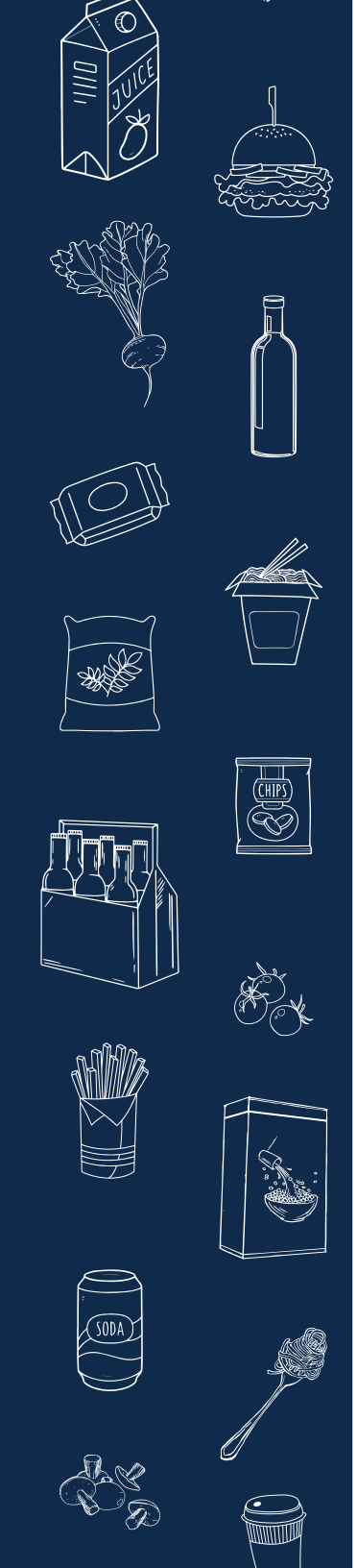

For Your Consumption

FOOD & BEVERAGE DIGEST **JANUARY 2026**

ALSTON & BIRD

Food & beverage litigation did not go gentle into that good night of 2025. From the flood of new citric acid lawsuits following an old playbook to decisions on "climate neutral" certifications and heavy metals in rice, we had plenty of reading material here at the *Digest* to get us through the holidays. We've plated coverage of a few of those cases to start the year off right—bon appétit!

Motion to Dismiss Fails to Fend Off Sticky Situation

Blum v. Amazon.com Inc., No. 2:25-cv-00977 (W.D. Wash. Dec. 29, 2025).

In a decision that's sure to stir the pot, a federal court in Washington denied an e-commerce giant's motion to dismiss allegations that various third-party brands of rice sold on its online platform contain trace amounts of heavy metals. The plaintiff claims he was left steamed when he discovered that the defendant did not disclose the possible presence of these elements, and that if he had known, he would not have shelled out for the rice or would have paid less.

In its motion to dismiss, the defendant argued that the presence of heavy metals in rice is old news—publicly known and widely reported for years—absolving it of any duty to spill the beans (or the rice) on its product pages. But the court was not convinced that a few scattered publications made the information widely known to the average shopper, and it held that the plaintiff plausibly alleged that the defendant had a duty to disclose under the Washington Consumer Protection Act.

The court also held that the plaintiff sufficiently alleged cognizable injury by identifying which alternative, cheaper products he would have purchased that contained lower levels of heavy metals, and that his fraud-based claims satisfied the demands of Rule 9(b). The defendant achieved a grain of victory, however, with the court's rejection of the plaintiff's affirmative misrepresentation claim first raised in his opposition to the motion to dismiss.

The main dish: The court's order keeps the defendant in hot water, at least for now, and it signals that a common-knowledge defense about heavy metals isn't enough to dodge false advertising claims.

Sweetener Suit Goes Sour

Garcia v. TC Heartland, No. 5:23-cv-04192 (N.D. Cal. Dec. 3, 2025).

