

# On the Challenges and Prospects of Punitive Damages in the Food and Drug Sector

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**Abstract**—Food and drug safety governance is a core issue in safeguarding public health. The punitive damages system in China faces contradictions and predicaments in judicial practice in this field. Based on relevant data from court judgments, this article analyzes the problems of the punitive damages system in the food and drug sector, such as the rigidity of compensation standards, the insufficiency of compensation for small-scale food purchases leading to an inversion of the cost and benefit of rights protection, the ambiguity in the identity recognition of “knowingly purchasing counterfeit goods”, and inconsistent judicial judgment standards; the mechanical application of administrative standards such as food safety standards, ignoring the differences in subjective fault and damage consequences in individual cases. This article attempts to propose targeted solutions, such as establishing a flexible compensation model that links the minimum compensation amount with the economic level, refining new standards for consumer identity recognition, and establishing a dynamic grading system for food safety standards, aiming to enhance the deterrent and fairness of the punitive damages system and provide references for deepening the rule of law in food and drug safety governance.

**Keywords**—punitive damages, compensation amount, consumers, safety standards

## I. INTRODUCTION

Food and drug safety is the cornerstone of people's livelihoods and public safety, and its governance directly impacts the health and well-being of the people and social harmony and stability. In recent years, although China has established a framework for the punitive damages system through laws such as the Food Safety Law and the Drug Administration Law, and issued the Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Cases Involving Punitive Damages in Food and Drug Disputes (hereinafter referred to as the “Interpretation”) in 2024 to further clarify the rules, the implementation of this system in judicial practice still faces deep-seated contradictions. Against this backdrop, how to address the challenges in applying the punitive damages system in the food and drug sector and achieve the multiple objectives of “curbing violations, protecting rights, and balancing the market” has become an urgent research topic. This paper combines relevant judicial interpretations and typical cases to provide theoretical references for improving the food and drug safety governance rules system and enhancing the scientific and rational nature of judicial rulings. It aims to promote the deepening of the punitive damages system from “formal justice” to “substantive justice”, thereby providing more adaptive legal support for ensuring “food safety”.

## II. THE CURRENT INSTITUTIONAL SITUATION OF PUNITIVE DAMAGES IN THE FIELD OF FOOD AND DRUGS

### A. The Connotation of Punitive Damages in the Food and Drug Sector

In the food and drug sector, the punitive damages system carries profound implications and multiple objectives. Punitive damages achieve punitive and deterrent purposes by awarding compensation amounts exceeding actual losses through court rulings. Food and drug safety is closely related to public interest. The introduction of punitive damages in the food and drug safety sector not only aligns with the need to protect public interest but also conforms to the purposes stipulated by law [1]. Unlike compensatory damages, which aim to compensate for losses, punitive damages transcend the “restitution principle” in civil law. It is a system designed to deter and prevent infringing acts, enabling consumers to receive compensation exceeding the actual losses incurred [2]. It represents a qualitative leap beyond compensatory damages, which adhere to the principle of balance, requiring the tortfeasor to pay compensation exceeding actual losses, and it possesses distinct punitive, deterrent, and preventive functions [3].

### B. The Development and Current Status of Punitive Damages in the Food and Drug Sector

#### 1) Legislative status

The punitive damages system in China's food and drug sector has evolved from its inception to a gradually improved legislative framework. The Consumer Rights Protection Law, enacted in 1993, stipulated that “if there is consumer fraud, consumers may demand compensation equal to three times the price of the goods or the cost of the services provided,” laying the foundation for the application of punitive damages in the consumer sector. Although no specific provisions were established for the food and drug sector, this provision established general principles for punitive damages in cases of fraud, providing universal guidance for the resolution of food and drug-related consumer disputes.

The punitive damages system first appeared in the Food Safety Law of 2009, Article 96 [4]. The current Article 148 of the Food Safety Law has been supplemented and revised to address situations and experiences encountered in judicial practice. This provision is characterized by the “return one, compensate ten” principle, significantly increasing the cost of violations in the food sector, strongly deterring counterfeiting and selling of counterfeit products, and providing consumers with a robust legal framework for protecting their rights, serving as a key basis for consumer

claims. The Interpretation, which came into effect on August 22, 2024, clarifies that for those who “knowingly purchase counterfeit goods”, punitive damages will only be supported within the scope of reasonable living consumption needs; it also establishes standards for determining defects in food labels and instructions, making the punitive damages system for food and drug products more practical in implementation.

