California legislators enacted a statutory definition of so-called UPF for school-related purposes. Specifically, the legislation labels so-called UPFs in the school food context as foods or beverages meeting two criteria. First, the purported UPF must contain one or more certain ingredients, such as stabilizers, thickeners, or colors. Second, the purported UPF must contain certain non-nutritive sweeteners or more than specified levels of saturated fat, sodium, or added sugar. The law also requires the regulation of as-yet undefined "ultraprocessed foods of concern" by June 2028.
- **Texas and Louisiana enact new laws on new food ingredient disclosures and school nutrition.** Louisiana and Texas enacted new legislation imposing disclosure requirements on food and beverage manufacturers, as well as new restrictions on ingredients permitted in public school meals. Some changes took effect as soon as September 1, 2025, with others rolling out in the next few years. Among other things, the Texas statute would require the following language "WARNING: This product contains an ingredient that is not recommended for human consumption by the appropriate authority in Australia, Canada, the European Union, or the United Kingdom" if a product contains any of 44 specified ingredients. Read more here.
- **FDA works with CDC and other regulatory partners on infant botulism outbreak.** In November 2025, FDA worked with manufacturer ByHeart Whole Nutrition Infant Formula on a voluntary recall of food products intended for infants. Certain products were associated with a multistate outbreak of infant botulism, which has led to more than 50 hospitalizations of infants across the country. As of December 17, 2025, all lots of ByHeart infant formula products were subject to recall.
- **FDA issues PFAS report regarding cosmetic products.** On December 29, 2025, FDA released a congressionally mandated report regarding PFAS in cosmetic products. The FDA's announcement regarding the report stated, "the FDA's evaluation did not reach definitive safety determinations and underscores significant uncertainty due to gaps in existing data on PFAS exposure through cosmetics."
- **Federal court strikes down West Virginia color additive ban.** On December 23, 2025, a West Virginia federal court granted a preliminary injunction enjoining enforcement of a state color additive ban. *Int'l Ass'n of Color Manufacturers v. Singh*, No. 2:25-CV-00588, 2025 WL 3721864 (S.D.W. Va. Dec. 23, 2025). In March 2025, the state enacted H.B. 2354 that, among other things, labeled seven color additives as "poisonous and injurious" adulterants and banned their sale in the state. The affected color additives were butylated hydroxyanisole, propylparaben, FD&C Blue No. 1, FD&C Blue No. 2, FD&C Green No. 3, FD&C Red. No. 3, FD&C Red No. 40, FD&C Yellow No. 5, and FD&C Yellow No. 6. The court held that the state color additive ban was unconstitutionally vague as to what substances are "poisonous and injurious."
- **Executive order aims to expedite rescheduling of cannabis.** On December 18, 2025, President Donald Trump signed an executive order that requires the attorney general to "take all necessary

steps to complete the rulemaking process related to rescheduling marijuana to Schedule III of the [Controlled Substances Act] in the most expeditious manner in accordance with Federal law."

- **FDA proposes adding new sunscreen active ingredient.** On December 11, 2025, FDA proposed adding bemotrizinol at concentrations up to 6% to the list of active ingredients in the over-the-counter (OTC) monograph for sunscreens. In announcing the proposal, FDA's Acting Director of the Office of Nonprescription Drugs Karen Murray stated, "Bemotrizinol would be a welcome addition to the current array of effective sunscreen active ingredients already available to American consumers."

- **FDA clarifies dietary supplement disclaimer requirement.** On December 11, 2025, FDA issued a letter detailing its intention to revise a dietary supplement disclaimer requirement. Under 21 C.F.R. § 101.93(d), dietary supplements may make certain claims so long as the statements are accompanied "on each panel" by the following words: "This statement has not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease." With its letter, FDA clarified that it intends to remove the requirement for this disclaimer to appear on each label and that it would exercise discretion in enforcing the requirement while rulemaking was underway.

- **FDA withdraws proposed rule regarding talc-containing cosmetics.** On November 28, 2025, FDA withdrew a 2024 proposed rule concerning testing methods for detecting and identifying asbestos in talc-containing cosmetic products. FDA announced that it was withdrawing the rule "in response to comments received during the comment period for the proposed rule that warrant further consideration and assessment prior to issuing final regulations."

- **New intoxicating hemp provisions enacted.** In the Continuing Resolution and Appropriations Package (H.R. 5371), enacted into law on November 12, 2025, Congress included several new provisions regarding intoxicating hemp products. The new provisions represent the most significant federal developments on hemp since the 2018 Farm Bill and will go into effect in November 2026. Recent legislation has established a broader hemp definition that now includes total THC, not just Delta-9-THC. New federal limits and exclusions target Delta-8-THC and other intoxicating cannabinoids. FDA guidance and compliance deadlines arrive in early 2026. Read Perkins Coie's Update on the topic here.

- **New law includes provisions regarding OTC drugs and sunscreens.** In another provision of the Continuing Resolution and Appropriations Package (H.R. 5371), Congress enacted new requirements for OTC and sunscreen products. By November 2026, FDA must issue new draft guidance on how sponsors can use nonclinical testing alternatives to animal testing, as appropriate, to meet safety and efficacy standards for non prescription drugs intended for topical administration, like sunscreens with Sun Protection Factor (SPF) ratings. The law also provides new structures for final administrative orders regarding active ingredients in sunscreens. Read Perkins Coie's Update on the topic here.

- **Ninth Circuit vacates certain bioengineered food disclosure rules.** On October 31, 2025, the U.S. Court of Appeals for the Ninth Circuit issued a ruling in *Natural Grocers v. Rollins* that has the potential to significantly alter the current landscape of bioengineered (BE) food disclosures. Among other things, the Ninth Circuit ruled that USDA acted contrary to law when it concluded that highly refined foods without detectable genetically modified material are exempt from BE disclosure. Read Perkins Coie's Update on the topic here.

- **California enacts new food allergen disclosure law.** On October 13, 2025, Governor Newsom signed S.B. 68 into law. S.B. 68 requires certain retail food establishments to disclose food allergens on the menu or via digital methods. The law's provisions go into effect on July 1, 2026.

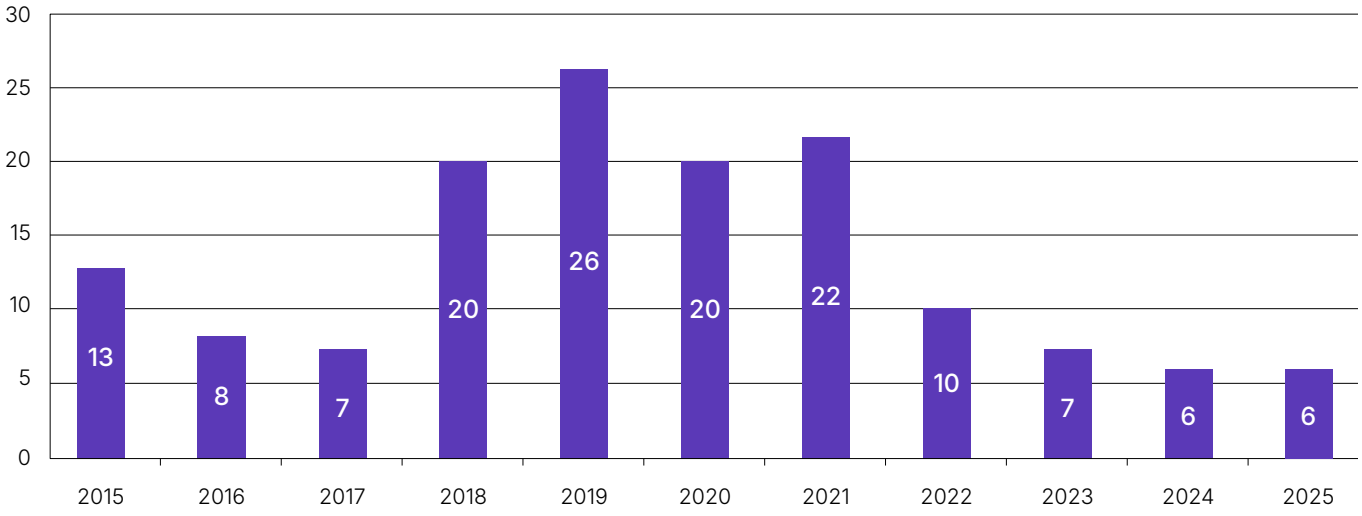
SECTION 4

Legal Trends in Pet Food

Legal Trends in Pet Food

Figure 3

PET FOOD CLASS ACTIONS: FILINGS BY YEAR



Data compiled by Perkins Coie based on a review of dockets from courts nationwide.