In a five-page order, the Northern District of California denied class certification in a consumer-fraud case challenging a sweetener brand's "Suitable for People with Diabetes" label. The plaintiff alleged that the statement misled health-conscious consumers because the product contains sucralose, which he claimed may have negative health effects. But the court found that the plaintiff's deposition testimony left a sour aftertaste: he could not confirm he ever saw or relied on the challenged label, did not recognize the packaging he claimed to have purchased, and is pre-diabetic rather than diabetic. Without credible reliance or injury typical of the group he sought to represent, the plaintiff couldn't meet Rule 23's recipe for typicality.

The court also held that the proposed class of California purchasers of certain sweetener products was overbroad and unascertainable. Because the challenged claim relates specifically to diabetes-related suitability, the class swept in both diabetic and non-diabetic consumers, who could not be presumed to have been deceived or harmed in the same way. The court further determined individualized reliance and injury would require consumer-by-consumer inquiries incompatible with class treatment. As a result, the court declined to serve up certification, directing the parties to meet and confer ahead of a February 2026 case management conference to decide "how, if at all, this case will proceed."

Court Raises the Bar for Added Sugar Allegations

Testone v. Go Macro LLC, No. 3:25-cv-01743 (S.D. Cal. Dec. 17, 2025).

A Southern District of California judge has given one plaintiff a bitter pill to swallow, dismissing a putative class action alleging that the defendant's snack bars are misleadingly labeled as healthy. According to the plaintiff, the bars contain enough added sugar to sour one's health.

The complaint targeted over 20 varieties of snack and protein bars featuring feel-good slogans like "Live Long," "Eat Positive," "Be Well," and "Finally—a bar that's both delicious and good for you!" The plaintiff also took issue with a small heart icon on the packaging, arguing that scientific studies and Food and Drug Administration (FDA) statements suggest the sugar content makes these treats anything but heart-healthy. The complaint included claims for violation of California's Unfair Competition Law, False Advertising Law, Consumers Legal Remedies Act, and various common-law causes of action.

While the defendant tried to argue that the claims were preempted by federal law, the court wasn't buying it, noting that the defendant failed to explain how the specific labeling statutes applied to healthfulness claims. However, the lawsuit hit a major snag on the "who, what, when, where, and how" of the alleged fraud, notably because it wasn't clear the plaintiff ever actually saw or relied on the challenged representations. The plaintiff took up the court's offer to file an amended complaint, which is now up against yet another motion to dismiss. We'll be on the lookout to see if the defendant receives another sweet victory.

Lawsuit Challenging Use of "Climate Neutral" Certification Put on Ice

Salguero v. Mondelēz International Inc., No. 1:25-cv-02139 (N.D. Ill. Oct. 27, 2025).

In an opinion that is sure to resonate with our most literalist readers, a judge in the Northern District of Illinois rejected a plaintiff's challenge to the inclusion of a "climate neutral certified" label on the packaging for Zbar granola bars because the product was, quite literally, certified as climate neutral by a third-party organization.

In her complaint, the plaintiff challenged the product's climate-neutral certification based on the allegation that the Zbar manufacturing process results in the emissions of over 50,000 tons of carbon dioxide annually—the same as over 12,500 gasoline-powered cars—which contributes to a higher concentration of greenhouse gases. But the court found that whether a Zbar is actually climate neutral was neither here nor there because the defendant did not represent that the product was, in fact, climate neutral. Rather, the defendant advertised that its Zbar product was "climate neutral *certified*," and there was no legitimate dispute that the product was indeed "climate neutral certified" by Change Climate Project.

As the court aptly observed: "There is nothing deceptive about [the defendant] including on its packaging a true statement." And because there were no additional facts that could have changed that outcome, the court tossed the lawsuit like a granola bar wrapper in a wastebin.

When Life Gives You No Lemons, File a Lawsuit

Carrasco v. Nonni's Foods LLC, No. 735994/2025 (N.Y. Sup. Ct. Dec. 2, 2025).