It is worth noting that the revised “Provisions of the Supreme People’s Court on Several Issues Concerning the Application of Law in the Trial of Food and Drug Disputes” (hereinafter referred to as the “Provisions”) stipulates that even if consumers purchase food that does not meet safety standards while being fully aware of its non-compliance, they may still seek punitive damages under the punitive damages system. This provision contrasts sharply with the approach in other consumer sectors, where punitive damages are no longer supported for “knowingly purchasing counterfeit goods” behavior.

The revised “Pharmaceutical Administration Law of the People’s Republic of China” in 2019 clearly stipulates that in addition to claiming compensation for losses, drug users or consumers may also claim punitive damages ranging from ten to thirty times the price of the drug. This regulation has significantly increased the cost for lawbreakers in the pharmaceutical field and strengthened the protection of consumers’ rights and interests. In view of the special nature of drugs concerning life and health [5], Article 144 of the Drug Administration Law stipulates: “Victims and their relatives who produce or sell counterfeit or substandard drugs or sell or use them knowing that they still do so have the right to claim compensation of ten times the price or three times the loss. If the compensation is less than 1,000 yuan, it shall be calculated as 1,000 yuan.” In line with the Food Safety Law, a punitive damages defense line has been established in the pharmaceutical field to strictly control the circulation of counterfeit and substandard drugs and ensure drug safety.

## 2) Current judicial situation

To analyze the application of punitive damages in private litigation related to food and drug safety, this paper utilized the Wolters Kluwer Legal Database, using the keywords “food and drug safety” and “punitive damages”, with a

timeframe limited to the past three years, to search for relevant judicial cases and compile data. A total of 4,388 judicial documents were retrieved, with the distribution of cases shown in Fig. 1, where civil cases accounted for 95.1%.

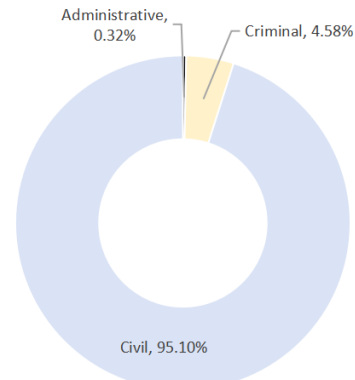


Fig. 1. Distribution of case types in food safety litigation.

Fig. 2 reflects the distribution of case values in food safety litigation cases. It can be seen that cases involving small claims of “0–100,000 yuan” account for 87.1%, the majority, while cases involving medium claims of “100,000–500,000 yuan” account for approximately 11.17%, and cases involving large claims of over 500,000 yuan are relatively few, with the combined proportion of such cases only accounting for 1.73%. This reflects the current situation in China, where the claim amounts in food and drug-related cases are generally low.

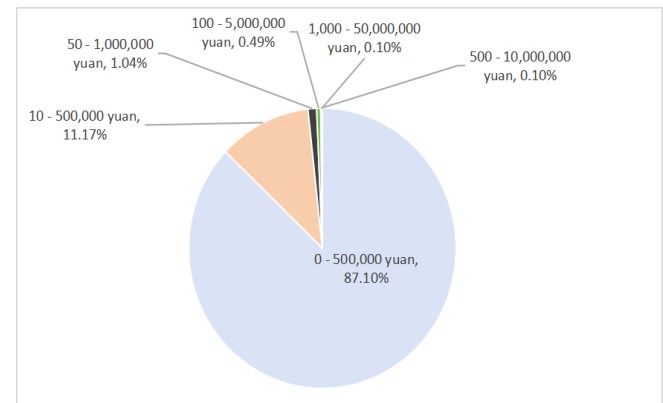


Fig. 2. Distribution of claim amounts in food safety litigation cases.

