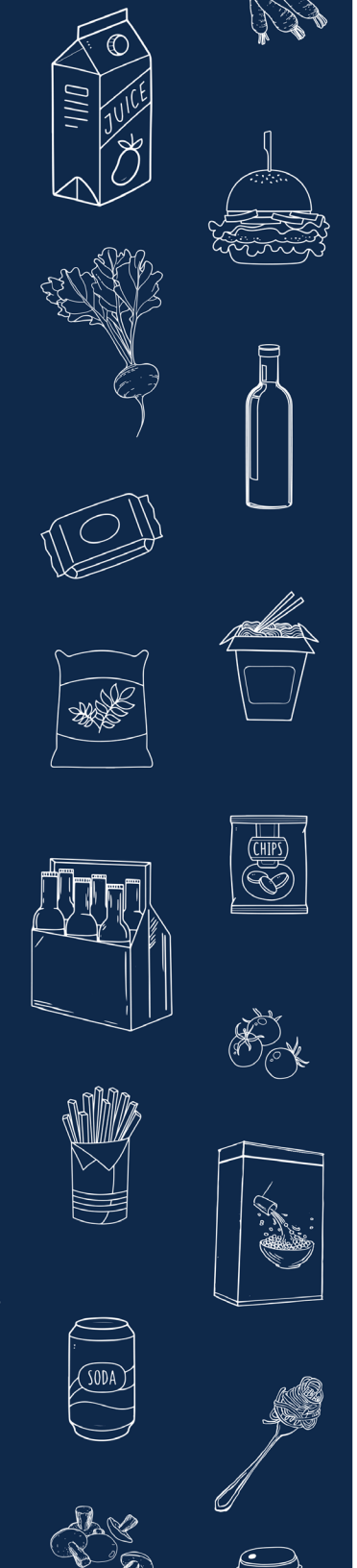


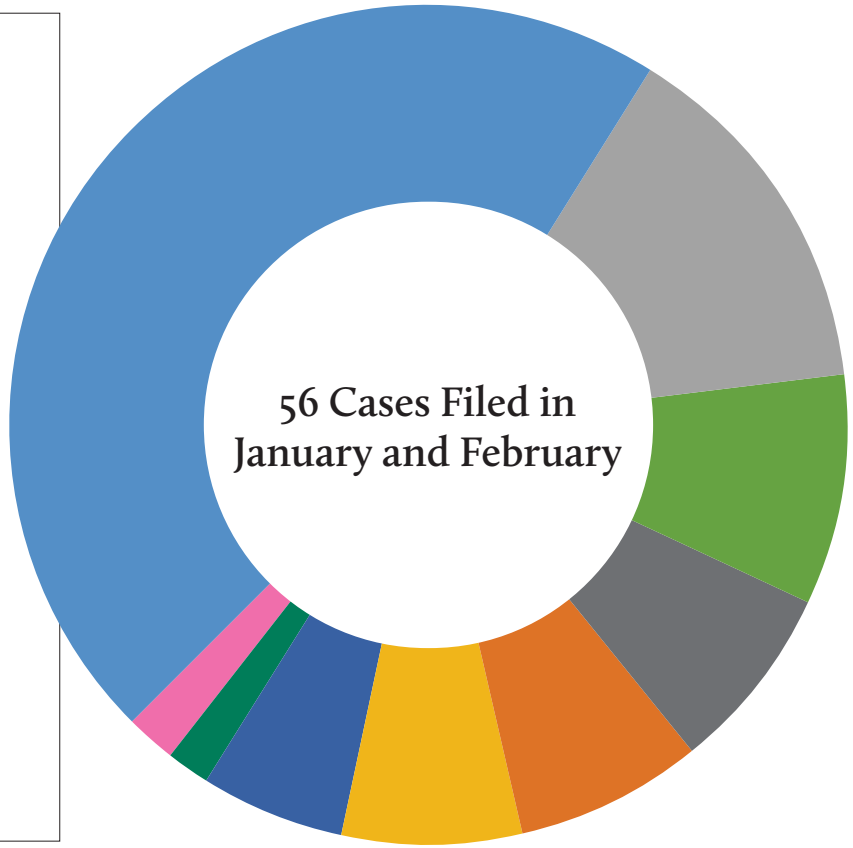
For Your Consumption

FOOD & BEVERAGE DIGEST **MARCH 2026**

ALSTON & BIRD

Food and beverage litigation has shown no signs of simmering down. This year's docket is already filled with fresh flavors—a surge in citric acid "natural" ingredient disputes, the recycling of environmental claims, and a sprinkling of nutrient content debates. Whether it's foreign substances stirring up controversy or evolving interpretations of what's on our labels, the *Digest* is here to serve up a taste of the most intriguing cases. Pull up a chair and dig in—there's plenty to chew on in this edition!

- 26 "Natural" Ingredient Claims
- 8 Flavor/Ingredient Claims
- 5 Foreign Substances
- 4 Health & Wellness Claims
- 4 Nutrient Content
- 4 Servings per Container
- 3 Environmental, Social & Governance Claims
- 1 Origin Claims
- 1 Slack-fill



Not Good Enough for Fido!

Orozco v. Target, No. 2:25-cv-07254 (C.D. Cal. Feb. 10, 2026).

One of the many dozens of plaintiffs responsible for the recent deluge of citric acid lawsuits has put a small notch in his collar, but the true end-consumer was too busy chasing squirrels and his own tail to notice. A federal court in California denied a dog food brand's motion to dismiss class allegations targeting its "no artificial preservatives" claim, which the plaintiff alleges is rendered false by the presence of citric acid in the kibble's ingredient list.

In support of its effort to dismiss the plaintiff's California consumer protection law and express warranty claims, the defendant attacked the complaint from tip to tail, arguing that citric acid is not artificial and that the plaintiff's definition of that term—something "made by man," "synthetic," or "manufactured"—would include nearly any ingredient. The defendant also argued that the plaintiff did not plausibly plead that the citric acid in the dog food was created using artificial means. The plaintiff's Article III standing was also scrutinized, not because he has only two legs, but because his claims encompass dog food that he did not purchase.