A new class action complaint accuses a snack foods brand of falsely advertising and misbranding its Limone Biscotti product. The product is advertised as "Baked With Real Lemons," and its label features images of lemon wedges and rind. According to the complaint, the product's lemon flavor derived from a "natural flavor" instead of real lemons because the ingredient list on the product label does not reference lemon or any other citrus fruit.

The plaintiff claims that due to the labeling representations, she had an expectation that the product (1) contained more than a de minimis amount of real lemon; (2) had a lemon taste derived only from lemon ingredients; and (3) could provide at least some of the nutrient benefits of real lemons. The plaintiff also argues that the labeling representations convinced her to pay more for the product. The complaint asserts one cause of action for violation of New York Business Law Sections 349 and 350.

Stay tuned to see whether this plaintiff's lemoncholy is eased by a favorable result.

An Alleged Skim Scam

Murgolo v. Danone US LLC, No. EF012154-2025 (N.Y. Sup. Ct. Dec. 8, 2025).

One plaintiff is alleging that America does NOT run on skim milk. In this class action complaint, the plaintiff alleges that a dairy manufacturer's Pumpkin Munchkin Coffee Creamer—marketed with a Beantown-favorite coffee and donut purveyor's brand—is falsely labeled as being "Made with Real Cream" because it is made predominantly with skim milk. The plaintiff claims she was left with a donut-sized hole in her heart and her pocket because she paid more for certain sensory, nutritive, and organoleptic properties of cream that skim milk doesn't have. The plaintiff also alleges that the product doesn't clearly state what it is, making it confusingly similar to products labeled "coffee cream," "light cream," or "table cream," which must contain a certain percentage of milkfat. Will these claims live on as legen-dairy, or are they doomed for the drain? We will see what the future holds for this lawsuit.

Savory Spice Slack-Fill Situation

Dudley v. Hawaii's Best Hawaiian Haupia LLC, No. 25STCV33785 (Cal. Super. Ct. Nov. 17, 2025).

Although the *Digest* has slacked off lately in its coverage of slack-fill lawsuits, they continue to fill court dockets. One recent example comes out of California, where a plaintiff is pouting over a potentially paltry portion of poultry product. The plaintiff alleges that she was duped by the packaging of a chicken spice blend, which she contends misled her and others into believing the package contained more spice than it did. According to the complaint, the plaintiff would not have bought the product had she known about this "nonfunctional slack-fill." The plaintiff goes on to argue that there is no legitimate explanation for the empty space in the package (such as being necessary to protect the product or resulting from settlement of the product during shipment). The plaintiff asserts claims for common-law fraud and for violation of the California Consumers Legal Remedies Act.

Little Tummies, Big Claims

Garland v. Mead Johnson & Co., No. 3:24-cv-01168 (S.D. Cal. Nov. 3, 2025).

A California complaint alleges that certain toddler nutritional drinks featured nutrient content claims on the principal display panel of the label that were both misleading and

prohibited under FDA regulations, rendering the products misbranded.

According to the complaint, FDA regulations generally prohibit nutrient content claims on food and beverage products intended for consumption by children under two years old, subject to limited exceptions that do not apply here. The plaintiffs further allege that these claims misled reasonable consumers by suggesting that the products provided physical health benefits for their children when, in fact, the drinks were nutritionally and developmentally harmful. Among other pieces of support for this allegation, the plaintiffs point to the USDA Dietary Guidelines, which recommend that children under two avoid consuming foods and beverages containing added sugars. Each of the toddler drinks at issue allegedly contained two grams of added sugar.

The complaint asserts claims for violation of California consumer protection laws, as well as unjust enrichment, false advertising, and common-law fraud, deceit, and misrepresentation.

A Sticky Situation for Vitamin Gummy Manufacturer

Del Pizzo v. Topco Associates LLC, No. EF011890-2025 (N.Y. Sup. Ct. Nov. 30, 2025).