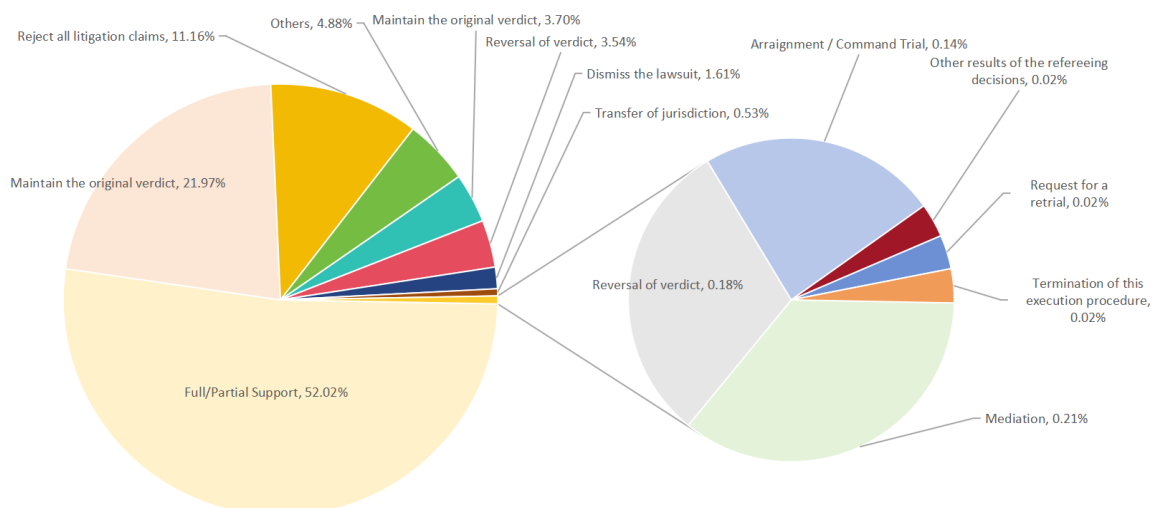


Fig. 3. Judgment outcomes in food safety litigation cases.

It is not difficult to see that, based on the results obtained from Fig. 3, 52.02% of the valid cases were supported or partially supported by the court. It is worth noting that the majority of these cases centered on the issue of whether the parties involved qualified as consumers. Take the case of “Liaoning Province Kaiyuan City People’s Court (2023) Liaoning 1282 Min Chu 459 Civil Judgment — Wang Moudong v. Zhao Mousheng Sales Contract Dispute Case” as an example. The judge determined that the plaintiff was a knowingly fraudulent buyer based on the purpose of consumption and dismissed the claim for punitive damages; In the case of “Shanghai No. 1 Intermediate People’s Court (2016) Shanghai 01 Min Zhong 10490 Civil Judgment — Zhang Zhengrong v. Shanghai Shangshu Yonghui Fresh Food Co., Ltd. Sales Contract Dispute Case”, the judge limited the recognition of the plaintiff’s claim for punitive damages to cases where the product met the reasonable needs of daily life.

In terms of the application of laws and regulations, judges mainly rely on the Food Safety Law and other administrative laws to make judgments, and regard “whether it meets food safety standards” as one of the elements for determining whether to support punitive damages. Such standards are formulated by administrative organs, and in practice it is easy to simply equate “meeting safety standards” with “substantive safety”.

Through the collation and statistics of the above data on judicial cases, we can see that in judicial practice, the application of the punitive damages system in the food and drug fields still has problems worthy of our attention, such as the blind application of food safety standards and the relatively low compensation amount corresponding to the small claim amount in the food field.

### III. JUDICIAL PRACTICE CHALLENGES

#### *A. Imbalance in Compensation Amount Standards: Generally Low Compensation Amounts in the Food Sector*

China’s current punitive damages system for food and drug products faces the core challenge of unreasonable standard setting, with a notable phenomenon being insufficient incentives for ordinary consumers. According to Article 148 of the Food Safety Law, the calculation of punitive damages is based on “ten times the price” or “three times the loss”, with a minimum of 1,000 yuan. We must acknowledge that this approach has significantly enhanced consumers’ confidence in asserting their rights and deterred unscrupulous businesses from engaging in illegal activities. However, this standard is clearly inadequate for small-scale transactions [6]. Furthermore, this standard does not specify the scope of losses suffered by consumers nor consider factors such as the quantity purchased, the unit price of the food, the defendant’s profits, or its economic condition. For example, in the case of daily food consumption, if a consumer purchases expired food at a normal low price, the compensation calculated at ten times the price is insufficient to cover the costs of testing, litigation, and time investment required for rights protection, leading to a reversal of costs and benefits.

