

1 GLORIA ALLRED, ESQ., SBN 65033  
2 NATHAN GOLDBERG, ESQ., SBN 61292  
3 RENEE MOCHKATEL, ESQ., SBN 106049

LAW OFFICES

**ALLRED, MAROKO & GOLDBERG**

6300 WILSHIRE BOULEVARD

SUITE 1500

LOS ANGELES, CALIFORNIA 90048-5217

Telephone No. (323) 653-6530

Fax No. (323) 653-1660

7 **Attorneys for Plaintiff, FRANK BERNARD**

9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF ORANGE

12 FRANK BERNARD,

13 Plaintiff,

14 vs.

15 ILITCH HOLDINGS, Inc., A Corporation;  
16 LITTLE CAESAR ENTERPRISES, Inc., A  
17 Corporation; and DOES 1 through 25,  
Inclusive,

18 Defendants.

) CASE NO:

) **COMPLAINT FOR DAMAGES**

) 1. **EMPLOYMENT  
DISCRIMINATION(Sexual  
Orientation) (Gov't Code §12900  
et seq)**

) 2. **CONSTRUCTIVE  
TERMINATION IN  
VIOLATION OF PUBLIC  
POLICY**

) **JURY TRIAL DEMANDED**

21 **PRELIMINARY FACTUAL INTRODUCTION**

22 1. Plaintiff **FRANK BERNARD** (hereinafter referred to as "Plaintiff" or "Plaintiff  
23 Bernard") is a gay man, who at all times relevant herein was a resident of the County of  
24 Riverside, State of California. Plaintiff Bernard legally married his same-sex spouse in the State  
25 of California on June 30, 2008.

26 2. Plaintiff Bernard is informed and believes, and based thereon alleges, that  
27 Defendants **ILITCH HOLDINGS, INC.**, is and at all times relevant herein was, a corporation  
28

1 doing business in the state of California with its Southern California Regional Office located in  
2 the City of Anaheim, County of Orange. At all relevant times mentioned herein Defendant  
3 Ilitch employed more than five employees and is engaged in interstate commerce within the  
4 meaning of California Government Code §12926.

5 3. Plaintiff Bernard is informed and believes, and based thereon alleges, that  
6 Defendant **LITTLE CAESAR ENTERPRISES, INC.** a wholly owned subsidiary of  
7 Defendant **ILITCH HOLDINGS, INC.**, is and at all times relevant herein was, a corporation  
8 doing business in the state of California with its Southern California Regional Office located in  
9 the City of Anaheim, County of Orange. At all relevant times mentioned herein Defendant  
10 Little Caesar Enterprises, Inc. employed more than five employees and is engaged in interstate  
11 commerce within the meaning of California Government Code §12926.

12 4. The true names and capacities, whether individual, associate or  
13 otherwise, of Defendants sued herein as DOES 1 through 25, inclusive, are currently unknown  
14 to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff is informed  
15 and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE  
16 is legally responsible in some manner for the events and happenings referred to herein, and  
17 caused injury and damage proximately thereby to Plaintiff as hereinafter alleged. Plaintiff will  
18 seek leave of Court to amend this complaint to show the true names and capacities of the  
19 Defendants designated herein as DOES when the same have been ascertained.

20 5. Whenever in this complaint reference is made to "Defendants, and each of  
21 them," such allegation shall be deemed to mean the acts of each named Defendant acting  
22 individually, jointly, and/or severally.

23 6. Plaintiff is informed and believes, and based thereon alleges, that at all  
24 times mentioned herein, each of the Defendants named above was the agent, servant and  
25 employee, co-venturer and co-conspirator of each of the remaining Defendants, and was at all  
26 times herein mentioned, acting within the course, scope, purpose, consent, knowledge,  
27 ratification and authorization of such agency, employment, joint venture and conspiracy.  
28 Hereinafter Defendants **ILITCH HOLDINGS, INC.** and **LITTLE CAESAR**

1 **ENTERPRISES, INC.** and all DOE Defendants shall be jointly referred to as “Defendants” or  
2 “Little Caesar.”