There is a lot to chew on in a class action against a manufacturer of vitamin gummies. The Spencer Sheehan–led plaintiff accuses the gummy maker of misbranding its products by obscuring the fact that purchasers must consume a "serving" that consists of multiple gummies to obtain the advertised nutritional value. As a result, the plaintiff alleges, purchasers only receive a small portion of the nutrition that they expect from each gummy.

The lawsuit, which seeks to represent a class of New York–based purchasers, asserts claims for violations of New York's General Business Law and seeks recovery of monetary damages and attorneys' fees. And while the allegations certainly give the court plenty to digest, only time will tell whether the class action melts under the heat of dispositive motions or is able to stick around.

Seeking Zen Again: Another Monk Fruit Copycat Suit

Boyd v. Wisdom Natural Brands, No. 2:25-cv-12080 (C.D. Cal. Dec. 22, 2025).

We previously reported on a complaint filed last summer in which the plaintiffs sued one food manufacturer over the company's "monk fruit sweetener"—a sugar substitute—claiming that the product was misleadingly labeled because it contained mostly erythritol rather than the monk fruit it was named for. That suit itself was a rerun of a 2022 complaint against the same company by a different plaintiff. Now, a third suit has been filed against a different company for its own monk fruit sweetener, signaling a potential trend for this product category.

The latest complaint echoes the previous suits, with the plaintiffs alleging that despite being labeled as "monk fruit" organic sweetener (and featuring an image of a Buddhist monk), the product contains less than 1% monk fruit extract and over 99% erythritol, as purportedly determined by third-party testing. The plaintiffs therefore claim that they were deceived by the product's labeling, in violation of California law.

What's the Fuss over Infant Formula?

Zetterstrom v. ByHeart Inc., No. 1:25-cv-09419 (S.D.N.Y. Nov. 11, 2025).

Pilato v. ByHeart Inc., No. 1:25-cv-09550 (S.D.N.Y. Nov. 14, 2025).

Schneider v. ByHeart Inc., No. 1:25-cv-09543 (S.D.N.Y. Nov. 14, 2025).

Three lawsuits have been filed in the Southern District of New York against an infant formula manufacturer following a recall of its product, and all the plaintiffs think they found the same formula for success. The plaintiffs in each suit allege that the defendant deceptively and misleadingly marketed its infant formula by failing to disclose that the product contained—or risked containing—*clostridium botulinum*, also known as infant botulism. Each suit also alleges that the defendant received a warning letter in 2023 from the FDA for violations of federal manufacturing and processing requirements but did little if anything to remedy its violations. Across the various suits, the plaintiffs hope to certify classes of New York, California, and Florida plaintiffs, as well as a nationwide class, and they assert causes of action for violations of various state consumer protection laws, negligence, breach of warranty, and unjust enrichment.

New Class Action Targets Nutrition Label as Oat-Rageously Misleading

Labrusciano-Carris v. HP Hood LLC, No. 3:25-cv-09637 (N.D. Cal. Nov. 7, 2025).

A California plaintiff is accusing an oat milk manufacturer of overstating the amount of vitamin D per serving. Taking a page out of the bone broth plaintiffs' playbook, the plaintiff alleges that independent, third-party testing confirms that one serving of oat milk product contains no vitamin D at all. Under FDA regulations, any foods that are fortified with additional nutrients must contain those nutrients at levels at least equal to the amounts declared on the nutrition facts panel. Consequently, the plaintiff alleges that the oat milk product is misbranded under the Federal Food, Drug, and Cosmetic Act and California state law. The plaintiff seeks to represent both a nationwide class and a California subclass, and he demands compensatory, statutory, and punitive damages, as well as prejudgment interest, attorneys' fees, and equitable relief.

A Hot Dog Label That's Getting Grilled

Levin v. Manischewitz Food Products Corp., No. 25STCV33868 (Cal. Super. Ct. Nov. 18, 2025).