Regulatory and litigation activity regarding pet food products continued in 2025.

Legislation and Regulation

January 2025 saw the introduction of the Pet Food Uniform Regulatory Reform Act (PURR Act of 2025). Among other things, this bill would see FDA take over sole regulatory authority for pet food for dogs and cats. The bill included a preemption provision that would generally prohibit any state or local requirements related to pet food marketing or labeling, outside of food safety oversight.

In March 2025, Congress saw the introduction of the Innovative Feed Enhancement and Economic Development Act of 2025 (Innovative FEED Act). The bill would amend the FDCA to establish a regulatory pathway for zootechnical animal food substances, a new category of animal feed substances.

In terms of pet food regulation, the USDA announced its intention in June 2025 to rescind its standards for organic pet food. In its notice of proposed rulemaking, the agency asserted that rescinding the organic standards for pet food would "clarify" the standards applicable to such products. The agency has received more than 12,000 comments on its proposal.

Pet Food Litigation

Several new pet food class-action cases were filed in 2025. Litigation trends in food and CPG have seen application to the pet food product category, such as:

- **Citric acid.** Pet food manufacturers have been targeted for challenges to "no artificial preservatives, colors, or flavors" marketing and labeling. These cases generally allege that products are misrepresented when they contain substances such as citric acid (which plaintiffs claim is a so-called artificial ingredient). *Melissa Burkett v. Big Heart Pet Brands, Inc.*, No. 25STCV19326 (Cal. Super. Ct., Los Angeles Cnty., filed July 2, 2024); *Andres Orozco v. Target Corporation*, No. 2:25-cv-07254 (C.D. Cal., filed Aug. 6, 2025); *Karla Elisa Cortez v. Post Holdings, Inc.*, No. 2:25-cv-02321 (E.D. Cal., filed Aug. 14, 2025).
- **Food safety.** Pet food products were also subject to litigation over food safety concerns. In 2023, FDA investigated cases of Salmonella associated with pet food manufactured by Mid America Pet Food. The foodborne illness incident prompted multiple class-action lawsuits in late December 2023 for failure to disclose that the products contained Salmonella. *See, e.g., Glenn Jackson, et al. v. Mid America Pet Food, LLC*, No. 5:23-cv-00153 (E.D. Tx., filed Dec. 29, 2023); *James Filardi, et al. v. Mid America Pet Food, LLC*, No. 7:23-cv-11170 (S.D.N.Y., filed Dec. 22, 2023). In 2025, Mid America agreed to settle the consolidated class-action matters for $5.5 million. The company admitted no liability.

SECTION 5

Legal Trends in Supplments

Legal Trends in Supplements

In 2025, supplement filings stayed active and clustered around several theories: "clinically proven/tested" efficacy claims, undisclosed safety concerns, testing-based content challenges, and pressure on unapproved drugs. Targeted products included weight loss supplements, protein powders, sleep aids, apple cider vinegar, and fiber and vitamin boosters (calcium, vitamins C and B12, etc.). While filings occurred across the country, California and New York remain repeat jurisdictions, accounting for 77% of filings.

Figure 4

DIETARY SUPPLEMENT CLASS ACTIONS: FILINGS BY JURISDICTION

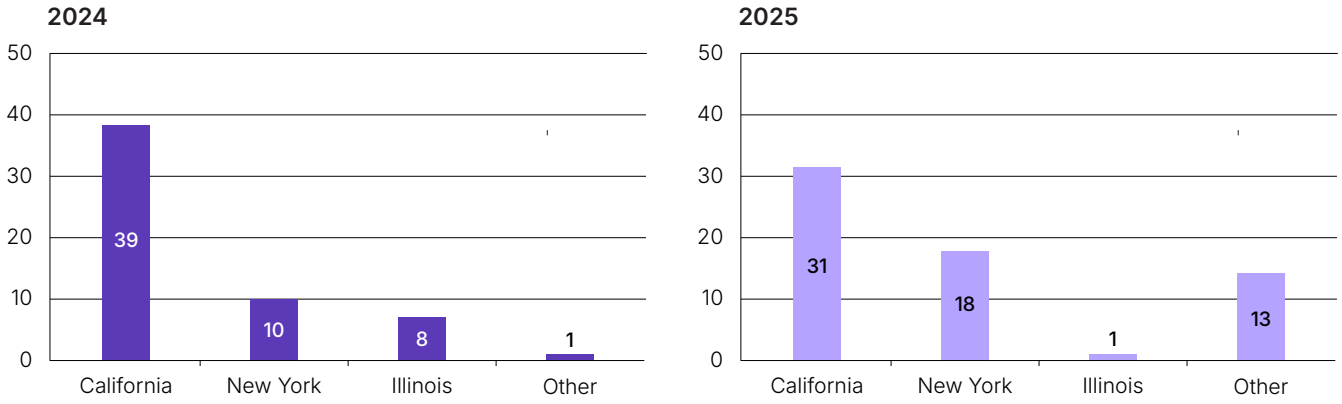
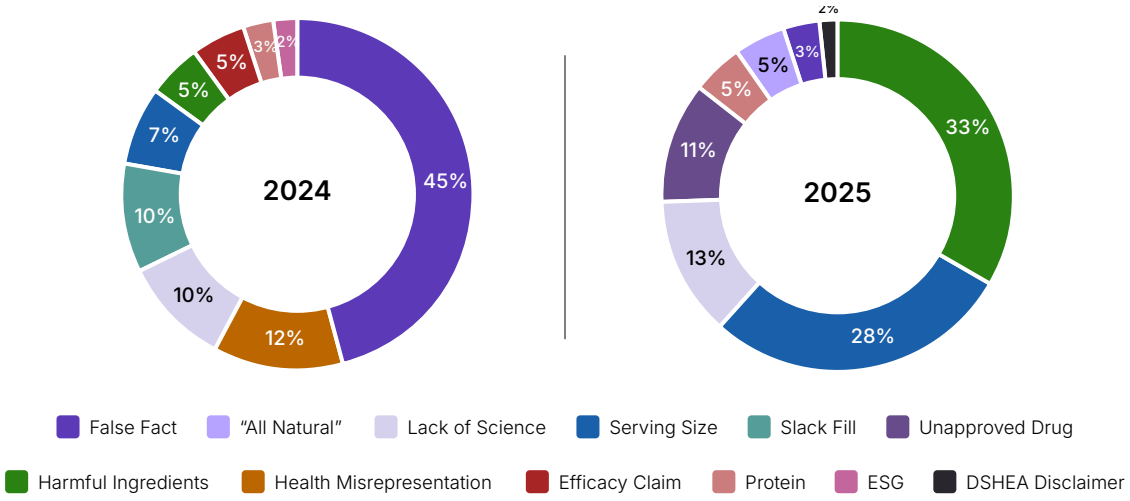


Figure 5

INDUSTRY FILINGS AND TRENDS: CATEGORIES



Data compiled by Perkins Coie based on a review of dockets from courts nationwide.