Take the case of “Xi’an Lianhu District People’s Court (2025) Shaanxi 0104 Min Chu 5976 Civil Judgment — Wei

Mou v. Shancha Catering Store Catering Service Contract Dispute” as an example. The plaintiff purchased an Angus beef burger for 15 yuan and found foreign objects in it. The tenfold compensation was only 150 yuan. From the perspective of the minimum compensation amount, Article 148 of China’s Food Safety Law explicitly states that “if the additional compensation amount is less than 1,000 yuan, it shall be 1,000 yuan.” This provision to some extent safeguards consumers’ rights, but in certain cases, a minimum compensation of 1,000 yuan may be insufficient to compensate consumers for the losses they have suffered. Food and pharmaceutical products are categories directly related to consumers’ health and safety. In cases where they cause physical discomfort but do not result in severe consequences, consumers may not only have to pay medical expenses but also suffer mental anguish, and may also incur significant time and effort in pursuing their rights. A compensation of 1,000 yuan is far from sufficient to compensate for these losses, often leaving consumers with little to gain from pursuing their rights, thereby reducing their willingness to do so. Chen Yifang, Head of the First Civil Division of the Supreme People’s Court, stated that consumers must bear the corresponding burden of proof in accordance with the law to obtain compensation for actual losses, such as the extent of losses and the causal relationship between the losses and the food or pharmaceutical products. Consumers are in a relatively disadvantaged position in economic relationships. The costs of evidence collection and presentation are relatively high for consumers, resulting in low compensation amounts, low compensation rates, and low willingness to assert their rights [7]. This institutional design objectively creates a distorted incentive structure where the cost of violating the law is low and the cost of asserting rights is high, making it difficult to effectively curb illegal behavior.

The punitive damages system in the United States does not set fixed multiples (such as China’s “three times” or “ten times”), and the amount of compensation in food-related cases is determined by a jury based on factors such as the defendant’s subjective malice and the severity of the harm caused. This rule also applies to the food sector. For example, under Alaska state law, in the independent proceedings to determine whether punitive damages should be awarded, the jury may consider the following factors: (1) The likelihood that the defendant’s conduct, at the time it was committed, would cause serious harm; (2) The degree to which the defendant knew of the likelihood of serious harm resulting from their conduct; (3) The amount of economic benefit the defendant obtained or was likely to obtain from their conduct; (4) The duration of the conduct and any intentional concealment of the conduct; (5) The defendant’s attitude and conduct upon discovery of the wrongful conduct; (6) The defendant’s economic condition; (7) The overall deterrent effect of other penalties and damages imposed on the defendant for the wrongful conduct [8]. In addition, the United States has set caps on the amount of punitive damages in food-related cases. Although the provisions on punitive damages vary among U.S. states, they have all established rules for determining the amount of punitive damages based on their own circumstances, providing juries with guidelines to follow, thereby

preventing the abuse of judicial power and ensuring that punitive damages are not unreasonable.

### *B. “Knowingly Purchasing Counterfeit Goods” Controversy: Ambiguity in Consumer Identity Determination*

Whether “knowingly purchasing counterfeit goods” should be protected under the punitive damages system has been a core controversy in judicial practice for a long time. In earlier years, the Supreme People’s Court’s judicial interpretations stipulated that if producers or sellers argued that the purchaser knew the food had quality issues yet still purchased it, the court would not support such a defense. This stance initially played a positive role in combating food and drug violations [9]. However, as professional and industrialized “professional fraud-busting” activities intensified, judicial attitudes began to diverge.

The classification of consumers who purchase counterfeit goods with the intent to resell them is subject to theoretical debate: one view holds that their purchasing purpose is for profit rather than for personal consumption, and thus they do not fall under the definition of “consumers” as outlined in the Consumer Rights Protection Law; another view argues that regardless of their motives, their actions objectively aid in combating illegal activities and should therefore be supported [10]. This theoretical controversy has led to inconsistent judicial standards in practice, with similar cases potentially receiving vastly different rulings in different courts. China’s Consumer Rights Protection Law does not explicitly define the term “consumer”, but instead defines it based on behavior and purchasing purpose as “purchasing, using goods, or receiving services for the purpose of living consumption”. According to this provision, the academic community generally recognizes that the determination of consumers under the Consumer Rights Protection Law should meet three conditions: the purpose of living consumption, the identity of the consumer, and the consumption behavior of purchasing, using goods, or receiving services [11]. However, when “knowingly purchasing counterfeit goods”, the subjective purposes of consumers are complex and diverse. Some may have both consumption and rights protection intentions, while others clearly aim primarily to profit. As a subjective state, purpose cannot be directly known by outsiders, leading to ambiguity in determining consumption purpose—one of the key challenges in identifying consumer status.

In 2024, the Supreme People’s Court’s Interpretation attempted to resolve this dispute by introducing the objective standard of “reasonable living consumption needs” [12]. This appears to provide a criterion for judicial rulings, to some extent avoiding disputes over whether those who knowingly purchase counterfeit goods have consumer status. However, in practice, it is difficult to accurately define the scope of “living consumption”, and separating the entire purchasing behavior based on a single motive also has its flaws. This standard still faces operational challenges in its specific application.