In a complaint that puts a labeling dispute under a gentle fire, a California consumer alleges that the defendant hot dog manufacturer's prominently labeled "All Beef Hot Dogs" also contain non-meat ingredients such as water, potassium, and lactate. The plaintiff asserts that the "all beef" callout is no honest *mis-steak*—it's a marketing ploy designed to sizzle up sales by suggesting high quality, even though federal regulations prohibit labeling cooked sausages as "all meat" when they contain non-meat ingredients. The suit seeks to certify a statewide class of purchasers and brings claims under California's Unfair Competition Law, False Advertising Law, and Consumers Legal Remedies Act, alleging that consumers paid a premium for a product that wasn't what it was claimed to be. The plaintiff requests damages, restitution, injunctions, and attorneys' fees to stop what he says is a labeling scheme that is decidedly not kosher.

Consumers Bring Colorful Claims Alleging Greenwashing

Castillo v. Safeway Inc., No. ECU004383 (Cal. Super. Ct. Oct. 28, 2025).

The plaintiffs in a new California state court suit are ramped up about recycling. A group of eco-enthusiastic consumers claim that the defendant, a manufacturer and distributor of a wide variety of household products, falsely advertised that a slew of its products were recyclable—a classic case of "greenwashing." According to the complaint, the defendant knew perfectly well its products couldn't be recycled but decided to take the "green" out of greenwashing and put it in their wallets by charging a premium. And if that wasn't enough, the plaintiffs allege the defendant tried to pull a fast one by misrepresenting the identity of the California-based subcontractor distributing the products.

The plaintiffs bring claims for violations of California consumer protection laws and for permanent injunctive relief. They seek to represent a class of California consumers who, over the past five years, purchased these "recyclable" products and are now feeling duped as they stare longingly at their recycling bins.

Mass Gainer Product Accused of Packing the Wrong Kind of Gains

Triana v. Naked Whey Inc. d/b/a Naked Nutrition, No. 1:25-cv-25168 (S.D. Fla Nov. 7, 2025).

It seems the plaintiffs' bar didn't wait for a favorable result before filing this copycat complaint. As reported in our last issue, one supplement manufacturer was hit with a putative class action following an October 2025 Consumer Reports article that identified high levels of heavy metals in various protein powders, including those manufactured by the defendant. In this latest complaint, a Florida plaintiff brought an action targeting the defendant's mass gainer product that challenges the defendant's alleged misrepresentations that the product is "clean" and has "nothing to hide." The complaint seeks to represent anyone residing in the United States who has purchased the mass gainer product, and it seeks relief under Florida's Deceptive and Unfair Trade Practices Act.

Fruit Juice Manufacturer Is Feeling the Squeeze

Morgan v. Florida Natural Growers Inc., No. 2:25-cv-03767 (E.D. Cal. Dec. 31, 2025).

A Florida juice purveyor is defending itself in a California court over juice from Mexico. According to a recent complaint, its grapefruit juice products' labels contain misleading and deceptive representations that the product is made exclusively of Florida grapefruit juice, when it is in fact blended with grapefruit juice from Mexico. The plaintiff does not explain how he came to learn of the juice's mixed origins, but he argues that the made-in-the-USA branding squeezed extra dollars out of shoppers who associate Florida grapefruits with higher-quality juice.

The plaintiff alleges violations of California's Consumers Legal Remedies Act, False Advertising Law, and Unfair Competition Law, as well as breach of express warranty, fraud, and unjust enrichment.

A Buttery Litigation Mashup

Alonzo v. Idahoan Foods LLC, No. 166090/2025 (N.Y. Sup. Ct. Dec. 14, 2025).

Burns v. Aldi Inc., No. 737776/2025 (N.Y. Sup. Ct. Dec. 19, 2025).