The court was satisfied that the allegations had enough bite to survive dismissal. How reasonable consumers understand whether citric acid is "artificial" is ultimately a question of fact, the court held. And though the plaintiff could not identify when he purchased the dog food, the court held that the allegations were pleaded with particularity because they identified a date range.

Because the packaging for the entire line of dog food products touted the same challenged representation, the court did not let a pesky thing like Article III get between the plaintiff and his discovery bone. And unlike courts in other jurisdictions, this court did not think the fool-me-once doctrine precluded a finding of imminent future harm necessary for injunctive relief because the plaintiff alleged he will be unable to rely on the veracity of the challenged representations in the future.

We'll continue to fetch updates as long as this lawsuit keeps throwing them.

Federal Court Dunks Lawsuit over Fruity Refreshers

Daly v. Dunkin' Brands Inc., No. 3:24-cv-01475 (N.D.N.Y. Feb. 9, 2026).

A New York federal court gave a donut purveyor some refreshing news when it dismissed class action allegations that the defendant's fruit-themed beverages deceptively implied that the products contained fruit. The court found that reasonable consumers would not be deceived into believing that the "Strawberry Dragonfruit" or "Mango Pineapple" Refreshers beverages meant anything other than that those drinks contained fruity flavors, given the lack of any indication on the defendant's menu boards that the products are made with real fruit. The court dismissed the plaintiff's New York General Business Law, breach of warranty, unjust enrichment, and fraud claims with leave to amend—an invitation the plaintiff accepted. Will the plaintiff's new allegations be enough this time, or will the defendant again sip the sweet taste of dismissal?

Make No Bones About It, There's Nothing Wrong with "Boneless Wings" Claim

Halim v. Buffalo Wild Wings Inc., No. 1:23-cv-01495 (N.D. Ill. Feb. 17, 2026).