3 7. In March 2014, Plaintiff Bernard was contacted by Sean Varvello, a  
4 Regional Trainer employed by Defendants. Mr. Varvello stated that he had read Mr. Bernard’s  
5 on-line resume and that Defendants were interested in employing him as a Restaurant Manager.  
6 Plaintiff interviewed with Mr. Varvello and was sent a formal offer letter on March 19, 2014.  
7 The offer letter states in relevant part that Mr. Bernard would be entitled to “health insurance  
8 and other benefits” after a 90-day waiting period following his first day of full-time  
9 employment.

10 8. Plaintiff Bernard accepted Defendants’ offer and his first day of work as a  
11 Manager Trainee was April 10, 2014. Plaintiff looked forward to a long and successful career  
12 with Defendants.

13 9. After approximately two weeks of employment Mr. Bernard submitted  
14 paperwork to Defendants’ corporate office to obtain health insurance benefits for himself and  
15 his husband.

16 10. On June 30, 2014, Plaintiff Bernard received his Blue  
17 Cross/Blue Shield card in the mail. He did not receive a duplicate card for his husband.

18 11. On July 1, 2014, Plaintiff Bernard telephoned Defendant Little Caesar’s  
19 Human Resources Department and explained to the female representative that he had not  
20 received an insurance card for his husband. The Human Resources representative told Plaintiff  
21 that, “Little Caesar’s does not provide benefits to same-sex spouses.” Plaintiff was also told  
22 that the company was in Michigan and that they did not have to provide such benefits.

23 12. As soon as Plaintiff Bernard got off the phone he sent a text message to  
24 his Area Manager, Robert Parsons. Mr. Bernard wrote that Defendants refusal to provide him  
25 with insurance benefits for his husband was a violation of California law. He wrote, “...I would  
26 appreciate receiving the same benefits as heterosexual employees of Little Caesar’s. Please  
27 advise.” Mr. Parsons responded that Mr. Bernard should talk to Human Resources.

28 13. Accordingly, Plaintiff Bernard telephoned Human Resources for a second time

1 on July 1<sup>st</sup>. He spoke to a second representative who confirmed the information that he had  
2 been provided with earlier that day.

3 14. That evening Plaintiff Bernard called Defendants' Ethics Hotline. He left  
4 a detailed message stating that he had been denied health insurance benefits for his husband.  
5 Plaintiff left his name and employee number.

6 15. On July 2, 2014, Plaintiff Bernard was contacted by an individual who  
7 said that she was following up on the ethics complaint he had made the prior day. Plaintiff  
8 again explained the situation set forth above. Plaintiff was told someone would get back to  
9 him.

10 16. On July 8, 2014, having heard nothing more from Defendants, Plaintiff  
11 Bernard again called the Ethics Hotline. He was told that a report of his complaint had been  
12 prepared and sent to Defendant Little Caesar. He was also provided with a report number, ILH-  
13 14-07-0001, but not a copy of the report.

14 17. On July 9, 2014, Plaintiff Bernard received a telephone call from Bridget  
15 Graham a Human Resources representative located in Defendant Little Caesar's Southern  
16 California Regional Office in Orange County. Ms. Graham confirmed to Plaintiff Bernard that  
17 Defendants did not provide same-sex spouse health insurance benefits.

18 18. Subsequent to his conversations with Defendants' Human Resources  
19 representatives, Plaintiff Bernard received a letter from Defendants dated July 8, 2014, in which  
20 they confirmed Plaintiff's same-sex spouse would not be provided with health insurance  
21 coverage. Specifically, the letter states in relevant part: "Spouse means the one person to whom  
22 you are legally married under the laws of the State in which you reside, including a common  
23 law Spouse, and **who is the opposite gender from you.**" (Emphasis added.)

24 19. As set forth above, Plaintiff complained both verbally and in writing that  
25 he was the victim of discrimination, specifically that he was being denied health insurance  
26 benefits for his same-sex spouse to whom he is legally married. Defendants, and each of them,  
27 advised Plaintiff that they only provide spousal health insurance benefits to opposite sex  
28 spouses. After he was advised by Defendants that they would not provide health insurance

1 benefits for his spouse, Plaintiff Bernard felt he had no viable option other than to  
2 constructively terminate his employment as he could no longer work for a company that  
3 blatantly discriminated against him. On July 24, 2014, Plaintiff sent written notice to  
4 Defendants advising them of his constructive termination on account of the Defendants' on-  
5 going discrimination against him.

