

The Tasting MENU

Restaurant Work | Task Force

The Sheppard Mullin Restaurant Task Force is a vertically integrated team of attorneys who coordinate their institutional knowledge of the restaurant industry and legal expertise to provide seamless representation. The team delivers a full menu of resources on matters that particularly affect the restaurant industry, including counseling clients through acquisitions, joint ventures and fund formation, franchise, supplier, and distribution agreements, data privacy, labor and employment, financing, bankruptcy and restructurings, ADA, and lease issues. The Tasting Menu is a collection of emerging issues the industry should consider.

APPETIZERS

California First State To Ban 4 Chemicals in Foods

Starting in 2027, California will prohibit red dye 3, potassium bromate, brominated vegetable oil, and propylparaben. Entities will be prohibited from manufacturing, distributing, selling, or holding any product that has any of these four chemicals. These four chemicals are normally found in some brands of orange soda, icing, hamburger rolls, candies, and processed foods. Although the law doesn't take effect until 2027, restaurants should bear this update in mind when entering supply agreements, particularly when negotiating duration and volume commitments. More on this topic can be found [here](#).

Paying Employees When Faced With Natural Disasters

When natural disasters strike, such as fires, floods, hurricanes, etc., and employees cannot work because of them, restaurants are faced with numerous employment-related issues that require immediate attention. These include how to pay non-exempt and exempt employees, and how to address leaves of absence, accommodations, benefits, WARN, and OSHA, among other things. More information can be found [here](#).

Supply Chain Management

The Israel-Palestinian conflict has sparked a number of issues that could affect restaurant supply chains, including fuel and shipping costs, human rights compliance, and an increased reliance on domestic alternatives. Sheppard Mullin attorneys are here to provide advice and counsel on risk management approaches when it comes to sourcing ingredients.

MAINS

Corporate Update: Transactions Are on the Menu

The restaurant industry generally outperformed expectations through the first half of 2023 and industry experts are cautiously optimistic about the remainder of the year. Operators looking to make an acquisition in the restaurant industry will need to put heightened focus on supply chain diligence, understanding third-party delivery cost structures, and assessing wage and hour practices.

Seventh Circuit Has Beef with McDonald's Franchise Agreements

The Seventh Circuit [recently](#) reinstated an antitrust complaint against McDonald's, holding that former employees sufficiently alleged that the chain's franchise agreements included an employee no-poach provision—wherein employers agree not to hire or solicit each other's employees—which constituted a per se violation of Section 1 of the Sherman Act. Restaurants that have adopted a franchise model should review their agreements for antitrust compliance in light of this decision. The case is [Deslandes v. McDonald's USA, LLC](#), 2023 WL 5496957 (7th Cir. Aug. 25, 2023).

FTC Enforcement Priorities Should Inform Marketing Strategy

Out of concern that AI can be used to "turbocharge fraud and scams," the Federal Trade Commission has recently announced its intent to use its "full range of tools to identify and address unfair methods of competition" facilitated by AI. In particular, a primary area of concern for the FTC is [how AI can be used to generate fake consumer reviews](#), an issue that has been high on the FTC's priority list as it works to curtail [fake endorsements](#) and [testimonials](#). Industry participants should bear these warnings in mind when developing marketing content. More on the FTC and DOJ's AI agenda can be found [here](#).

DESSERTS

Restaurant Legal Summit

Neil A.F. Popovic, a partner in our Business Trial Practice Group, led a presentation on climate change and environmental marketing claims, and how they impact the restaurant industry at the Restaurant Legal Summit in Scottsdale, Arizona on October 25-27. For a copy of the presentation, please [email](#) us.

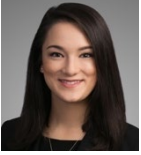
Victory Never Tasted So Sweet

After 5 years of litigation, Jason Kearnaghan, Melanie Hamilton, and Hilary Habib of Sheppard Mullin prevailed in trial, defeating class and PAGA claims involving employee paystubs. They were then met with many post-trial challenges, and on August 28, 2023, they secured a complete victory when the Court issued a statement of decision against Plaintiff and for Defendant.

Restaurant Task Force



Kristi Thomas,
Restaurant Task Force Leader
Labor and Employment
Orange County
kthomas@sheppardmullin.com



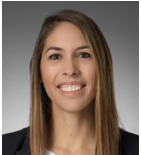
Joy Siu
Antitrust and Competition
San Francisco
jsiu@sheppardmullin.com



Tyler Bernstein
Labor and Employment
Orange County
tbernstein@sheppardmullin.com



Khirin Bunker
Business Trial
Los Angeles
kbunker@sheppardmullin.com



Stacy Dominguez
Business Trial
Orange County
sdominguez@sheppardmullin.com



James Gatto
Intellectual Property
Washington, D.C.
jgatto@sheppardmullin.com



Robert Gorzelany
Real Estate, Energy, Land Use &
Environmental
New York
rgorzelany@sheppardmullin.com



Derek Havel
Labor and Employment
Los Angeles
dhavel@sheppardmullin.com



Sascha Henry
Business Trial
Los Angeles
shenry@sheppardmullin.com



Abby Meyer,
Food & Beverage Industry Team Leader
Business Trial
Orange County
ameyer@sheppardmullin.com



Ava Habibian
Business Trial
Orange County
ahabibian@sheppardmullin.com



Kelly Hensley
Labor and Employment
Los Angeles
khensley@sheppardmullin.com



Greg Labate
Labor and Employment
Orange County
glabate@sheppardmullin.com



Steve Peterson
Corporate
Houston
speterson@sheppardmullin.com



David Poell
Business Trial
Chicago
dpoell@sheppardmullin.com



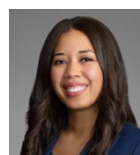
Patrick Quine
Corporate
Washington, D.C.
pquine@sheppardmullin.com



Stacey Rosenberg
Finance and Bankruptcy
Los Angeles
srosenberg@sheppardmullin.com



Olivier Theard
Real Estate, Energy, Land Use &
Environmental
Los Angeles
otheard@sheppardmullin.com



Chante Westmoreland
Intellectual Property
Houston
cwestmoreland@sheppardmullin.com