In an opinion with enough puns to give us a run for our money, Judge John J. Tharp, Jr. eighty-sixed a class action alleging that everyone's favorite purveyor of chicken-fried goodness misled customers by selling "boneless wings" that were essentially chicken breast nuggets, rather than deboned chicken wings. Judge Tharp found that the complaint had "no meat on its bones" because—for multiple reasons—reasonable consumers would not be deceived. For example, reasonable consumers understand that cauliflower wings, another product on the defendant's menu, are not made, even in part, from chicken wing meat. Boneless wings also sell at a cheaper price than traditional wings and common sense would tell consumers that a product made of the same ingredients, but requiring extra effort to prepare, would cost more. And much like consumers understand that buffalo wings are not made from buffalo meat, consumers would understand that "boneless wings" is just a fanciful name or a preparation style. So Judge Tharp concluded the plaintiff could not drum up enough plausible factual allegations to state a claim.

Our compliments to the chef—I mean, court—for the smorgasbord of tasty puns.

Fruit Pouch Allegations Squeeze Past Dismissal Attempt

Smith v. Wanabana LLC, No. 1:24-cv-02196 (N.D. Ill. Feb. 6, 2026).

A federal court in Illinois granted in part and denied in part a food distributor's motion to dismiss a complaint accusing multiple foreign and domestic supply chain participants of failing to get the lead out—literally—of puree pouches. The plaintiffs brought the lawsuit on behalf of their minor child, who they allege was diagnosed with heightened levels of lead in her blood after nearly a year of consuming fruit puree pouches that contained lead-laced cinnamon, and that the distributor controlled the design, manufacture, and sale of the product through a network of related entities.

The parties have been exchanging lead volleys since the lawsuit was filed in 2024, with multiple defendants moving to dismiss. This time, the court smushed certain causes of action against a company that allegedly oversaw the management of the pouch manufacturer's operations, in large part because of where the defendant was situated along the supply chain. Because the defendant was not the manufacturer, it was immune under Illinois law from the plaintiffs' strict liability claim. The court also put the plaintiff's allegations in a blender for failing to differentiate between defendants, and it held that the moving defendant could not be liable for another's representation, defeating the plaintiffs' express warranty claim.

But it was not all sugar and spice for the defendant. The court preserved the plaintiffs' other causes of action for negligence and breach of implied warranty and under Illinois's Family Expense Act, which gives parents a cause of action to recover for medical expenses against a tortfeasor that injures their child. The defendant's alleged failure to test for the presence of lead in the product was sufficient to keep the plaintiffs' negligence claim from sinking like a lead balloon, while the breach of implied warranty of merchantability claim survived because the defendant was a merchant-seller in the supply chain and had not modified or disclaimed the implied warranty, which runs with the product. And because the claim brought under the Family Expense Act was derivative of the viable underlying claims, it too survived.

PDCAAS Hulks Out

Shahinian v. IQBAR Inc., No. 8:25-cv-01112 (C.D. Cal. Jan. 14, 2026).

In California, challenges to protein content statements have continued. You may have seen our previous reports on "PDCAAS"—short for "protein digestibility corrected amino acid score"—in our January 2026, November 2025, and July 2025 issues, with the July 2025 issue introducing the Shahinian complaint. As a refresher, the named plaintiff alleges that nutrition bars included less protein, and lower-quality protein (based on the protein's PDCAAS), than advertised. The complaint raised three substantive claims: violation of the California Consumers Legal Remedies Act (CLRA), unjust enrichment, and breach of express warranty.

Since last May, the parties have continued to duke it out. Most recently, the court denied a motion by the defendant to dismiss the plaintiff's unjust enrichment claim, which the plaintiff amended after it was dismissed in the fall for lack of allegations as to why monetary damages would be inadequate. This time around, the court was satisfied that the plaintiff showed that he lacked an adequate remedy at law. In non-legalese, that means that the plaintiff's case has lived to fight another day, with the ultimate fate of his claim still in the balance.

Trick AND Treat?

Lane v. The Hershey Company, No. 2:26-cv-00824 (E.D.N.Y. Feb. 12, 2026).