Take the case of “Zhang v. Shanghai Xingfresh Food Co., Ltd. for a Sales Contract Dispute” as an example: Plaintiff Zhang Mou purchased 46 salted duck eggs in total, issuing 46 receipts, and requested the court to order the defendant to

compensate 46,000 yuan. Despite the plaintiff’s “knowing” intent, the court supported the claim based on the total purchase price of 101.2 yuan, awarding ten times the purchase price (1,012 yuan) as compensation, thereby partially acknowledging the plaintiff’s claim for punitive damages.

In the case of “Fujian Province Ningde Intermediate People’s Court (2025) Min 09 Min Zhong 226 Civil Judgment — Ren Mou v. Wang Mou and XX Company Product Liability Dispute Case”, the appellate court held that the plaintiff Ren Mou had purchased the same product multiple times from different merchants and filed lawsuits with the same grounds, seeking a refund of the purchase price and ten times the compensation, demonstrating “knowing” subjective intent. The court therefore did not support the plaintiff’s claim for punitive damages.

If these details, such as how to accurately define “reasonable living consumption needs” and how to reasonably consider factors such as the shelf life and consumption habits in a case, remain unclear, it may still lead to inconsistent judicial standards.

### *C. Rigid Application of Administrative Standards: Single-Dimensional Assessment Criteria*

In addition to the above issues, the rigid application of administrative standards has also sparked controversy. The Food Safety Law and the Drug Administration Law are the primary legal basis for the punitive damages system in the food and drug sector. Such legislation is formulated by administrative agencies, and in judicial practice, administrative management standards are directly transplanted as private law adjudication criteria. This excludes key elements such as the degree of fault, the harmfulness of the conduct, and the consequences of the damage from the determination of liability, making it difficult for judicial outcomes to achieve individual justice at the private law level [13].

Take the food safety sector as an example. According to Article 148, Paragraph 2 of the Food Safety Law, violating food safety standards is one of the elements required to establish punitive damages. Courts directly cite administrative standards to determine liability in civil litigation, making technical indicators the sole criterion for private law adjudication. The nature of food safety standards as public law rules established by administrative agencies raises issues of compatibility between public law rules and the logic of private law adjudication when they are rigidly applied in punitive damages litigation.

The direct application of administrative standards can reduce the costs of disputes over the determination of civil liability and make full and effective use of judicial resources. However, objective and existing numerical standards also restrict the discretion of judges. Article 150, Paragraph 2 of the Food Safety Law defines food safety as being non-toxic, harmless, meeting the necessary nutritional requirements, and not causing any harm to human health. Accordingly, the core essence of food safety lies in preventing health risks, and its civil liability should serve the purpose of protecting the right to life and health and preventing harm [14]. Legislation and the judiciary should allow judges to exercise their discretionary power as appropriate for this purpose. We

need to consider whether exceeding or falling short of safety standards necessarily entails punitive damages, and whether compliance with safety figures is the sole criterion for determining a judgment.

Food safety standards and food safety cannot be equated simply. The former are pre-established absolute regulatory standards set based on administrative management needs, while the latter are comprehensive judgments involving multiple substantive criteria. Directly replacing elements such as illegality, damage, and causation in private law with objective, numerical standards in civil judgments would lead to the mechanization of civil judgment standards, weaken judicial discretion, suppress judges' discretionary space, and fail to meet the needs of individual case adjudication [15].

#### IV. IMPROVEMENT SUGGESTIONS FOR PUNITIVE DAMAGES IN CASES OF KNOWINGLY PURCHASING COUNTERFEIT FOOD AND DRUG PRODUCTS

##### *A. Establishing a Flexible Compensation Model Based on the Proportionality Principle*

Currently, the minimum compensation amount stipulated in China is 1,000 yuan, which has been in use since 2009. Given the significant changes in economic development over the years, the author suggests raising the minimum compensation amount to 2,000 yuan. This could be done by referencing the mature experience of the "Minimum Wage Regulations", which stipulate that the minimum wage should be adjusted every 2–3 years. Local regions could then adjust their minimum compensation amounts every 3–5 years based on their actual conditions, with the amounts set in proportion to the per capita disposable income of each region.

