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Environmental Alert

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SB 343: Will California hit pause on "Recyclable" claims enforcement?

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SB 343 litigation puts California recyclable claims enforcement in focus as businesses prepare for the October 4, 2026, compliance deadline.

What's the impact?

- A federal court is weighing whether to preliminarily enjoin SB 343's restrictions on recyclability claims on packaging.
- The ruling may arrive close to the October 4, 2026, compliance deadline, and any appeal could extend uncertainty.
- Businesses should continue to audit labels, contracts, and supplier obligations before the October 2026 compliance deadline.

An imminent court decision on a preliminary injunction will determine whether SB 343's restrictions on recyclability claims move forward with the set effective date of October 4, 2026, or are temporarily paused.

As previously discussed in our April 6, 2026 alert, "California's SB 343 Restricts Common Recyclability Claims on Products and Packaging," SB 343 focuses on the chasing arrows triangle

symbol as an implied representation that an item can be recycled. SB 343 prohibits the use of the chasing arrows symbol — or any recyclability claim — on products and packaging unless specific criteria are met, including that the material is collected by programs serving at least 60% of California's population and sorted by at least 60% of recycling programs statewide.

Since our prior alert, the preliminary injunction motion in *California League of Food Producers, et al. v. Bonta*, No. 3:26-cv-01675-WQH-JAC (S.D. Cal.), has been briefed and argued before Judge William Q. Hayes in the U.S. District Court for the Southern District of California. On April 7, 2026, Plaintiffs filed an amended complaint.

This update summarizes the briefing, the June 3 hearing, and what it means for businesses preparing for SB 343's October 4, 2026, compliance deadline amid the recent increase in private enforcement about allegedly deceptive recycling labels.

Preliminary injunction of federal lawsuit

PLAINTIFFS' MOTION (APRIL 24, 2026)

On April 24, 2026, Plaintiffs[1] moved for a preliminary injunction to enjoin the Attorney General ("AG") and others from enforcing SB 343's restrictions on the use of the chasing arrows symbol and other recyclability claims under Public Resources Code ("PRC") §§ 18015(d) and 42355.51. A preliminary injunction requires showing (1) a likelihood of success on the merits, (2) a likelihood of irreparable harm, (3) that the balance of equities tips in the movant's favor, and (4) that an injunction is in the public interest.

Unconstitutional Vagueness. Plaintiffs argue that SB 343 is facially void for vagueness under the Fourteenth Amendment's Due Process Clause because the law's key criteria fail to provide businesses of ordinary intelligence with fair notice of what is prohibited. Specifically, Plaintiffs identify four areas of vagueness: (1) the undefined phrase "routinely becomes feedstock used in the production of new products or packaging," which provides no discernible metric for compliance; (2) the reference to the Basel Convention criterion without provision of guidance, which does not provide businesses the information necessary to determine recyclability status of their materials; (3) the APR Design Guide criterion, which incorporates a privately developed, dynamic standard that can change without notice and conflicts in places with CalRecycle's own guidance; and (4) the requirement that products be "designed to ensure recyclability" and not

[1] Plaintiffs include: California League of Food Producers, American Forest & Paper Association, California Apple Commission, California Blueberry Commission, California Grocers Association, California Restaurant Association, California Strawberry Commission, California Table Grape Commission, California Walnut Commission, Californians For Affordable Packaging, Dairy Institute Of California, Flexible Packaging Association, Grower Shipper Association Of Central California, Olive Oil Commission Of California, Pet Food Institute, Print Creative Alliance, Snac International, and Western Growers Association.

include components that "prevent recyclability," terms that the statute leaves without definition or administrable standards.

Plaintiffs emphasize that CalRecycle has no authority to promulgate clarifying regulations or make product-by-product compliance determinations, leaving businesses without any administrative mechanism to resolve ambiguities. This regulatory vacuum, Plaintiffs contend, invites arbitrary enforcement by both public officials and private litigants.

First Amendment Violation. Plaintiffs also argue that SB 343 imposes an unconstitutional restriction on commercial speech under the *Central Hudson* intermediate scrutiny framework, which allows non-misleading speech to be restricted if the government has a substantial interest, the regulation advances that interest, and the regulation is narrowly tailored. They contend that recyclability claims are only "potentially misleading" speech, not inherently misleading, and therefore retain First Amendment protection. Plaintiffs argue that SB 343 does not directly advance California's asserted interests in reducing consumer confusion and improving recycling rates because the law suppresses truthful and accurate claims, which will result in less-informed consumers, reduced recycling participation, and increased landfill waste.