Apparently, nothing sparks consumer outrage quite like candy that refuses to make eye contact. Only months ago, we reported on a Florida court's decision that tossed a lawsuit over jack-o'-lantern candies like a crumpled wrapper in the trash. Now, more plaintiffs are sticking their hands deeper into the candy bowl in a copycat suit targeting a wider range of chocolate-and-peanut-butter forms, from competitor medals and footballs to ghosts and bats. The plaintiffs allege they purchased each based on their wrappers' promise of candies adorned with carved designs. The reality, the plaintiffs allege, is far less elevated: the candies are blank, smooth, and entirely designfree. Had they known their treats would lack such detail and design, the plaintiffs contend, they would not have purchased them at the same price.

With Florida's porch light turned off and candy bowl brought in, the plaintiffs are ringing the doorbells of New York, Pennsylvania, Massachusetts, Rhode Island, Oregon, and Washington, D.C., hoping different consumer protection laws improve their prospects for handouts.

Half-Baked Protein Allegations Rise Again

Swartz v. Dave's Killer Bread Inc., No. 26cv163250 (Cal. Super. Ct. Jan. 7, 2026).

We've heard this tune before. And before. A California plaintiff is taking a slice out of a popular bread brand's protein claims, alleging that front-of-package statements promise more nutritional muscle than the bread can deliver. The complaint targets protein claims made without accompanying protein-quality disclosures allegedly required by the Food and Drug Administration. According to the plaintiff, not all proteins are created equal, and the bread's primary protein source (wheat and oats) means that only a fraction of the advertised grams are usable by the body. This case is both a copycat and somewhat of a redux: the plaintiff previously litigated similar claims in federal court, where a class was certified before restitution claims under California's Unfair Competition Law (UCL) were dismissed on jurisdictional grounds. This state-court action tries to pick up the crumbs, seeking restitution for California purchasers.

Whether this protein theory gets toasted at the pleadings or proceeds to discovery remains to be seen. But the suit is another reminder that when brands market protein, plaintiffs are quick to ask whether the label tells the whole grain of truth.

Consumer Seeks to Spill the Tea on Prebiotic Beverages

Vickers v. Halfday Tonics Inc., No. 2:26-cv-00935 (E.D.N.Y. Feb. 17, 2026).

A beverage manufacturer is facing a new lawsuit challenging its representations that its canned tea products contain prebiotic benefits. Allegedly, the claim that its tea is "good for your gut" is false and misleading because its benefits are not realistically attainable. According to the plaintiff, while it is true that the canned tea contains six grams of fiber blend, a consumer would have to ingest more than one can a day for multiple weeks to experience any noticeable health effects. And if that were the case, the complaint alleges that a consumer's sugar intake would counteract any potential prebiotic benefit.

The plaintiff brings claims for unjust enrichment, violations of New York consumer protection laws, and in a gutsy move, violations of consumer protection laws of all remaining states on behalf of a nationwide class and a New York subclass.

Monk Fruit Deja-Vu

Chakravarthy v. Pyure Brands LLC, No 2:26-cv-01518 (C.D. Cal. Feb. 12, 2026).

If you thought plaintiffs had transcended litigation over monk fruit sweeteners, think again. Last month, we saw the latest complaint in the monk fruit saga filed in the Central District of California. (We previously covered similar complaints in January 2026 and September 2025.) This time—like last time, and the time before that—the plaintiff alleges that the defendant's "Organic Monk Fruit Sweetener" contains very little monk fruit and mostly erythritol, a synthetic sweetener that the plaintiff alleges is linked to health risks.

Here, unlike the previous complaints, the plaintiff alleges that the product's front label bore a "free from artificial sweeteners" claim and omitted any mention of erythritol at all, creating an unwelcome surprise when he saw erythritol listed first on the back-of-pack ingredient list. This alleged deception underpins a number of claims for the plaintiff, including violation of California's CLRA, UCL, and False Advertising Law (FAL), as well as breach of warranty, negligent misrepresentation, intentional misrepresentation/fraud, and quasi-contract/unjust enrichment. While the defendants have yet to respond, one thing is clear—monk fruit challenges are here to stay.