At the same time, an improved flexible compensation model should be established. It is suggested to abandon the rigid requirement of "ten times the payment amount or three times the losses", breaking the restrictions and providing more options for the calculation basis. For example, in cases of personal injury, the actual losses of the consumer should serve as the compensation basis; if the producer or operator acted with fraudulent intent, the calculation basis should be the producer's or operator's turnover or sales profit [16].

Regarding the scope of the consumer's actual losses, a mechanism covering all costs incurred in the process of asserting rights could be explored, including compensation for reasonable and lawful expenses such as lost wages, medical expenses, and appraisal or testing fees. This approach would not only achieve the deterrent and punitive effects of punitive damages against illegal and irregular practices but also maximize the protection of consumer rights, stimulate public supervision and reporting of unlawful behavior, promote the healthy development of the market economy, and safeguard the rights and interests of the people and the public interest.

##### *B. Further Clarify the Criteria for Determining Consumer Status*

###### *1) Use the purpose of purchase as the core determining factor*

The purpose of purchase should be the core element in determining consumer status. In practice, some purchasers

may be aware of issues with food or pharmaceutical products but initially purchase them for personal or household consumption needs, such as purchasing food for daily dietary requirements or purchasing pharmaceuticals for medical treatment. Even if they later discover defects in the products and seek compensation, their consumer status should not be easily denied. When determining the purpose of purchase, auxiliary factors such as the quantity, frequency, and intended use of the purchase should be considered. If the quantity falls within the scope of reasonable living consumption, the frequency is reasonable, and there is actual consumption or intent to consume after purchase (e.g., evidence of consumption for food or the need for use for pharmaceuticals), this can serve as evidence of the authenticity of the consumer's purpose.

###### *2) Comprehensive consideration of purchasing behavior characteristics*

The purpose of purchase is a subjective state and cannot directly determine whether a purchaser is an ordinary consumer. Therefore, external behavior must be used as an auxiliary means of judgment. In practice, the following characteristics are generally considered to indicate that the purchase exceeds the scope of reasonable daily consumption: first, repeatedly purchasing the same product from the same seller multiple times, with the quantity exceeding reasonable consumption needs; second, repeatedly filing similar lawsuits; third, recording video evidence during the purchase [17]. Behaviors that meet all three of the above characteristics are generally deemed by judicial authorities to indicate that the purchaser's purpose of purchase exceeds the scope of "reasonable living consumption needs", and the portion exceeding such needs is not recognized.

"Those who knowingly purchase counterfeit goods," whether they are professional fraud investigators or ordinary consumers, are all classified as "purchasers" under the Interpretation. Courts analyze the purchasing behavior through relevant evidence to assist in determining the purpose of the purchase and apply punitive damages within the scope of "reasonable living consumption needs". In summary, whether it is professional fraud or ordinary consumer behavior, the ultimate outcome will result in some form of compensation. This aligns with the legislative spirit of protecting consumer interests in China, encourages consumers to actively protect their rights, curbs the harmful actions of unscrupulous businesses, and safeguards the quality of food safety in China.

##### *C. Comprehensive Consideration of Food Safety Factors*

Food safety standards serve as authoritative indicators of food safety. Administrative agencies must consider the objective needs of the broadest possible scope when establishing rules and standards, which should possess universal applicability and mandatory enforceability. In judicial practice, using such standards as a basis for judgments is a reasonable approach consistent with China's current civil adjudication principles. However, rather than treating administrative rules as the "sole criterion", it is more appropriate to position them as "safety benchmarks" given their characteristics.

The author suggests using administrative standards as the baseline level in civil adjudication to determine whether

punitive damages can be applied, and overlay higher-level evaluation dimensions tailored to the specific needs of individual cases. For example, in cases where the safety standards are met but there are circumstances such as intentionally producing food or drugs that do not comply with the company's registered operating standards, knowingly continuing to sell products with cumulative toxic hazards, or causing substantial harm to human health, these can be considered as conditions for determining the applicability of punitive damages. Additionally, reference can be made to the approach of the Xi'an Market Supervision Bureau, which involves scientifically constructing an AI knowledge base to real-time aggregate disputes over the application of standards in enforcement cases, dynamically optimizing local supplementary standards, and continuously enhancing the precision and scientific rigor of food and drug safety adjudication to effectively safeguard public food and drug safety. This approach ensures the normative exercise of judicial discretion while strengthening the substantive integration of food and drug safety standards with the actual needs of individual cases.

#### CONFLICT OF INTEREST

The author declares no conflict of interest.

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