Legal Theory Highlights

– **Lack of science.** As supplements started riding the GLP-1 wave in 2025, plaintiffs began targeting "faux-xempic" claims on weight loss supplements (e.g., "curbs hunger," "increases GLP-1 levels," or "promotes weight loss"). Complaints allege that such claims overstate prescription-like benefits and rely on thin clinical support. *See, e.g., Christina Robins v. Lemme Inc.*, No. 25STCV04635 (Cal. Super. Ct., Los Angeles Cnty., filed Feb. 19, 2025); *Sarah Erwin v. The Clean Supps LLC*, No. 2:25-at-00904 (E.D. Cal., filed July 11, 2025); *Judith Nwaigbo v. HUM Nutrition, Inc.*, No. 2:25-cv-09440 (C.D. Cal., filed Oct. 3, 2025). This follows a greater trend of

filings against supplement companies who claim a product is "clinically proven" (at minimum, "tested"), and plaintiffs challenge the strength of defendants' scientific substantiation. *See, e.g., Simone Georges v. Foodscience LLC*, No. 2:25-cv-02972 (C.D. Cal., filed April 4, 2025) ("clinically proven" to treat joint problems in dogs); *Richardson v. Alliance Pharma Inc.*, No. 5:25-cv-02507 (C.D. Cal., filed Sept. 23, 2025) ("clinically proven" to relieve menopause symptoms); *Louise Hudis v. Quincy Bioscience Holding Company, Inc.*, No. 1:25-at-00937 (E.D. Cal., filed Oct. 13, 2025) ("clinically tested," "improves memory," and "supports healthy brain function").

- **Harmful ingredients.** More than a dozen complaints came out against 7-OH products, alleging they fail to disclose that the alkaloids found in kratom behave like opioids and pose the same risk of addition, dependency, and withdrawal symptoms. *See, e.g., M.G. and J.H. v. Ashlynn Marketing Group, Inc. dba Se7en*, No. 2:25 cv 06491 (C.D. Cal., filed July 16, 2025); *K.K. v. Thang Botanicals, Inc.*, No. CGC 25 626929 (Cal. Super. Ct., San Francisco Cnty., filed July 7, 2025). Some plaintiffs go as far as calling such products unlawful drugs. *See, e.g., Jason McCool v. Hi Tech Pharmaceuticals, Inc.*, No. 1:25 cv 05668 (N.D. Ga., filed Oct. 3, 2025).

- **Serving size.** Several supplement cases in 2025 followed the traditional trend of serving size cases, alleging that the front-label unit count (*e.g.*, "72 gummies") does not provide the same number of servings (less than 72). However, many more put their spin on the traditional theory by citing lab tests to allege "none" or "far less" of the promised ingredient. For example, several cases alleged apple cider vinegar must contain a minimum of 4% acetic acid, yet the products at issue only contained 2%. *See Tiffini Smith v. Nature's Truth Inc.*, No. 2:25-cv-01536 (C.D. Cal., filed Feb. 23, 2025); *Lynn Ama, et al. v. Piping Rock Health Products, Inc, et al.*, No. 1:25-cv-03787 (S.D.N.Y., filed May 6, 2025). Similarly, creatine, colostrum, and fennel products allegedly contained *no* detectable amounts of those ingredients. *See, e.g., David Frankle v. Perfectfit365*, No. 3:25-cv-05286 (N.D. Cal., filed June 24, 2025); *Aimee Follett, et al. v. Inner Brightness LLC, et al.*, No. 2025CV30754 (Colo. Dist. Ct., Bounder Cnty., filed Sept. 9, 2025); *Valentina Vassallo v. Bloom NU LLC d/b/a Bloom Nutrition*, No. D-1-GN-25-007874 (Texas Dist. Ct., Travis Cnty., filed Sept. 9, 2025).

Notable Rulings

In 2025, the Ninth Circuit issued two opinions involving supplement products, but the implications reach beyond the supplements space. *Scheibe v. ProSupps USA, LLC*, 141 F.4th 1094 (9th Cir. 2025), reinstated a case challenging "0 grams carbs/0 calories" on a weight loss/muscle mass product and held that a plaintiff's single sample lab test is sufficient at the pleading stage to avoid preemption where it reasonably supports an inference that compliant composite testing would show misbranding. The court emphasized that "the Federal Rules of Civil Procedure do not cast judges as skeptics of pleadings." *Id.* at 1100.

> In 2025, the Ninth Circuit issued two opinions involving supplement products, but the implications reach beyond the supplements space.

Next, in an unpublished decision, *Bubak v. GOLO, LLC*, 2025 WL 2860044 (9th Cir. Oct. 9, 2025), the Ninth Circuit panel affirmed dismissal of a UCL claim where pursuing the state claim would "necessarily require litigating the alleged underlying FDCA violation," reinforcing that private plaintiffs cannot use state law claims as *de facto* FDCA enforcement. This provides defendants with a pathway for an implied preemption defense when plaintiffs' theories rest on FDCA violations rather than independent state law deception. As context from 2024, the U.S. Court of Appeals for the First and Second Circuits have already set defendant-friendly preemption guardrails relevant to supplements, including *DiCroce v. McNeil Nutritionals, LLC*, 82 F.4th 35 (1st Cir. 2023), *cert. denied*, and *Jackson-Mau v. Walgreen Co.*, 115 F.4th 121 (2d Cir. 2024)., and 2025 continued that trajectory in the Ninth Circuit.

District courts in 2025 further delivered practical markers for all stages of litigation. On the pleadings, the Northern District of Illinois dismissed claims that "Real Food, Real Science, Real Nutrition" promised nutritional equivalence to fruits and vegetables, holding the label did not suggest the products provide a particular amount of real food or nutrition. *Spivey v. Evig, LLC dba Balance of Nature*, 2025 WL 1638453 (N.D. Ill. June 9, 2025). This signals judicial caution around broad slogans, particularly where plaintiffs scrutinize efficacy and "clinically proven"-type claims. Separately, the same district court dismissed a "lack of science" brain-health case under Rule 9(b) for failure to plead with particularity Illinois state consumer fraud claims against each defendant and for personal-jurisdiction deficiencies, highlighting the need for defendant-specific allegations. *Murrow v. Quincy Bioscience Holding Co., Inc.*, 2025 WL 446149 (N.D. Ill. Feb. 10, 2025).

On procedure, the Southern District of New York certified a class of consumers in a class action alleging defendants deceptively labeled and marketed their "One A Day" gummy vitamin supplements, specifically claiming the label suggests that consumers only need to take one gummy per day to receive the full nutritional benefit, when two or more gummies are required. The court held the alleged deceptive act was uniform on every package and that materiality could be determined on a classwide basis. The court also concluded that the requirements of Rule 23(a) and Rule 23(b) were satisfied. *Newman v. Bayer Corp.*, 348 F.R.D. 567 (S.D.N.Y. Mar. 19, 2025).

Lastly, at trial, a California jury delivered a defense verdict in an added-sugar case targeting a supplement for kids behind in growth or facing nutritional shortfalls. *See, e.g., VanCleave v. Abbott Laboratories*, No. 19cv345045 (Cal. Super. Ct., Santa Clara Cnty. Feb. 21, 2025). Claims like "Complete Balanced Nutrition," "Nutrition to help kids grow," and "Balanced Nutrition" were allegedly misleading in light of the product's sugar content. The plaintiff's full refund theory failed at summary judgment, but a class was certified and the case went to trial based on a price premium theory of damages. However, the jury found that the claims were not false or misleading and plaintiffs were not harmed by purchasing the product. This trial result provides a practical counterweight to growing momentum at class certification.