All the Good Stuff, Plus Salmonella (Just the Allegations Kind)

Adkins v. Superfoods Inc., No. 1:26-cv-00860 (S.D.N.Y. Feb. 2, 2026).

A dietary supplement manufacturer faces a class action against products that were recalled due to potential *Salmonella* contamination. In light of the recall, the plaintiff alleges that the manufacturer's marketing and advertising for the products is false, deceptive, and misleading. In support of these allegations, the plaintiff points to claims that the products contain "the highest quality ingredients," "all the good stuff," and "none of the bad stuff," and that the manufacturer used "good manufacturing practices." The plaintiff also notes that the dietary supplements were marketed and advertised "as being fit or suitable for human consumption." The plaintiff argues that she and other class members would not have purchased these products had they known about the potential contamination. The lawsuit is grounded in claims of negligence, negligent misrepresentation, breach of express and implied warranties, fraudulent concealment, violation of relevant state consumer protection laws, strict product liability, and unjust enrichment.

Wellness Woes: Sugar-Coated Claims and Bottle Shock

Wood v. Nowhere Holdco LLC, No. 26STCV04773 (Cal. Super. Ct. Feb 12, 2026).

A healthy grocery store known for curated vibes, premium pricing, and a devoted wellness-minded following is now facing a class action alleging that some of its branded products are healthier in spirit than in substance. The complaint serves up two alleged missteps, each targeting a different corner of the store's private-label lineup. First on the menu: baked goods advertised as containing "organic evaporated cane juice." According to the plaintiffs, that phrasing allegedly misleads reasonable consumers into believing the treats contain no added sugar at all. In other words, what sounds to the plaintiffs like juice is allegedly just sugar wearing yoga pants.

For its second act, the complaint turns to pricing practices for bottled soups and beverages sold by the grocer. According to the plaintiffs, shelf prices prominently displayed in the store fail to include a mandatory bottle deposit fee that only materializes at checkout. The plaintiffs argue that this leaves consumers with sticker shock and runs afoul of California's

crackdown on so-called "drip pricing," where the advertised price isn't the price consumers ultimately pay.

Together, the plaintiffs allege that the grocery store's corporate parents violated California's usual consumer-protection lineup (CLRA, UCL, and FAL) along with a buffet of common-law claims.

Fair Trade or Fair Game?

Williams v. Starbucks Corp., No. 2:26-cv-00112 (W.D. Wash. Jan. 13, 2026).

Plaintiffs have brewed up trouble for a leading coffee brand. The plaintiffs, who like their cup of Joe as ethical as hot, allege that the brand misled consumers by marketing its coffee as "Committed to 100% Ethical Coffee Sourcing" and touting its Coffee and Farmer Equity (CAFE) Practices certification program as the cornerstone of ethical sourcing. Not so, say the plaintiffs, who allege it has repeatedly failed to address reports of forced labor, child labor, unsafe working conditions, and wage violations, and has not taken steps to address labor issues raised by the United Nations, investigative journalists, or worker advocates.

But the plaintiffs aren't just exercised over ethics. They also hang decaffeinated coffee products out to drip-dry, alleging that independent testing revealed the presence of undisclosed volatile organic compounds such as benzene, toluene, and methylene chloride.

The plaintiffs bring their claims on behalf of New York and Washington classes, raising false advertising and deceptive business practice allegations under Washington and New York consumer protection laws.

Are Protein Bar Claims Worth Their Salt?

Espinoza v. Tru Brands Inc., No. 26STCV01966 (Cal. Super. Ct. Jan. 20, 2026).

Protein bars are no stranger to challenge, but this time it is the salt (rather than protein) content of the products that is being called into question. The plaintiff alleges that he relied on sodium content representations on the nutritional label when deciding to purchase the company's protein bars only to get salty over an allegedly higher sodium content than declared, as purportedly revealed by his counsel's own independent testing. So-di-umbrage the plaintiff took at the representations led to allegations that the products were misbranded, and thus, not fit for sale. The plaintiff brings this suit on behalf of himself and all persons in California who purchased these products, and he seeks injunctive relief, restitution, and attorneys' fees and costs.