Plaintiffs are attempting to roast two mashed potato manufacturers in New York state court for allegedly buttering

up their packaging while skimping on real butter in the products. The plaintiffs allege that the butter-forward claims on instant mashed potato packaging cause purchasers to expect butter to be the predominant oil or fat used. Instead, the plaintiffs contend that butter is present at de minimis amounts, rendering the products misbranded under New York's General Business Law.

Plaintiffs Take Aim at Patriotic Coffee Branding

Bakker v. Black Rifle Coffee Co. LLC, No. 2:25-cv-03193 (E.D. Cal. Nov. 3, 2025).

Patriotic coffee drinkers in California and New York have set their sights on one coffee manufacturer's Old Glory–adorned packaging. The plaintiffs assert that the defendant's patriotic-themed imagery led them into believing the entirety of the defendant's coffee production, from harvest to roast, was conducted in the United States. Never mind the obvious challenges of growing coffee too far from the equator, the plaintiffs insist they were surprised to learn that the defendant allegedly sources its coffee extraterritorially, rather than right here in the U.S. of A.

The plaintiffs seek to represent a class of California and New York consumers, and they raise several consumer protection claims under each state's laws.

Two Sheehan Citric Acid Lawsuits Grow in Brooklyn

Velez v. Lidl US LLC, No. 541426/2025 (N.Y. Sup. Ct. Nov. 24, 2025).

Tsatskis v. Family Dollar Services LLC, No. 542634/2025 (N.Y. Sup. Ct., Dec. 5, 2025).

Another day, another barrage of lawsuits from *Digest* favorite Spencer Sheehan. This time, two nearly identical complaints challenge mac and cheese products as misleadingly labeled because they contain "No Artificial Preservatives" on their packaging despite using citric acid. The core allegations in these complaints imitate the numerous other lawsuits covered by this publication in which plaintiffs have challenged claims that food products contain no artificial flavors or preservatives after spotting citric acid on the ingredient list.

Return of the Missing %DV

Henninger v. Naturecom Inc. d/b/a NutriVitaShop (Cal. Super. Ct. Dec. 19, 2025).

We are once again seeing a challenge to a front-of-package protein claim—an issue our readers will recognize from prior coverage in the November 2025, July 2025, and January 2024 editions. In this latest suit, the plaintiff alleges that the defendant both overstated the product's protein content and failed to disclose the percent daily value (%DV) for protein in the nutrition facts panel. According to the complaint, when a product makes a front-of-package protein claim and has a protein digestibility corrected amino acid score (PDCAAS) below 1.0, federal regulations require the %DV for protein, calculated using the PDCAAS method, to be listed in the nutrition facts panel.

The defendant's product was marketed as "Organic Rice Protein 80% Isolate" and relied on sprouted brown rice as a protein source and allegedly had a PDCAAS between 0.50 and 0.63. The plaintiff argues that the omission of the required %DV misled consumers into believing the product provided more usable protein than it actually did. The complaint further asserts that the number of grams of protein per serving of the product claimed on the front-of-package label (i.e., "30 g protein") was inconsistent with information about the product that was included on the company's website (which indicated that the product contained "25 g protein per serving") and inconsistent with the results

of independent testing, which revealed that the product contained less protein than either of these representations (only 23.7 grams of protein per serving).

According to the plaintiff, protein content is a material purchasing factor for consumers, and he would not have purchased the product or would have paid less for the product had he known the truth about the actual amount of usable protein per serving. He alleges violation of the California Consumers Legal Remedies Act and False Advertising Law; common-law fraud, deceit, and misrepresentation; unlawful, unfair, and fraudulent trade practices; and unjust enrichment.

Veggie Tales (Or Lack Thereof)

Parashos v. Once Upon a Farm, No. 3:26-cv-00314 (N.D. Cal. Jan. 12, 2026).