Regulatory Updates

In 2025, the dietary supplement space was marked by announcements of mixed enforcement action.

On the favorable side, FDA's December 11, 2025, letter to the industry is perhaps the most practical win for supplement brands this year. FDA announced it will exercise enforcement discretion regarding the long-standing requirement under 21 C.F.R. § 101.93(d) that the Dietary Supplement Health and Education Act of 1994 structure/function disclaimer must appear on "each panel" that contains a qualifying claim. FDA notes it has "rarely, if ever," enforced this requirement and doesn't intend to if claims on other panels are linked to the main disclaimer. Further, the agency is considering a change to the "every panel" language in the regulation. This announcement significantly reduces label clutter, costs for small-packaging products, and fodder for lawsuits over hyper-technical violations of the regulation. *See, e.g., Porsche Desrys v. Traditional Medicinals, Inc.*, No. 3:25-cv-07898 (N.D. Cal., filed Sept. 16, 2025).

On the other hand, FDA officially embraced AI tools in 2025 to modernize label reviews and post-market surveillance. After a successful pilot of the internal tool "Elsa" in May 2025, the agency expanded to "Agentic AI" in December 2025. These tools may allow reviewers to rapidly cross-reference supplement labels and identify adverse events and regulatory violations.

Lastly, consistent with several lawsuits discussed above, on July 29, 2025, FDA announced its recommendation to schedule 7-OH—a concentrated byproduct of the kratom plant—under the Controlled Substances Act. This move follows the agency's comprehensive medical and scientific review of the ingredient and is part of FDA's broader efforts to address the risks associated with opioid-like substances. The Drug Enforcement Administration (DEA) is now reviewing FDA's recommendation. A public comment period is anticipated before any scheduling action is finalized.

SECTION 6

Legal Trends in Personal Care Products

Legal Trends in Personal Care Products

Federal Regulatory Landscape in 2025

The Modernization of Cosmetics Regulation Act of 2022 (MoCRA) remained the center of gravity for federal oversight of the U.S. cosmetics and personal care sector throughout 2025. Core obligations—facility registration and product listing, safety substantiation, adverse event reporting, and updated labeling—are now operational and shaping day-to-day compliance. At the same time, shifts in federal policy priorities and a governmentwide regulatory review introduced delays and uncertainty for several rulemakings that MoCRA expressly contemplated. The result is a two-speed environment: Foundational statutory duties are active and enforceable, while key implementing rules are proceeding more slowly than initially expected.

Implementation of MoCRA's foundational requirements deepened materially in 2025. Facility registration and product listing, effective July 1, 2024, have scaled to reflect the size and global footprint of the industry. By July 2, 2025, FDA reported 12,049 unique, active cosmetic product facilities registered—2,141 in the United States and 9,908 abroad, including 5,806 in China—and 784,270 unique, active product listings. Registration must be renewed biennially, and product listings must be updated annually as formulations and portfolios change, with the "responsible person" ensuring accuracy and timeliness. Although MoCRA includes targeted small-business exemptions from certain requirements, those exemptions do not extend to products that present higher risks (*e.g.*, products intended for the eye area, injected or internal-use products, or those intended to alter appearance for more than 24 hours without customary removal), and they do not relieve companies of the statutory duty to ensure product safety.

Safety substantiation is now a gating compliance obligation for every cosmetic on the market. MoCRA defines "adequate substantiation of safety" as evidence that experts consider sufficient to support a reasonable certainty that a product is safe under customary conditions of use, and it defines "safe" in relation to injury risk under labeled or customary use. Companies must maintain scientific files—tests, studies, analyses, and other data—supporting the safety for finished products and, as needed, ingredients. They should be prepared for FDA to request and review those files when it reasonably believes a product may present a serious threat.

Adverse event management has likewise taken on heightened importance. Responsible persons must report "serious adverse events" to FDA within 15 business days and maintain adverse event records for six years. MoCRA's definition of "serious adverse event" spans outcomes such as death, life-threatening experiences, inpatient hospitalization, significant disability, congenital anomalies, infections, and significant disfigurement—including serious or persistent rashes, second- or third-degree burns, significant hair loss, or persistent changes in appearance—as well as events requiring medical or surgical intervention to prevent these outcomes. Companies should maintain intake systems capable of triaging events, medical assessments to determine seriousness, and procedures for follow-up reporting if new, material information emerges. In parallel, as of December 29, 2024, cosmetic labels must provide a domestic address, phone number, or electronic contact point, such as a website or email, to enable consumers to report adverse events directly to the person responsible. This contact requirement both facilitates case capture and underscores the importance of consumer-complaint systems.

Several MoCRA rulemakings and studies progressed at a slower pace in 2025 due to regulatory review, but the underlying policy directions remained clear. Good manufacturing practices (GMPs) for cosmetics—one of MoCRA's central future pillars—are on an extended

timeline for finalization. In the meantime, FDA continues to use its adulteration and misbranding authorities and scrutinize manufacturing controls during inspections.

Two high-profile technical areas—talc and fragrance allergens—also saw extended timelines. FDA's proposed rule to standardize asbestos testing in talc-containing cosmetics, initially issued in late 2024 with a comment period closing in March 2025, was withdrawn on November 28, 2025. Concerns raised during the comment period included the feasibility and reliability of dual microscopy methods (*e.g.*, polarized light microscopy and transmission electron microscopy), the risk of false positives, and the interplay with products straddling cosmetic and drug classifications. On fragrance allergens, MoCRA required FDA to propose a rule identifying specific allergens for label disclosure, but FDA's Fall 2025 Unified Agenda shifted the Notice of Proposed Rulemaking to May 2026. While the final U.S. list remains to be proposed, companies that market globally should plan for potential alignment with the European Union's expanded allergen list.

MoCRA's new enforcement tools came into sharper focus in the fourth quarter of 2025. On December 18, 2025, FDA issued draft guidance, *Questions and Answers Regarding Mandatory Cosmetics Recalls: Guidance for Industry*, explaining how it will use its recall authority when it reasonably believes an adulterated or misbranded cosmetic could cause serious adverse health consequences or death. Consistent with other FDA-regulated sectors, the guidance emphasizes an opportunity for voluntary action before an order issues, the process for prompt informal hearing, if requested, and expectations for effective recall execution.

FDA also delivered MoCRA's mandated evaluation of PFAS in cosmetics. On December 29, 2025, the agency reported that 51 distinct PFAS appear in 1,744 cosmetic formulations and centered its risk review on the 25 most frequently used compounds, which account for about 96% of intentional uses. FDA highlighted significant toxicological data gaps for most PFAS, identified a small subset that presents low safety concerns under intended use, and flagged at least one compound as a potential concern amid substantial uncertainties. Although there is no federal prohibition on intentionally added PFAS in cosmetics, the report signals continued scrutiny and an inclination toward risk reduction in line with broader HHS efforts to limit PFAS exposure across consumer products.

Two additional federal threads rounded out 2025. First, the anticipated proposal to prohibit formaldehyde and formaldehyde-releasing ingredients in hair-smoothing and straightening products was not issued by December 31, 2025. Second, congressional interest continued despite rulemaking delays: In July 2025, the Safer Beauty Bill Package was reintroduced, seeking to build on MoCRA with stricter chemical restrictions, enhanced disclosure, and added protections for salon workers. The passage remains uncertain, but the package reflects sustained pressure for heightened transparency and chemical risk management in cosmetics.

Against this backdrop, FDA's enforcement posture has emphasized continuity rather than retrenchment: MoCRA's statutory requirements apply regardless of regulatory timetables, and FDA continues to target misbranding and adulteration, focusing on higher-risk categories and vulnerable populations.