Plaintiffs also argue the law is more extensive than necessary because California could employ less-restrictive alternatives, such as permitting qualified claims (e.g., "Recyclable where facilities exist – check locally") or requiring disclosures rather than imposing a blanket prohibition.

Irreparable Harm. Plaintiffs assert that the loss of First Amendment freedoms, even for minimal periods of time, constitutes irreparable harm as a matter of law. They further argue that their members are already being forced to make costly labeling and manufacturing decisions to comply with the speech restriction, including auditing thousands of SKUs, retooling production lines, and renegotiating vendor contracts.

AG'S OPPOSITION (MAY 18, 2026)

In opposition to the motion the AG advances the following arguments.

Standing. The AG argues that Plaintiffs have failed to establish Article III standing, which requires an injury-in-fact, causation, and redressability, because they have not identified specific harm suffered by individual members of the Plaintiff associations. The AG contends that Plaintiffs' declarations contain mostly "boilerplate pronouncements" and do not identify particular members' alleged difficulties in complying with particular provisions of SB 343 or how their intent to engage in speech would be prohibited by SB 343.

Vagueness. The AG argues that SB 343 is not unconstitutionally vague because the general directives of SB 343 are "sufficiently clear to give individuals fair notice of when they may or may not make a recyclability claim." Specifically, words like "routinely," "ensures," and "prevents" are commonly understood; CalRecycle's Material Characterization Study and its tables clearly

delineate which material types and forms meet or fail to meet the statutory criteria; and the APR Design Guide criterion requires that products be designed not to include components that prevent recyclability and are not dependent on changing industry standards.

First Amendment. The AG argues that SB 343 regulates misleading commercial speech and is constitutional under the *Central Hudson* factors. The AG contends that California has a substantial interest in regulating environmental marketing claims to reduce consumer confusion and deception, decrease contamination in recycling bins, and improve the economic viability of recycling streams. The AG further argues that SB 343 directly addresses these interests by prohibiting recycling symbols or recycling instructions on items that are not actually recyclable, and that the law is not more extensive than necessary, noting that Plaintiffs overstate the breadth of SB 343 and their suggested alternatives would not be effective in fixing California's waste problem.

No Irreparable Harm. The AG argues that Plaintiffs have not shown how their members would suffer irreparable harm in the absence of a preliminary injunction because SB 343 does not violate their rights.

Balance of Equities. The AG argues that the balance of equities and public interest weigh against granting the injunction, noting that the public interest is served by allowing SB 343 to take effect because it will protect the public from deceptive claims and improve recycling rates, and that Plaintiffs' delay in bringing the challenge (nearly five years after the law was signed) weighs against granting the requested relief.

Severability. In the alternative, the AG argues that if any provision of SB 343 is found likely to be unconstitutional, the offending provisions are severable from the remainder of the statute.

PLAINTIFFS' REPLY (MAY 26, 2026)

The Plaintiffs reply brief pressed the following points.

Standing. Plaintiffs argue that the AG's standing objection fails because the Ninth Circuit does not require organizations to identify individual members by name when doing so would have an adverse effect; in this case, make those businesses "easy targets for enforcement actions." Plaintiffs also note that the AG made no promise not to enforce the law as a whole, and that the "obvious, imminent risk of private enforcement" has already begun.

Vagueness. Plaintiffs respond that the AG's identification of a handful of "examples including" clear glass containers and tin cans ignore the multi-material packaging used for the majority of consumer goods and the difficulty applying the law's complex categories. They further argue that stricter vagueness of scrutiny applies because SB 343 implicates First Amendment rights and imposes criminal sanctions.

AG's Severability Defense. Plaintiffs argue that severability fails because the problems are so interwoven that the only solution is to invalidate SB 343 entirely.

Intermediate Scrutiny. Plaintiffs contend the AG has not carried the burden of demonstrating that SB 343 directly serves its asserted interests or is narrowly tailored and dismissed alternatives without evidence.

Irreparable Harm. Plaintiffs argue that they have raised "serious questions going to the merits," the timing of the suit does not undercut relief, and the "unrefuted recent surge of lawsuits around allegedly deceptive recycling labels" illustrates "ongoing, worsening injuries."

JUNE 3, 2026, HEARING

The hearing on Plaintiffs' motion for preliminary injunction was held on June 3, 2026, before Judge William Q. Hayes. An order has not yet been issued.

Plaintiffs' Oral Argument. Plaintiffs largely reiterated the arguments set forth in their briefing, emphasizing that SB 343 will undermine recycling by driving companies to remove recyclability claims from packaging, resulting in more items going to landfills.

