

## The Tasting MENU

### APPETIZERS

#### Don't Let Contamination Be The Catch Of The Day.

Restaurants should keep in mind how important it is to conduct appropriate environmental due diligence before purchasing or leasing a new property for development. Commissioning a qualified consultant to conduct a Phase I Environmental Site Assessment has the following benefits: (1) Providing important information about the property, including the likelihood of contamination, which can inform decisions; and (2) providing liability protection in the event remediation is required. Contact Olivier Theard at [otheard@sheppardmullin.com](mailto:otheard@sheppardmullin.com) regarding your Phase I.

#### Which Cooks Control Your Kitchen?

In the dynamic restaurant industry, negotiating change in control provisions is pivotal for lease agreements. Permitted transfers create flexibility, allowing specified changes in ownership or management without triggering restrictions to obtain landlord approvals. Clarifying "change in control" upfront, whether it pertains to majority ownership, key decision-makers, or a combination, prevents triggers that could jeopardize the lease when, for example, you're adding investors, exploring expansions, selling the business, or when partners split up. In essence, permitted transfers in change in control provisions empower adaptation and the long-term success of the establishment. Reach out to Meigan Everett at [meverett@sheppardmullin.com](mailto:meverett@sheppardmullin.com) to ensure your lease grows with your business.

#### I'll Have The BLT, Not The CTA.

As of January 1, 2024, businesses now need to comply with the new Corporate Transparency Act (CTA), which requires businesses to make Financial Crimes Enforcement Network (FinCEN) disclosures regarding their "beneficial owners" and certain other information unless they qualify for an exemption. Food service operators will need to assess their obligations under this new regulatory regime, which includes steep fines for noncompliance, as it rolls out in 2024. More on the CTA can be found [here](#) and Patrick Quine at [pquine@sheppardmullin.com](mailto:pquine@sheppardmullin.com) can be contacted for additional details.

### 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

**Big AI Appetites May Cause Heartburn.** With the growing use of artificial intelligence (AI) in the industry, restaurants should have the following considerations on the front burner:

- **AI Bots Including Conversational Voice Kiosks.** These enable natural language interactions with customers, more personalized targeting, upselling and other advantages. But it is important to consider not just the standard customer data privacy issues that arise, but also issues with the biometric information, such as voiceprints and facial recognition on which these technologies are based. For example, permission is typically needed to use any personal biometric information to train AI models.
- **Training AI Models On Your Customer Data.** Many companies are sitting on a trove of customer data and realizing this data can be valuable to train AI models. However, it may be problematic to use customer data in a manner that exceeds or otherwise is not permitted by the privacy policy in effect at the time the data was collected as discussed in our recent [post](#). Indeed, the Federal Trade Commission recently published guidance warning companies who attempt to retroactively amend their terms of service or privacy policy to authorize the use of previously collected customer data to train an AI model could be an unfair and deceptive practice in violation of Section 5 of the FTC Act. More on the FTC's guidance can be found in our post, [AI \(and other\) Companies: Quietly Changing Your Terms of Service Could Be Unfair or Deceptive](#).

To mitigate these and other AI-related legal risks, companies need to develop policies on employee use of AI and for the responsible development of AI tools and AI models. James Gatto at [jgatto@sheppardmullin.com](mailto:jgatto@sheppardmullin.com) can assist.

**Clean Up On Aisle 1228.** As discussed in a prior menu, California's \$20 minimum wage for fast food workers was set to go into effect (and did go into effect) on April 1, 2024 after Assembly Bill 1228 was signed into law. AB 610, which is also now in effect, has carved out eight new exemptions from the definition of "fast food restaurant" under AB 1228 including "restaurants in airports, hotels, event centers, theme parks, museums, and certain other locations." Restaurants should be mindful of these exemptions when following AB 1228. For more information, contact Kristi Thomas at [kthomas@sheppardmullin.com](mailto:kthomas@sheppardmullin.com).

### DESSERTS

Food service experience? We've lived it. Christopher Van Gundy, a Business Trials Litigation partner, began his career in food as early as his college days at Brown University. Every Sunday morning, while everyone else was sleeping in, Chris scraped eggs off plates at the university's Food Service. He learned the job was easier without gloves, and even became life-long friends with his co-worker. Back then, he was making \$4 an hour. This experience led to a mixology certification and a summer job in the food catering business. Chris now has 30+ years of legal experience, both as in-house and outside counsel, and has helped his clients working in the food industry navigate FDA and USDA regulations as well as false advertising lawsuits. And to think it all began with just a few eggs. Contact Chris at [cvangundy@sheppardmullin.com](mailto:cvangundy@sheppardmullin.com).

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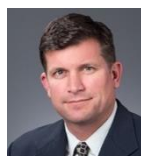
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