State Regulatory Landscape in 2025

State action in 2025 continued to outpace federal rulemaking for cosmetics and personal care products, with legislatures and agencies tightening chemical restrictions, expanding disclosure obligations, and ramping up marketplace surveillance. While MoCRA sets a nationwide floor for safety substantiation, adverse event systems, facility registration, and product listing, it does not broadly preempt state ingredient restrictions. As a result, companies are operating in a "50-state" compliance environment in which the strictest state rules often define national formulation, labeling, and data practices.

- **PFAS prohibitions continued to spread and mature.** By early 2025, California, Colorado, Maryland, and Minnesota had moved to prohibit intentionally added PFAS in cosmetics, with effective dates that began on January 1, 2025, in several jurisdictions. New Mexico also joined this cohort with a PFAS ban taking effect on January 1, 2028, which signals momentum

toward a continental phaseout. Throughout 2025, agencies emphasized surveillance and enforcement: California, Colorado, Maryland, and Minnesota shifted from initial rollouts to more aggressive market monitoring, and MPCA finalized its "PFAS in Products" reporting rule on December 8, 2025. That rule set fee structures and technical reporting parameters and extended the first major reporting deadline to July 1, 2026. In parallel, manufacturers began preparing "currently unavoidable use" submissions to position specialized applications for possible temporary relief under Minnesota's broader PFAS phaseout framework. For national brands, the upshot has been decisive reformulation to eliminate intentionally added PFAS and tighter supplier controls to distinguish intentional uses from trace impurities.

- **States broadened restrictions beyond PFAS, tightening lists and timelines.** California's Toxic-Free Cosmetics Act took effect on January 1, 2025, prohibiting 24 ingredients—including formaldehyde, certain phthalates, and mercury—from manufacture, sale, or offer for sale in the state, aligning much of the California baseline more closely with European Union norms. Washington's Toxic-Free Cosmetics Act also took effect in 2025, restricting nine chemicals or classes (including formaldehyde, lead and lead compounds, certain ortho-phthalates, triclosan, and PFAS), with an initial sell-through period for retailers to deplete existing inventory. Washington's Department of Ecology continued implementation through rulemaking: On August 28, 2025, it adopted a rule banning intentionally added formaldehyde and 25 formaldehyde-releasing chemicals in cosmetics effective January 1, 2027, with sell-through permitted through December 31, 2027. At the same time, previously enacted restrictions on other substances transitioned from manufacture bans to sales and use prohibitions—culminating in end-of-year "shelf clearing" ahead of January 1, 2026, for categories such as intentionally added PFAS, lead, mercury, and certain ortho-phthalates. Given overlapping statutes and rules, Washington's effective dates vary by substance, and companies should verify product-specific applicability, particularly for formaldehyde donors that are now subject to a separate 2027 compliance track. New York advanced its Beauty Justice Act in late 2025 toward the 2026 session, proposing broad prohibitions (including several heavy metals and formaldehyde-releasing agents) and specific protections for products marketed to women of color, with certain restrictions contemplated for later effectiveness (*e.g.*, January 1, 2029, for some intentionally added substances). Together, these measures reflect a steady tightening of ingredient controls across multiple high-profile chemical classes.
- **Transparency and supply chain reporting gained prominence.** Beyond outright bans, states pushed for deeper visibility into chemical use. California's Department of Toxic Substances Control (DTSC) pursued two Safer Consumer Products (SCP) rulemakings in the third quarter of 2025—one clarified importer compliance options and another proposed to add microplastics to the Candidate Chemical List—while CARB extended reporting under its 2023 Consumer and Commercial Products Survey to September 22, 2025. Oregon's modernization of its Toxic-Free Kids Act now requires brand- and model-specific disclosure of high-priority chemicals in children's cosmetics for the 2024-2025 sales period, with the first detailed reports due on January 31, 2026. Although the mechanisms differ—agency databases, consumer-facing disclosures, and targeted surveys—the direction is consistent: more product-level data, more often, and with fewer aggregation allowances.
- **The practical effect: a de facto national standard for many brands.** By the end of 2025, the cadence of state bans, sell-through deadlines, and reporting milestones drove many companies to adopt a uniform, "strictest-state" baseline—reformulating out of intentionally added PFAS and formaldehyde donors, purging lead and mercury sources, restricting certain ortho-phthalates, and upgrading documentation to support state reporting. For 2026, companies should expect continued state activity on microplastics and allergen disclosure, additional PFAS reporting refinements, and expanding enforcement that pairs product testing with documentation audits.

Litigation Landscape in 2025

Figure 6

PERSONAL CARE CLASS ACTIONS: FILINGS BY JURISDICTION

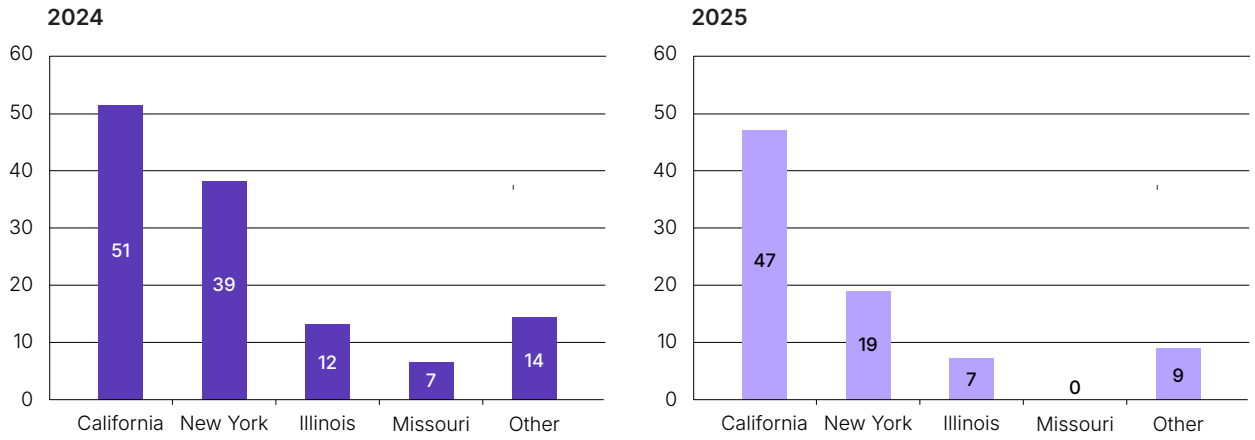
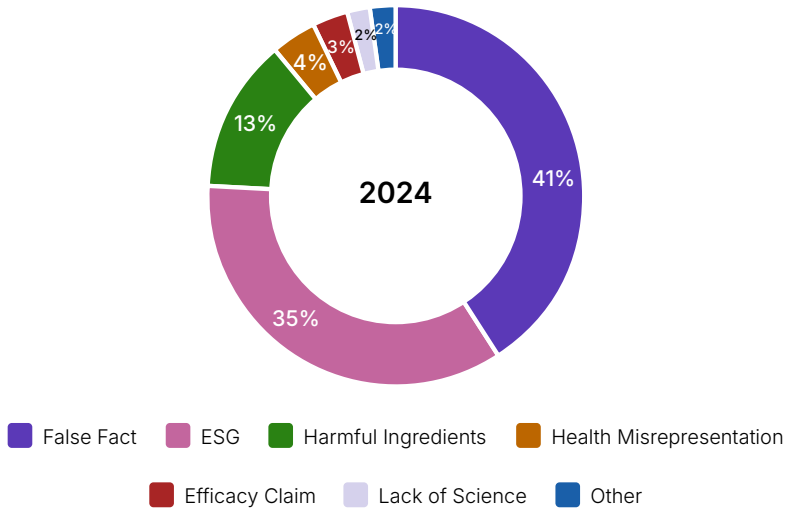


Figure 7

PERSONAL CARE CLASS ACTIONS: FILINGS BY TYPE



Data compiled by Perkins Coie based on a review of dockets from courts nationwide.