A class action has been filed against a food manufacturer that targets the marketing of its kid-friendly pouch. According to the complaint, the defendant falsely represents that its pouches contain vegetables when, in fact, they contains only fruits (pineapple, banana, apple, avocado) and an herb (mint). The complaint alleges that the product's packaging and advertising, which prominently claim it is a "Fruit & Veggie Blend" and "made with real, organic fruits & veggies," are misleading and deceive reasonable consumers, particularly parents seeking nutritious options for their children.

The complaint alleges violations of California consumer protection laws, as well as claims for intentional misrepresentation, negligent misrepresentation, and quasi-contract/unjust enrichment.

Wheat Me in the Middle: "100% Whole Grain" Class Action Ends in Settlement

Wallenstein v. Mondelēz International Inc.,
No. 3:22-cv-06033 (N.D. Cal. Dec. 12, 2025).

Purchasers of Wheat Thins crackers secured a suh-wheat payday in December following three years of litigation. The suing snackers had alleged that the defendants' labeling of the crackers as "100% Whole Grain" was false and misleading because they contained cornstarch, an allegedly refined (not whole) grain ingredient. The parties agreed to a $10 million all-cash, non-reversionary common fund to cover settlement claims and administration, attorneys' fees, expenses, and service awards. Class members submitting a valid claim without proof of purchase are able to recover $4.50 per household; with multiple proofs of purchase, class members can recover a minimum of $8 up to a maximum of $20 per household. In light of the price premium generated by the purchasers' damages model – just $0.15 per box (or 3.24%) – that is one crackerjack settlement!

Settlement Cleans Up Environmental Claims on Beef Products

Environmental Working Group v. Tyson Foods Inc.,
No. 2024-CAB-005935 (D.C. Super. Ct. Nov. 12, 2025).

The parties in a suit challenging greenwashing claims on the defendant's beef products have settled. The organizational plaintiff alleged that advertisements highlighting the defendant's commitment to achieving net-zero greenhouse gas emissions by 2050 were false and misleading because the goal is unachievable given current agricultural practices, and achievable or not, the defendant purportedly had taken no actions to achieve this goal. The complaint also asserted that "climate-smart" labeling on the beef products misled consumers to believe that their purchase was smart for the environment when there was no evidence that any of the agricultural practices used to produce the products actually reduce greenhouse gas emissions. The court previously denied the defendant's motion to dismiss, noting the "vast discrepancy" between the defendant's actions and its advertised goals.

The plaintiff succeeded in washing out the environmental claims at issue through settlement. The defendant agreed to neither make new nor repeat old emissions reduction or "climate smart" environmental claims on its beef products for five years unless a mutually agreed upon expert validates the claims. The settlement agreement did not include a monetary payment, and each party released any claims for recovery of attorneys' fees or costs incurred by the lawsuit.

Presentations

Sam Jockel will moderate the "SB 343 California's Truth in Recycling Law: Analysis, Greenwashing Risks, Labeling Limits, and Other Potential Liabilities" panel at ACI's EPR Think Tank on January 27.

Angela Spivey and **Sam Jockel** will speak on multiple panels at the 2026 CPG Legal Forum hosted by the Consumer Brands Association, February 18–20.

Alan Pryor and **Angela Spivey** will speak on panels at the Annual Symposium on Alcohol Beverage Law & Regulation hosted by the National Alcohol Beverage Control Association (NABCA), March 15–17.

Publications & Media

Angela Spivey, **Joey Burby**, **Sam Jockel**, and **Debolina Das** wrote the advisory "State AGs Take a Page Out of the MAHA Playbook: Food & Beverage Industry in the Crosshairs." (January 14, 2026)

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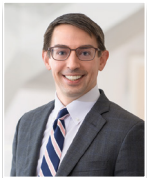

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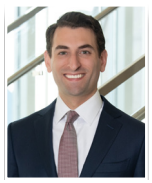

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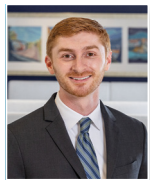

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