Plaintiffs Want Their Grains to Be Made Whole

Davey v. Hannaford Bros. Co. LLC, No. 2026-50945 (N.Y. Sup. Ct. Feb. 21, 2026).

Harbour v. Acme Markets Inc., No. 56892/2026 (N.Y. Sup. Ct. Feb. 4, 2026).

Abualya v. Wakefern Food Corp., No. 703624/2026 (N.Y. Sup. Ct. Feb. 6, 2026).

Multiple New York plaintiffs are suing various cracker-making companies over alleged misbranding of wheat crackers made with "stoned," "stone ground," or "cracked" wheat. The complaints allege that while the packaging capitalizes on the benefits of whole grains, the primary grain used to make the crackers is not whole grain flour, causing the plaintiffs to pay a price premium for a wholesome ingredient they did not receive.

The plaintiffs' claims are grounded in New York consumer protection law, and the plaintiffs seek to certify classes of New York consumers. While their arguments are not the most refined, the plaintiffs hope to recover actual damages and attorneys' fees. Time will tell whether the plaintiffs will continue to mill these sorts of lawsuits before the defendants expose them as less wheat than chaff.

Once Bitten, Twice Baked (or However That Saying Goes)

Berkowitz v. Cooper Street Cookies LLC, No. CIVVS2600876 (Cal. Super. Ct. Feb. 2, 2026).

A cookie manufacturer faces a class action in California over its representations that its "twice baked" cookies contain no artificial ingredients. The plaintiff alleges that despite these representations, the product contains sodium acid pyrophosphate and monocalcium phosphate, which the complaint characterizes as synthetic additives. According to the plaintiff, reasonable consumers understand "no artificial" claims to mean that ingredients are derived from natural sources using minimal processing, rather than industrial chemical synthesis. The plaintiff alleges that she would not have purchased the cookies had she known about the purportedly synthetic additives, and she asserts claims for violation of California consumer protection laws and for breach of warranty.

Single Serve and Single Use?

Davin v. Keurig Dr. Pepper, No. 4:26-cv-10007 (S.D. Fla. Jan. 29, 2026).

Duke v. Philz Coffee, No. 26CV166705 (Cal. Super. Ct. Jan. 26, 2026).

Disputes are brewing in Florida federal and California state courts. Two groups of plaintiffs allege that single-serve coffee pods are not recyclable, despite how they are marketed. The plaintiffs argue that consumers have been misled by the word recyclable, the "chasing arrows" symbol, and other "greenwashing" elements, when most consumers cannot recycle the pods due to their size, material, and potential contamination. The plaintiffs allege that they were injured because they purchased (or purchased at a premium) these products believing that they were recyclable, causing them to shell out more green than they received.

Will these lawsuits survive, or are they destined for the junkyard?

Serving-Size Lawsuits Mount Against Supplement Manufacturers

Sabath v. Life Seasons Inc. No. 502257/2026 (N.Y. Sup. Ct. Jan 20, 2026).

Vickers v. Basic Sportswear Corp., No. 603932/2026 (N.Y. Sup. Ct. Feb. 10, 2026).

Coleman v. Quten Research Institute LLC, No. 151359/2026 (N.Y. Sup. Ct. Feb. 1, 2026).

Elkind v. RB Health (US) LLC, No. 600523/2026 (N.Y. Sup. Ct. Jan. 8, 2026).

We previously reported on a class action complaint filed late last year that accused a nutritional gummy manufacturer of misrepresenting how many gummies it took to obtain the advertised nutritional value. Now, more plaintiffs are serving up similar allegations, accusing other supplement manufacturers of advertising serving-based benefits that can only be realized by consuming multiple gummies or capsules. In the latest complaints, the plaintiffs similarly claim that if they had known how many products they actually had to ingest to obtain the advertised nutritional value, they would have paid less for the products.