Litigation involving cosmetics and personal care products accelerated across 2025, with plaintiffs intensifying challenges to product safety, chemical content, and advertising accuracy. The rollout of MoCRA heightened scrutiny of adverse event handling, safety substantiation, and labeling, while state-level prohibitions and disclosure mandates supplied new theories for consumer protection and product liability suits. The result is a two-track risk profile: Legacy mass-tort and contamination claims—notably talc and hair relaxers—continued to generate outsized exposure, and a parallel surge of class actions targeted "clean," "natural," "hypoallergenic," "mineral," "oil-free," "recyclability," and origin claims.

- **MoCRA's early implementation created litigation vectors as FDA enforcement built momentum.** Plaintiffs' firms increasingly referenced serious adverse event reporting and "adequate substantiation of safety" to assess whether responsible persons maintain robust scientific files for marketed products, and they scrutinized post-market complaint handling for signs of negligence or deceptive practices. Preemption arguments remained in flux: MoCRA does not broadly preempt state ingredient bans or most consumer protection claims, but defendants continued to explore preemption and primary-jurisdiction defenses on claims that implicate FDA's labeling and safety frameworks. Courts are parsing these issues on a claim-by-claim basis, leaving outcomes highly fact-specific.
- **Claims straddling the cosmetic/drug divide continued to draw suits and regulatory attention.** Plaintiffs and regulators challenged "drug-like" statements—language that a product treats, cures, or prevents disease or affects the structure or function of the body—arguing that such claims convert a cosmetic into an unapproved drug under the FDCA. These theories supported warning letters and class actions alleging false advertising and unfair competition. The practical upshot: Companies tightened claim substantiation and pared back express and implied benefit statements to avoid regulatory triggers.
- **Marketing representations remained a central battlefield.** Plaintiffs attacked "natural," "mineral," "hypoallergenic," "oil-free," "biodegradable," and "preservative-free" claims, often pairing them with allegations of undisclosed PFAS, heavy metals, fragrance allergens, or other synthetics. In *Lacy Timmins v. Unilever United States, Inc.* (E.D. Cal. June 4, 2025), a notable "hypoallergenic" matter, a federal court in the Eastern District of California denied a motion to dismiss a putative class action in June 2025 where the plaintiff alleged a petroleum jelly product labeled as hypoallergenic contained fragrance. The court noted that the term's meaning may present questions of fact appropriate for further proceedings. Courts also examined "natural" representations in light of PFAS content. In *Abigail Esquibel, et al. v. Colgate-Palmolive Co., et al.* (S.D.N.Y. June 27, 2025), the Southern District of New York allowed core fraud-based and consumer protection claims to proceed while trimming ancillary claims. These decisions underscore that reasonable-consumer standards remain potent at the motion-to-dismiss stage when plaintiffs link label promises to plausible chemical content allegations.
- **Environmental and origin claims drew heightened scrutiny.** Public and private enforcers challenged "reef friendly" or "reef safe" sunscreen claims where products contained ingredients alleged to harm marine ecosystems. In May 2025, the Santa Clara County District Attorney's Office announced a settlement requiring Sun Bum to pay civil penalties and curtail "reef friendly" advertising for certain chemical sunscreens. "Recyclable" packaging claims also faced suits where municipal programs allegedly refuse the materials at issue, and "Made in USA" and "Assembled in USA" statements drew challenges when products used imported components. In *Benjamin Karter and Diego Ornelas v. Dude Products Inc.* (S.D. Cal. Oct.1, 2025), a federal court in the Southern District of California granted a motion to dismiss on October 1, 2025, holding that "Assembled in USA" describes the place of assembly rather than the origin of parts and that a reasonable consumer would not read it to require all components to be domestic.
- **PFAS stayed at the center of consumer class actions.** Plaintiffs filed suits alleging undisclosed PFAS in cosmetics and personal care products, seeking price-premium damages under state consumer protection laws. Standing and injury questions proved pivotal. Some PFAS cases faltered for lack of product-specific testing tied to a purchaser's item, while others survived where plaintiffs offered concrete, SKU-specific analytical data. Parallel state restrictions—such as prohibitions on intentionally added PFAS—reinforced allegations that reasonable consumers expect PFAS-free products, especially where labels implied "clean" or "natural."

Elsewhere, suits alleged contamination and undisclosed risks, including benzene in dry shampoos and alleged benzene formation from benzoyl peroxide acne treatments during storage and use. Plaintiffs also challenged the presence of heavy metals in menstrual products and alleged bacterial contamination (*e.g.*, Burkholderia cepacia) tied to water quality and manufacturing controls—areas where MoCRA's enhanced records and recall authority raise the stakes for documentation and response speed.

By the third quarter of 2025, several rulings clarified class-action standards and the contours of advertising litigation. In *Abigail Esquibel, et al. v. Colgate-Palmolive Co., et al.* (S.D.N.Y. June 27, 2025), the court allowed fraud-based and consumer protection claims tied to "natural" labeling to proceed while dismissing constructive fraud and injunctive relief for lack of standing. The Second Circuit in *D. Joseph Kurtz, et al. v. Kimberly-Clark Corp.* (2d Cir. July 1, 2025) vacated a "flushable" wipes settlement, instructing district courts to scrutinize the allocation between class members and counsel under Rule 23(e). The Ninth Circuit in *Narguess Noohi v. Johnson & Johnson Consumer Inc.* (9th Cir. July 25, 2025) affirmed class certification in "oil-free" labeling litigation, accepting an objective materiality theory and a reliable, classwide damages model at certification. In *Allison Barton, et al. v. The Procter & Gamble Co.* (S.D. Cal. Aug. 8, 2025), the court permitted an amended complaint alleging undisclosed lead in tampons to proceed based on enhanced testing detail, while dismissing certain "unfair" UCL claims. The Ninth Circuit's decision in *Judah Rosenwald, et al. v. Kimberly-Clark Corp.* (9th Cir. Sept. 24, 2025) dismissed a wipes-labeling case for failure to plead federal jurisdiction, highlighting procedural gates that can end consumer suits early.

Newly filed matters in the third quarter spotlighted sunscreens and SPF claims. Plaintiffs challenged advertised SPF values and "100% mineral-based" claims,

alleging that independent laboratory testing showed materially lower UVA/UVB protection or undisclosed chemical sunscreen ingredients, such as butyloctyl salicylate. Cases including *Andrea Fahey, et al. v. Sun Bum LLC*, No. 3:25-cv-02263 (S.D. Cal., filed Aug. 29, 2025); *Tina Barrales v. L'Oréal USA, Inc. d/b/a La Roche-Posay, LLC*, No. 2:25-cv-07912 (C.D. Cal., filed Aug. 22, 2025); *Jessica Augustine v. Sun Bum Suncare, LLC*, No. 25CU048189C (Cal. Super. Ct., San Diego Cnty., filed Sept. 9, 2025); and *Stuart Fogelson v. Crown Laboratories Inc.*, No. 531729/2025 (N.Y. Sup. Ct., Kings Cnty., filed Sept. 13, 2025) underscore that sun care claims are becoming data-intensive and that "mineral" positioning requires close control over all formulation inputs.