On vagueness, Plaintiffs emphasized the four areas identified in the briefing, comparing "routinely becomes feedstock" to the "conveniently recycled" language struck down in the *Lungren* case,[2] and providing examples of vagueness. Plaintiffs highlighted gable-top cartons (the classic milk carton), which dropped below the 60% threshold after a single facility stopped accepting them, giving manufacturers only about nine months' notice to change their labels for reasons entirely outside their control. Plaintiffs also claimed that the law prohibits companies from providing useful instructions to consumers about multi-component packaging and items such as aluminum, which is recyclable only if "reasonably free of food contamination." Plaintiffs noted that the penalties are cumulative ($500 for the first violation, $1,000 for the second, $2,000 for the third, plus $2,500 per violation under the UCL) and can be calculated per unit sold, exposing widely distributed consumer products to enormous potential liability.

AG's Oral Argument. The AG reiterated that SB 343 was designed to address the fact that sorting and finding markets for recycling is difficult, mainly due to contamination, and therefore, many

[2] *See*, *Ass'n of Nat. Advertisers, Inc. v. Lungren*, 809 F. Supp. 747, 761 (N.D. Cal. 1992), aff'd, 44 F.3d 726 (9th Cir. 1994) ("The statute's definition of 'recyclable' is more uncertain. The problem is that while section 17508.5(d) defines a consumer good as 'recyclable' if it can be 'conveniently recycled' in California counties with more than 300,000 people, the statute offers no guidance as to what recycling programs satisfy the 'conveniently recycled' requirement.").

recyclables end up in landfills. The court's questioning elicited several concessions and highlighted key concerns about the law's operation.

On the First Amendment claim, the court elicited a notable distinction about permissible speech under SB 343: A manufacturer cannot say "recyclable in some areas" but can say "not recyclable in some areas," drawing attention to the law's asymmetric treatment of recycling speech and raising questions about narrow tailoring.

Turning to vagueness, the court zeroed in on products that fall into the APR Design Guide's "grudgingly tolerated" category, noting that the AG's own briefing described SB 343 compliance as only "arguable" for such products, meaning a manufacturer would not know whether it complied. When the court asked whether the question of compliance would ultimately go to a jury, the AG confirmed that it would. The AG conceded that "there probably are situations where it could be vague," but argued the provision should not be invalidated because "in most situations" it would be clear.

On "routinely becomes feedstock," the AG argued the term is in common usage and would overlap with the 60/60 requirement. However, the court asked the AG about its own briefing, which acknowledged that an item could satisfy the 60/60 requirement yet fail the "routinely" standard if material is collected and sorted but there is no market for it and it never actually becomes feedstock. The court then asked how a manufacturer would know this, particularly when market conditions change after a product enters commerce. The AG conceded that "it would be hard for them to know that."

On "designed to ensure recyclability" and "prevent recyclability," the AG confirmed that the standard is economic — not whether recycling is physically impossible, but whether design choices make it economically unviable. The court then posed a hypothetical in which a manufacturer could have achieved an 85% recyclability rate with alternative materials but chose a 40% rate to preserve its cost structure, and asked whether that constitutes a failure to "ensure recyclability." The AG agreed this would be a viable claim under the statute.

Implications for businesses

The outcome of this motion will shape the compliance landscape for October 4, 2026, deadline.

If a preliminary injunction is granted: Injunctive relief will only protect the Plaintiff associations and their members, consistent with the U.S. Supreme Court's June 2025 decision in *Trump v. CASA, Inc.*, which limits the scope of injunctions to parties before the court. Companies that are not members of the Plaintiff trade association remain subject to SB 343's requirements.

If a preliminary injunction is denied: The October 4, 2026, compliance date remains in place for all products manufactured on or after that date. Companies should continue to prepare by auditing packaging and product labeling, maintaining supporting documentation, tracking

manufacturing dates, and reviewing supply chain and vendor agreements, as outlined in our prior alert.

Regardless of the outcome, given that the court's decision may not come until shortly before the compliance deadline — and could be appealed — businesses should not pause compliance efforts, especially in light of the recent surge of private suits about allegedly deceptive recycling labels. Companies should continue auditing SKUs against CalRecycle's Material Characterization Study, evaluating whether current recycling representations address recyclability accurately in compliance with the Consumers Legal Remedies Act, False Advertising, and Unfair Competition Law. In addition, companies should assess SB 343 compliance and related customer/vendor/supplier compliance and indemnification representations and establish systems to document manufacturing dates before and after the October 4, 2026, cutoff. Packaging redesigns require months of planning, retooling, and supply chain coordination; the litigation and expenses of change are just ramping up.

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