

## The Tasting MENU

### APPETIZERS

#### Ladies' Night Bites: The Costly Flavor

While Ladies' Nights draw large crowds to restaurant dining, these gender based promotions may expose businesses to discrimination litigation. Various states such as California, New York, New Jersey, Minnesota, Iowa, Maryland, Pennsylvania, Washington, and Wisconsin have outlawed gender-based promotions. Most recently, in December 2024, Lima Restaurant, a family run establishment in the Bay Area, closed its doors permanently after a decade due to costs of litigating a Ladies' Night discrimination suit. Thus, while these gender promotion nights can lead to economic incentives, the risks associated with potential litigation cannot be ignored. Reach out to [Alicia Burrell](#), [Justin Carr](#), or [Megan Bilbao](#) for further information.

#### FDA Packed Nutrition for a Healthier Bite!

The FDA is proposing a rule to enhance consumer access to nutritional information by mandating front-of-package labels on most packaged foods. This would introduce a "Nutrition Info" box with standardized terms like "Low," "Med," and "High" for saturated fat, sodium, and added sugars, indicating their daily value percentage per serving. The rule also specifies labeling guidelines for items like bulk containers and game meats, with phased compliance dates based on business size. Restaurants selling packaged foods take note and contact [Michelle Garabetian](#) for more details.

#### A Cherry Goodbye to Red Dye No. 3

On January 15, 2025, the FDA revoked the use of Red Dye No. 3 in food and ingested drugs due to the Delaney Clause, which bans additives found to cause cancer in humans or animals. Red Dye No. 3, a synthetic dye is commonly used to give foods a cherry-red color. By January 2027, manufacturers must reformulate their products and restaurants may need to dispose of products with Red Dye No. 3 as a listed ingredient. While some countries still permit using Red Dye No. 3, imported foods must meet U.S. regulations. Contact [Ava Habibian](#) with questions as you waive goodbye to Red Dye.

### 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 we see impacting this industry.

### MAINS

#### Hold the Junk Fees: Restaurants Get a Pass

The FTC's new junk fee rule targets hidden charges in live-event ticketing and short-term lodging, leaving restaurants out of scope—for now. This exclusion is due in part to advocacy efforts by the National Restaurant Association and the Independent Restaurant Coalition, which highlighted the unique challenges facing the restaurant industry. This exemption for restaurants aligns with a broader trend of regulatory relief for the industry. Earlier in the year, California also moved to exempt certain restaurant fees from a rule that would have required operators to include service fees in the price of individual goods. But restaurants should still be mindful of broader consumer protection trends around transparent pricing. Service fees and automatic gratuities that aren't clearly disclosed could attract regulatory attention under existing unfair or deceptive practices laws. Contact [AJ Dhaliwal](#) for more information.

#### Serving Up Compliance: Employers Face the Heat from ICE

Immigration and Customs Enforcement (ICE) is charged with the arrest, detention and removal of certain non-citizens. With increased enforcement a focus for the new Administration, employers, including restaurants, should be prepared for more I-9 audits and scrutiny from ICE.

Based on what we have seen, it has now become clear that the Enforcement & Removal Operations (ERO) division of ICE will focus on non-citizens with serious criminal convictions and those who were ordered removed by an Immigration Judge but failed to depart the U.S.

But, more I-9 audits are expected in the coming years, but due to limited agency resources and the impact on the economy, mass raids are not expected. While some I-9 audits will be randomly selected, others will be based on a broader investigation that ICE may be conducting with that company. Reach out to [Greg Berk](#) for assistance.

### DESSERTS

Neil Popović, a partner in the Business Trial Practice Group and head of the Firm's International Litigation and Arbitration and ESG and Sustainability Teams, began his food service journey as a prep cook and waiter during college in Berkeley. While in law school, he learned skills like chopping parsley and kneading bread alongside his then-girlfriend, now wife. Neil later successfully represented McDonald's in the notable "vegetarian french fries" litigation and FIJI Water in environmental claim cases. He continues to represent food and beverage companies in domestic and international matters involving environmental marketing claims, ingredient sourcing, and unfair competition allegations. Neil can be reached at [NPopovic@sheppardmullin.com](mailto:NPopovic@sheppardmullin.com).

## Restaurant Task Force



**Kristi Thomas,  
Restaurant Task Force Leader**

Labor and Employment  
Orange County  
kthomas@sheppardmullin.com



**Joy Siu, Tasting Menu Editor**

Antitrust and Competition  
San Francisco  
jsiu@sheppardmullin.com



**Megan Bilbao**

Labor and Employment  
Orange County  
mbilbao@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, Tasting Menu Editor**

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



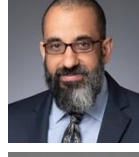
**Patrick Quine**

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