The fourth quarter of 2025 saw extraordinary verdicts in legacy talc litigation, reshaping settlement dynamics. A Baltimore jury awarded more than $1.5 billion to a plaintiff alleging peritoneal malignant mesothelioma from asbestos in talc-containing personal care products. Earlier in 2025, juries in Minnesota and California issued awards of $65.5 million and $966 million, respectively, in mesothelioma cases. These results hardened plaintiffs' bargaining positions and undercut prospects for a comprehensive bankruptcy-based resolution after federal courts rejected earlier proposals reportedly in the $8 billion to $9 billion range. At the same time, the hair relaxer multidistrict litigation exceeded 10,900 cases as of January 2026, with courts emphasizing general causation workups and scheduling a "Science Day" for early January 2026 to frame endocrine-disruptor theories and cancer risk evidence. Together, these tracks signal sustained high-dollar exposure on toxic tort theories in parallel with expanding consumer-fraud dockets.

Regulators and self-regulatory bodies maintained pressure on advertising substantiation. The National Advertising Division issued a series of decisions involving Procter & Gamble oral care products in mid-2025, concluding that "Gum Detoxify" was adequately substantiated, recommending modification of an "extra strength fluoride" claim not supported by regulatory standards, and allowing certain Whitestrips whitening claims with clarifying context. These outcomes, along with increased scrutiny of influencer marketing disclosures under FTC endorsement guidance, reinforced the centrality of robust, product-specific evidence and clear, conspicuous disclosures about material connections.

Across the docket, procedural and evidentiary thresholds tightened. Courts increasingly required plaintiffs to provide product- and lot-specific testing to establish standing and plausibility for contamination or chemical-content allegations, and they demanded reliable damages methodologies at certification. Settlement fairness review became more exacting after appellate clarifications. For defendants, this environment rewards disciplined recordkeeping: Safety substantiation files, supplier attestations, batch records, testing protocols, and complaint trending analyses can make or break early motions and class certification defenses. For marketing teams, precision in claims and qualified disclosures—particularly on "natural," "mineral," "hypoallergenic," "recyclable," and origin claims—remains the practical first line of risk control.

SECTION 7

Proposition 65 Trends

Proposition 65 Trends

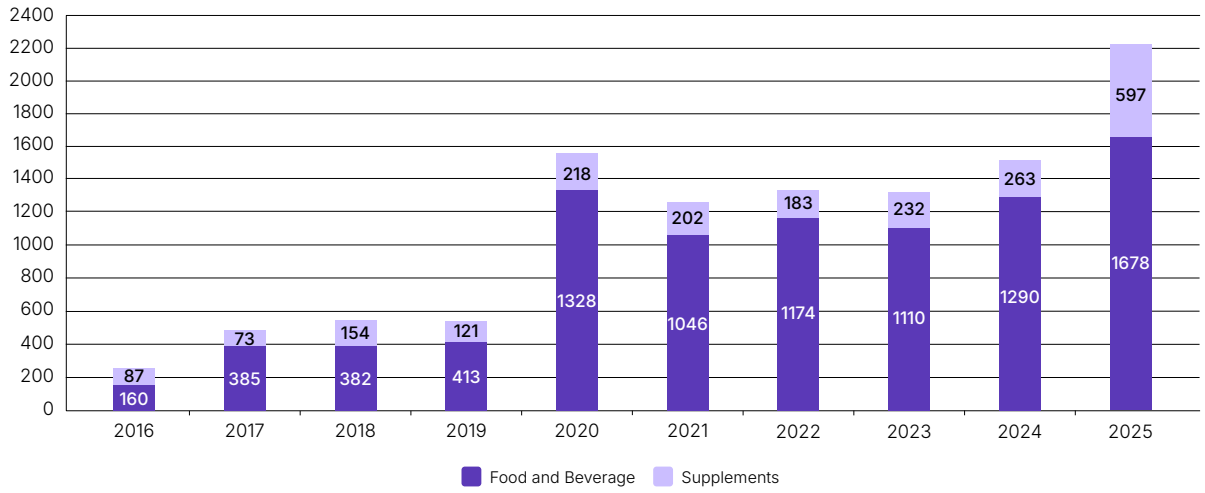
Proposition 65 was a California initiative approved by voters in 1986 and enacted into law as the Safe Drinking Water and Toxic Enforcement Act. Proposition 65 prohibits retailers and manufacturers from knowingly and intentionally exposing California consumers to a chemical known to the state of California to cause cancer, birth defects, or reproductive harm without first providing a "clear and reasonable warning." It is administered and regulated by the Office of Environmental Health Hazard Assessment (OEHHA). Every CPG company doing business in California should understand and comply with Proposition 65. Most Proposition 65 claims and enforcement actions are brought by private plaintiffs. In 2023, private plaintiffs issued nearly 4,000 notices of violation, a significant increase from prior years.

Food, Beverage, and Dietary Supplements

Food, beverage, and dietary supplement companies remain major targets for Proposition 65 plaintiffs. Proposition 65 pre-litigation notices involving food products have risen steadily over the past five years, increased again in 2024, and appear to be continuing the trend in 2025, as shown in the figure below.

Figure 8

PRE-SUIT NOTICES OF VIOLATION



Data compiled by Perkins Coie based on a review of dockets from courts nationwide.

In 2020, there was a shocking threefold increase in the number of notices plaintiffs served on food, beverage, and supplement manufacturers—driven primarily by a handful of new and aggressive "bounty hunter" plaintiffs. The increased focus on the food and beverage industry remained relatively stable from 2021 through 2023: 1,248 notices in 2021; 1,357 in 2022; and 1,342 in 2023. In 2024, however, notices targeting food, beverages, and dietary supplements jumped to an all-time high of 1,553 notices. The trend continued into 2025, with 2,275 notices targeting food, beverages, and dietary supplements. Much of the growth reflects increased attention to dietary supplements, which reached an all-time high of 597 notices.

As in prior years, the pre-litigation notices primarily target foods containing heavy metals like lead, cadmium, and arsenic. Since the California Chamber of Commerce filed a lawsuit challenging the requirement to provide Proposition 65 warnings for dietary acrylamide, the number of acrylamide notices has fallen to nearly zero. In 2020, acrylamide accounted for nearly 40% of all Proposition 65 notices related to foods but dropped to 22% in 2021. In 2022, acrylamide notices accounted for less than 10% of all Proposition 65 notices related to foods, while heavy metals alone accounted for more than 90% of all pre-litigation notices issued to food, beverage, and supplement companies. In 2025, zero notices were issued for acrylamide in food.

Key product categories targeted by heavy metal notices remain the same as in previous years: seafood products, spices, dried and powdered foods, and dietary supplements.

General Consumer Packaged Goods

General consumer packaged goods companies have also faced a surge of Proposition 65 notices in recent years, receiving slightly more than half of all notices of violation issued by enforcers. That said, it is in decline from prior years, when consumer packaged goods companies received closer to two-thirds of all notices.

The range of products targeted is broad, but several trends have emerged. As in past years, the chemicals most often at issue for general consumer goods are lead and phthalates, and diethanolamine has emerged as a major chemical of concern.

Prop 65 Chemicals of Note in 2025

Notices targeting PFAS increased significantly in 2025. To date, only certain PFAS chemicals are on the Prop 65 list—perfluorooctanoic acid (PFOA), perfluorooctanoic sulfonate (PFOS), and perfluorononanoic acid (PFNA). While there were only a few dozen notices purporting to detect PFAS chemicals in 2023, enforcers filed 271 notices targeting PFAS chemicals in 2025. While a significant number of those notices target waterproof textiles—including outdoor apparel such as ski wear and raincoats—several enforcers have issued notices relating to PFAS in food products. The primary plaintiffs who have issued notices in this space are Ecological Alliance, LLC and Environmental Research Center, Inc. Because OEHHA has not established a safe harbor for any of the listed PFAS and several labs are now able to detect PFAS at the part-per-trillion level, we expect to see an increasing number of notices as to these chemicals.

Bisphenol A (BPA) has also experienced a resurgence with approximately 60 notices of violation filed in 2025. While some of the notices related to BPA in thermal paper, a significant number targeted canned food and beverage products. The primary plaintiffs who issue notices in this space are Environmental Health Advocates, Inc. and Center for Environmental Health.

