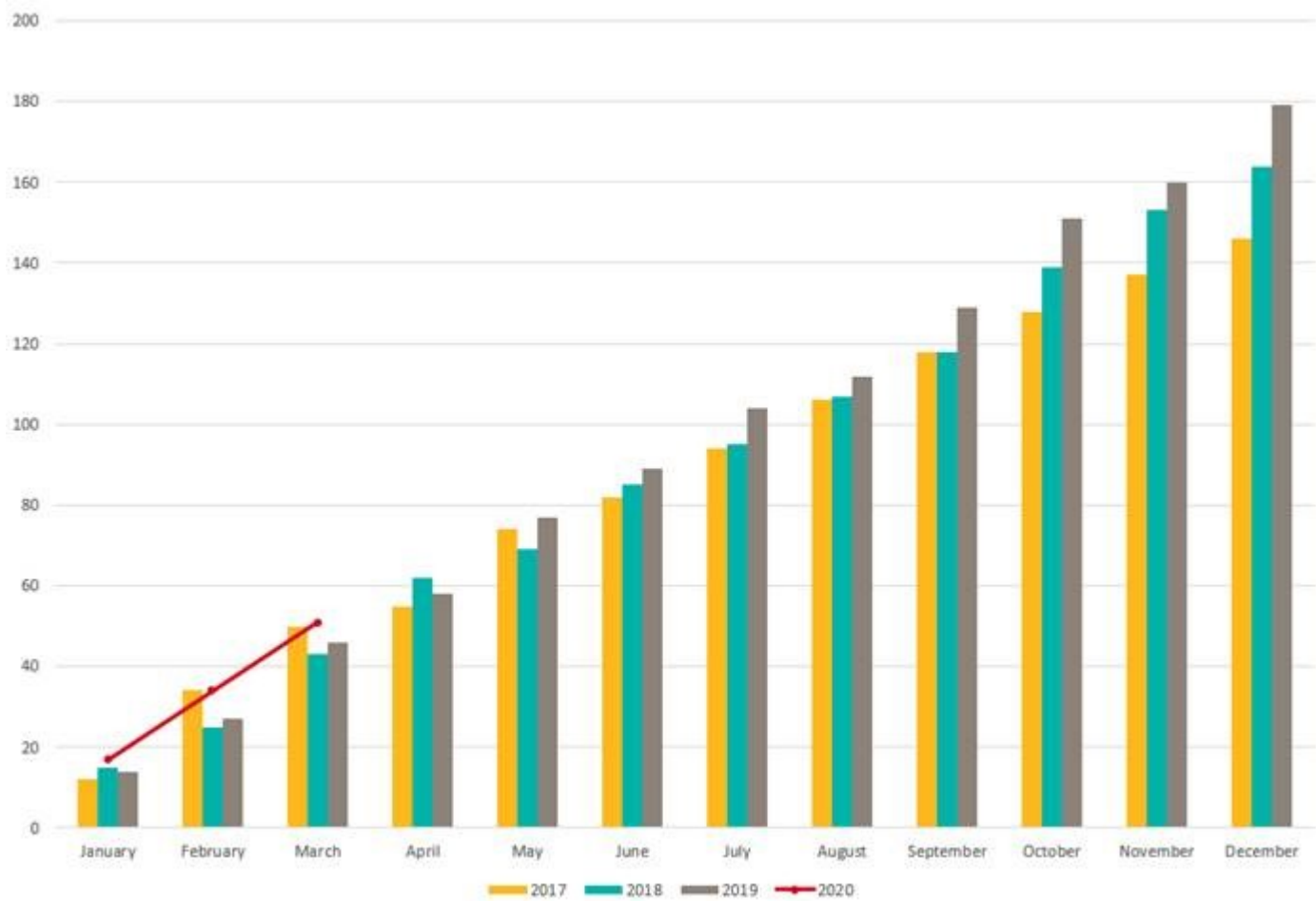


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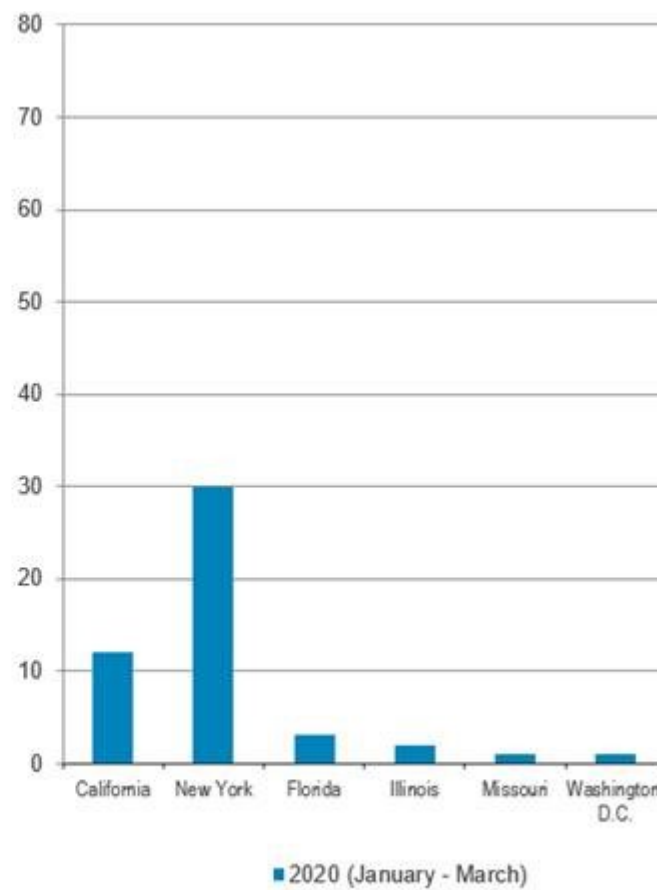
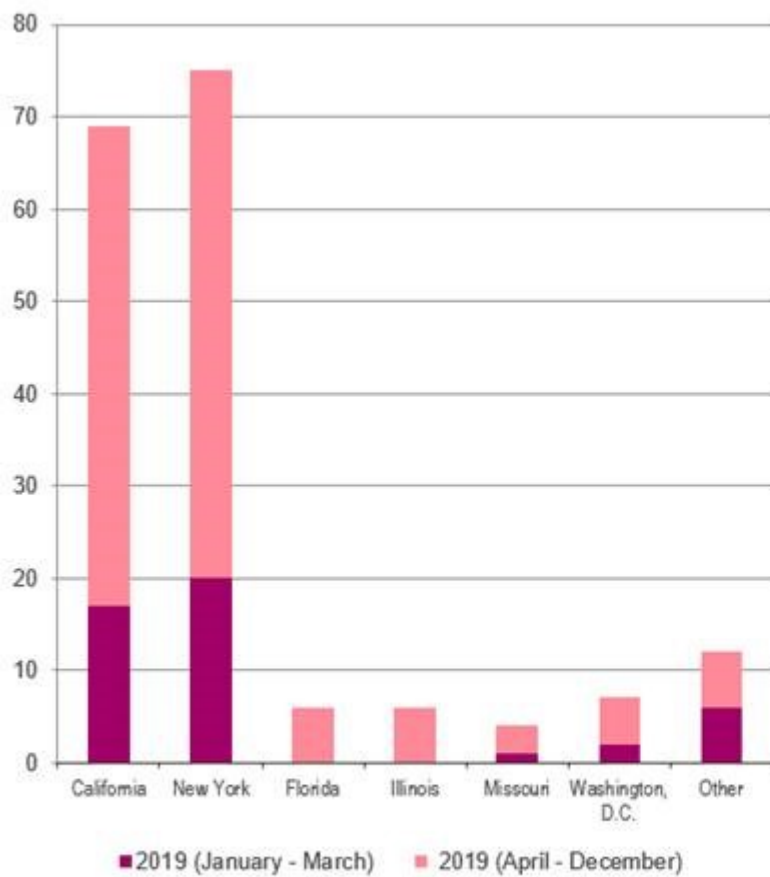
April 10, 2020

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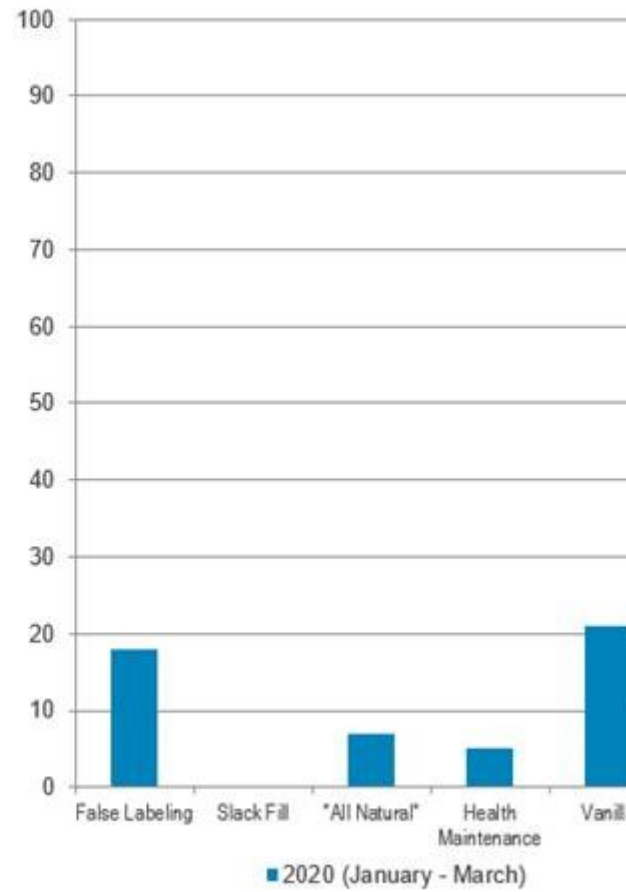
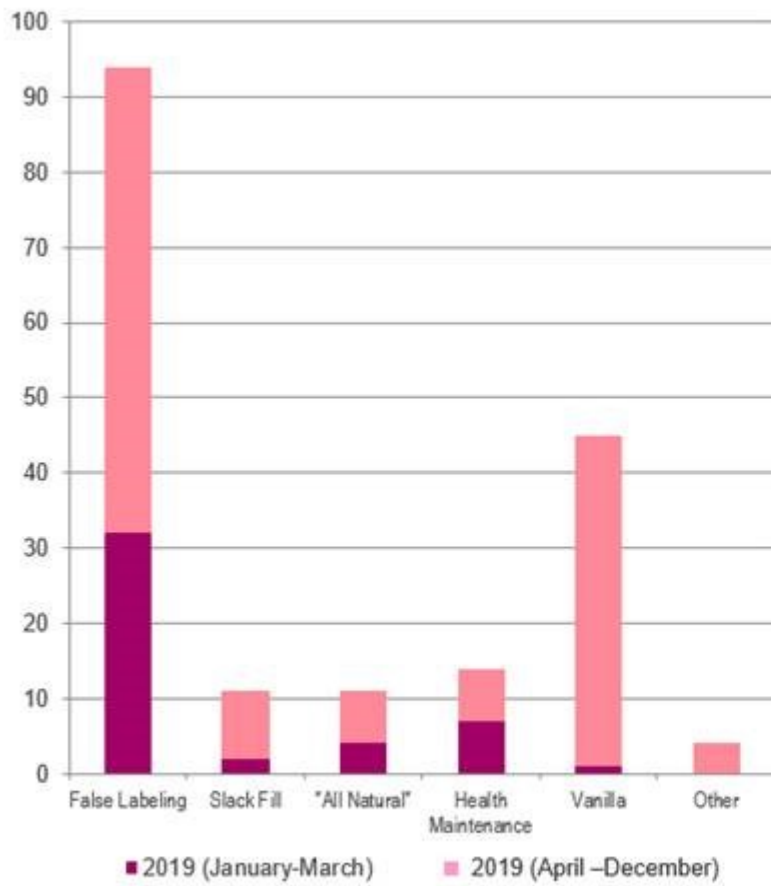
With 61 new filings in the first three months of 2020, 2020 is on-track with 2019 to be a big year in food and beverage litigation. About a third of new cases allege defendants misleadingly claim their product contains vanilla, while the remainder of cases are an even mix between cases alleging misleading health misrepresentations, natural claims, false-fact, and Proposition 65. **Vanilla.** We wrote about the uptick in "vanilla" cases in our [2019 Food Litigation Year in Review](#), and the early numbers from 2020 confirm this remains a popular area for plaintiffs. There were 21 new "vanilla" cases filed in 2020 out of 61 total cases. All but one of these cases was filed in New York federal courts by the same group of