Another Heavy Metal Shake-Up

Clemente v. Jocko Fuel LLC, No. 1:26-cv-00659 (E.D.N.Y. Jan. 26, 2026).

A plaintiff in New York might have hoped to pump iron alongside her consumption of Jocko Mölk Protein Shakes, but she alleges she got the wrong kind of metal. According to her class action complaint, independent testing revealed the presence of an ingredient not included on the label—cadmium, a toxic and carcinogenic heavy metal. Hedging, the plaintiff also alleges that the shakes are either actually contaminated or at risk of being contaminated with cadmium. The plaintiff neglects to include any other information about her own "independent testing."

The plaintiff seeks to represent a nationwide class and New York subclass of consumers who allegedly were misled and deceived by the marketing and labeling of the protein shake. She brings claims under New York's General Business Law and for breach of express warranty and unjust enrichment.

As readers of this publication know, lawsuits over heavy metals allegedly revealed by independent testing are not new. But the plaintiff's decision here to allege independent testing results support her allegations but not include a single detail of what those results show might be a toxic recipe.

A Natural Battleground over Sweeteners' Origins

Ghanaat v. The Lemon Perfect Company, No. 3:26-cv-01153 (N.D. Cal. Feb. 6, 2026).

Koentjoro v. Ultima Health Products Inc., No. 26STCV04518 (Cal. Sup. Ct. Feb. 10, 2026).

Rodriguez v. Cove Drinks Inc., No. 2:26-cv-02412 (C.D. Cal. Mar. 6, 2026).

Thackrah v. Yerbae LLC, No. 8:26-cv-00271 (C.D. Cal. Feb. 4, 2026).

The ongoing war over the meaning of "artificial" has many battlefronts, and sweeteners has remained a reliable one. One law firm has filed a handful of lawsuits on behalf of plaintiffs alleging that beverage manufacturers falsely and misleadingly labeled their beverage or drink-mix products as containing "No Artificial Sweeteners" or being "Naturally Sweetened," when in fact the products contain stevia leaf extract or erythritol. As the complaints all allege, these sweeteners are not natural due to either the extensive industrial processing required to isolate and purify steviol glycosides from the stevia plant in the case of stevia extract, or the industrial fermentation and chemical processing in the case of erythritol.

Across all complaints, the plaintiffs claim that these labeling practices are deceptive and material to consumers' purchasing decisions. The complaints assert violations of the CLRA and UCL and breach of express warranty, seeking class certification, restitution, disgorgement, injunctive relief, damages, attorneys' fees, and other appropriate relief.

New Complaints

Plaintiff Can't Believe It's Not Butter, Really

Fields v. Fresh Gourmet Company LLC, No. [_____] (N.Y. Sup. Ct. Jan. 13, 2026).

A New York plaintiff is all buttered up over the advertising of "Butter & Garlic Croutons." The plaintiff alleges that despite the product's name, yellow packaging, and other representations suggesting the presence of real butter, the product's ingredient list contains a parade of butter's less attractive cousins, including nonfat milk, butter oil, and natural flavors (with milk) as part of a seasoning blend—ingredients that lack butter's distinct flavor profile and are produced through a different manufacturing process. The complaint further alleges that the product is "misbranded" under the New York Agriculture and Markets Law because its name does not accurately reflect its ingredients, and "Butter & Garlic Croutons" is not a common or usual name for croutons that lack real butter.

The suit seeks to certify a statewide class of purchasers and brings claims for violations of New York General Business Law Sections 349 and 350, alleging that consumers paid a premium for a product that is not what it claimed to be.

Petits Fours

Presentations

Sam Jockel and **Angela Spivey** will speak during the "The MAHA Report and Its Ripple Effect: Dietary Guidelines, Policy, and Industry Implication" panel at ACI's 10th Advanced Summit on Food Law Regulation, Compliance, and Litigation on April 28.

Rachel Lowe will speak on the "Greenwashing and Microplastics Litigation" panel at the Los Angeles County Bar Association's Environmental Spring Symposium on April 17.

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