OEHHA added BPA to the Proposition 65 list as a reproductive toxicant in 2015. Shortly before enforcement began, OEHHA issued an emergency notice in April 2016 and an interim rule in December 2016 permitting point-of-sale warnings for BPA in canned and bottled foods and beverages. OEHHA cited the risk of inconsistent labeling and consumer confusion in the absence of an established maximum allowable dose level for oral BPA exposure. The interim rule expired at the end of 2017 and those point-of-sale warnings are no longer a permitted safe harbor warning method for canned food and beverages.

Proposition 65 Litigation

NOTICE DEFECT CASES UNDER APPELLATE REVIEW

A pending decision from a California appellate court could reshape how private enforcers must comply with the procedural requirements of Proposition 65.

Proposition 65 permits private parties to bring enforcement actions against alleged violators but only after providing a 60-day pre-suit notice of violation to the business and relevant government agencies. The notice requirement serves multiple purposes: It allows alleged violators to evaluate claims and cure violations before facing litigation and gives public prosecutors an opportunity to decide whether to pursue the matter themselves. Regulations adopted by the OEHHA specify the information a valid notice must contain, including the name, address, and telephone number of "the noticing individual or a responsible individual within the noticing entity."

The current dispute arises from enforcement actions brought by Consumer Advocacy Group (CAG) against several retailers and manufacturers. In five separate but related cases, Los Angeles County Superior Court judges invalidated CAG's pre-suit notices, concluding that they failed to meet regulatory requirements. Although the notices identified CAG's retained outside counsel as the contact person, the court held that the regulations require disclosure of an individual within the noticing organization itself. CAG appealed, and the matters have been consolidated into a single case now fully briefed before the California Court of Appeal, Second Appellate District (*Consumer Advocacy Group, Inc. v. Walmart, Inc. et al.*, Case No. B336080).

CAG's Arguments on Appeal

CAG contends the trial court adopted an unduly rigid interpretation of the regulation. It argues that courts should interpret notice requirements in light of their purpose—facilitating pre-litigation communication—rather than applying them mechanically. From this perspective, designating retained counsel as the contact advances the regulatory objective because lawyers are readily accessible and authorized to discuss the claim. CAG also challenges whether the notice provisions demand strict compliance at all, arguing that substantial compliance suffices unless a statute or regulation imposes a detailed mandate that can only be served by exact adherence. Providing contact information for an authorized lawyer, CAG maintains, satisfies the essential purposes of the notice scheme.

CAG separately disputes a ruling that certificates of merit attached to certain notices were defective because they did not track verbatim the language prescribed by attorney general regulations. Minor wording deviations, CAG argues, do not undermine the certificate's purpose and should not invalidate an otherwise proper notice.

The Defendants' Position

The defendant businesses argue that the regulations must be enforced as written. They maintain strict compliance is essential to deter abusive enforcement actions, promote early resolution, and ensure transparency for public prosecutors and affected businesses. Requiring identification of an internal representative encourages direct communication and prevents private enforcement from becoming purely lawyer driven.

The defendants further argue that the regulatory scheme sets detailed prerequisites for valid notices and satisfies the legal standard for strict compliance. They argue CAG's failure to name an internal representative defeats both strict and substantial compliance, and any defect cannot be cured retroactively. They also assert that deviations from prescribed certificate-of-merit language materially alter the required representations and render the notices invalid.

Broader Implications

The appellate court's resolution of these issues may significantly affect Proposition 65 enforcement practice. A ruling favoring the defendants could impose heightened procedural hurdles on private enforcers, while a decision for CAG could validate more flexible compliance approaches. Either outcome will clarify how rigorously courts will police notice requirements before allowing private actions to proceed.

Supreme Court Review of Roundup Litigation Revives Focus on Federal Preemption and Glyphosate

The Supreme Court of the United States has agreed to review a high-profile case involving Roundup, a widely used herbicide whose active ingredient is glyphosate. The Court's decision to grant review places federal preemption—and glyphosate—back in the spotlight.

The Bayer Appeal

The case stems from a Missouri jury verdict for a plaintiff who alleged that long-term Roundup use caused non-Hodgkin lymphoma and that the manufacturer failed to warn of cancer risks. Bayer, which acquired Monsanto in 2018, has asked the Court to determine whether federal pesticide law preempts state-law failure-to-warn claims. Bayer points to the Environmental Protection Agency's (EPA) repeated conclusions that glyphosate is unlikely to be carcinogenic to humans when used as directed and argued those determinations foreclose additional state warning requirements.

Bayer's appeal centers on the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which establishes a comprehensive federal scheme for pesticide labeling. FIFRA requires EPA approval of pesticide labels, and the agency has consistently declined to mandate cancer warnings for glyphosate-based products. Bayer argues that state tort claims demanding additional warnings conflict with this federal framework.

According to Bayer, allowing juries to revisit EPA labeling decisions through state failure-to-warn claims would defeat the uniformity Congress sought to achieve.

It would also place manufacturers in a regulatory bind by forcing them to choose between compliance with federal labeling requirements and exposure to state-law liability. Courts have reached differing conclusions on this question, with some permitting claims to proceed despite EPA approval of product labels.

Glyphosate and Prop 65

A related dispute previously played out in the Proposition 65 context: In *National Association of Wheat Growers v. Bonta*, agricultural and business groups challenged California's attempt to require Proposition 65 cancer warnings for glyphosate-containing products. The district court agreed with the challengers and issued a permanent injunction barring enforcement of the warning requirement, concluding that the compelled warning violated the First Amendment because it was not purely factual or uncontroversial.

The Ninth Circuit affirmed, holding that compelling businesses to warn that glyphosate causes cancer does not directly advance California's public health interests where regulators have not confirmed such a risk and scientific authorities remain divided. The court emphasized the state may communicate its views directly but may not require private parties to convey a contested message.

By granting review in the *Roundup* case, the Supreme Court has signaled concern with the divergent approaches taken by lower courts and with the broader implications for industries subject to extensive federal regulation.

About Perkins Coie

For more than a decade, our team at Perkins Coie has defended the CPG industry in challenges to companies' labeling, marketing, and advertising. Over that time, we have developed a deep understanding of the legal and regulatory environment, strategies of the plaintiffs' bar, and—most importantly—the business objectives of our clients in these essential industries. That experience informs our risk mitigation counsel to clients and helps us implement effective litigation strategies if claims are filed.

Our team has helped secure important legal precedents in CPG class-action litigation, working with clients to favorably develop the law. Through creative and aggressive lawyering, we have obtained dismissals and favorable decisions on many of the key defenses relied on by companies whose labeling is threatened: the "reasonable consumer" defense, Article III standing, federal preemption, primary jurisdiction, and failure to show damages. And Perkins Coie's experience extends beyond litigation: We frequently offer advice to clients on supply chain issues, labeling risk review, product recalls, and compliance with developing regulatory standards.

The Perkins Coie CPG team is active outside the courtroom as well. Members of our team are frequent speakers and commentators and publish in legal journals nationwide on emerging issues in this dynamic area of the law. Our work in the industry has led to numerous recognitions, including Perkins Coie being named a Food & Beverage Practice Group of the Year by *Law360*. We are also consistently ranked for Food & Beverage and Retail by *Chambers USA*.

This work as thought leaders is informed by our proprietary database cataloging and classifying hundreds of industry filings and key rulings. We regularly perform analytics on this data to spot emerging trends and advise clients on risk. This data is kept current with daily monitoring of case filings, which is information we provide to clients in real time via our *Food & Consumer Packaged Goods Litigation Update*, a daily email update available exclusively to clients by request. Please email KHale@perkinscoie.com for details.

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