plaintiffs' counsel—Sheehan & Associates and Reese LLP. The complaints allege that "vanilla" claims on a wide variety of products (from milk to herbal tea) are false because the products derive their vanilla flavor in part from vanilla flavoring, rather than vanilla beans or vanilla extract. Vanilla flavoring, plaintiffs allege, contains non-vanilla flavors that reasonable consumer do not expect in products labeled vanilla. **Health maintenance.** Five new lawsuits in 2020 allege defendants misleadingly imply their products are healthy when the opposite is true, according to plaintiffs. Four of these cases involve added sugar. Three complaints filed by Sheehan & Associates allege Honest Tea, Gold Peak tea, and Steaz tea products are misleadingly marketed as "just a tad sweet," "slightly sweet" and "lightly sweetened" when the products contain significant amounts of added sugar. Plaintiffs allege added sugar contributes to negative health outcomes such as weight gain and type II diabetes. The remaining "added sugar" complaint targets BodyArmor sports drink. It alleges BodyArmor is marketed as a health product "packed with essential vitamins and minerals," when in reality it contains "excessive" added sugar. **Natural.** There were seven new natural filings in the first quarter of 2020. Plaintiffs in four of these cases allege that multi-function ingredients such as malic acid function in the products as a flavor, rendering "no artificial flavors" claims false. For example, plaintiffs allege Tropicana fruit juice products are labeled as though they contain only natural flavors when they contain dl-malic acid, "an artificial flavoring agent." Dl-malic acid is a multi-function ingredient that is typically used as a pH control agent, not a flavor. Nevertheless, there have been dozens of similar filings against food and beverage companies and plaintiffs are typically successful at beating defendants' motions to dismiss. A longer summary of these cases is in our [2019 Food Litigation Year in Review](#). **False Fact.** Just under a third of the new filings in the first quarter of 2020 claim defendants market their products with false facts. Two notable complaints allege that defendants misleadingly marketed their Graham Cracker products as sweetened primarily with honey, when the crackers contain mostly sugar and only a small amount of honey. This group also includes "animal welfare" cases. In one such case, plaintiff relies on a third-party "expose" to allege defendant's claims that its cows are "happy, healthy, well-cared for" are false. **Proposition 65.** There were ten new Proposition 65 cases in the first quarter of 2020, nine of which allege that defendants' products contained acrylamide and failed to warn consumers of that fact. In one notable case, B&G Foods North America sued Kim Embry, a serial Proposition 65 enforcer, seeking a declaratory judgment that Embry's acrylamide-based Proposition 65 cases violate the First Amendment. The case was filed on March 6, 2020 and is pending in the Eastern District of California. **Annual Filing Trends**



## Filings by Jurisdiction



## Filings by Category



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