6 20. On August 26, 2014 Plaintiff Bernard filed charges of sexual orientation  
7 discrimination against both Defendants with the California Department of Fair Employment  
8 and Housing ("DFEH") that he was subjected to discriminatory disparate treatment when  
9 Defendants', and each of them, refused to provide him with the same health insurance benefits  
10 as they provided to legally married heterosexual employees. A true and correct copy of the  
11 Charge of Discrimination is attached hereto as Exhibit "A" and incorporated herein by  
12 reference.

13 21. The DFEH issued a Right to Sue notice on August 26, 2014, authorizing  
14 this lawsuit, a copy of which is attached hereto as Exhibit "B" and incorporated herein by  
15 reference.

16 **FIRST CAUSE OF ACTION**

17 **(Sexual Orientation Discrimination, Government Code section 12940, et seq. By Plaintiff**  
18 **Against All Defendants)**

19 22. Plaintiff Bernard repeats and realleges by reference each and every allegation  
20 contained in paragraphs 1 to 21 and incorporates the same herein as though fully set forth.

21 23. Plaintiff Bernard is informed and believes, and based thereon alleges, that  
22 Defendants discriminated against him on the basis of his sexual orientation by subjecting him to  
23 disparate treatment and discrimination by refusing to provide him with the same health  
24 insurance benefits that a married heterosexual employee receives from Defendants after 90 days  
25 of employment on account of his sexual orientation as more fully set forth hereinabove.

26 24. Plaintiff Bernard is informed and believes, and based thereon alleges, that in  
27 addition to the practices enumerated above, Defendants, and each of them, have engaged in  
28 other discriminatory practices against him which are not yet fully known. At such time as said

1 discriminatory practices become known to him, Plaintiff will seek leave of Court to amend this  
2 complaint in that regard.

3 25. As a direct and proximate result of Defendants' willful, knowing and  
4 intentional discrimination against him, Plaintiff Bernard has been denied health insurance  
5 benefits for his spouse to whom he has been legally married for over six years. Plaintiff is  
6 thereby entitled to general and compensatory damages in amounts to be proven at trial.

7 26. Plaintiff Bernard is informed and believes, and based thereon alleges, that the  
8 outrageous conduct of Defendants described above was done intentionally with oppression and  
9 malice, and with a conscious disregard for his right to be free of discrimination, and with the  
10 intent, design and purpose of injuring him. Plaintiff is further informed and believes that  
11 Defendants, through their officers, managing agents and/or supervisors, authorized, condoned  
12 and/or ratified the unlawful conduct of all of the other Defendants named in this action. By  
13 reason thereof, Plaintiff is entitled to punitive or exemplary damages from all Defendants in a  
14 sum according to proof at trial.

15 27. As a further direct and proximate result of Defendants' violation of  
16 Government Code §12940, et seq., as heretofore described, Plaintiff Bernard has been  
17 compelled to retain the services of counsel in an effort to enforce the terms and conditions of  
18 the employment relationship with Defendants, and has thereby incurred, and will continue to  
19 incur, legal fees and costs, the full nature and extent of which are presently unknown to Plaintiff,  
20 who therefore will seek leave of Court to amend this Complaint in that regard when the same  
21 shall be fully and finally ascertained. Plaintiff requests that attorneys' fees be awarded pursuant  
22 to California Government Code §12965.

23 28. Defendants' policy to provide health insurance benefits only to the spouses of its  
24 heterosexual legally married employees is discriminatory on its face and in violation of California  
25 law. The wrongful conduct of Defendants as described above, unless restrained and enjoined, will  
26 cause irreparable damage and injury to Defendants' legally married gay and lesbian employees in  
27 California in that they will be unable to obtain health insurance benefits for their same-sex spouse.

28 29. Plaintiff Bernard has no adequate remedy at law for the injuries and damages

1 Plaintiff has and continues to suffer in the future unless Defendants' wrongful and unlawful  
2 conduct is restrained and enjoined, and they are ordered to provide equal benefits to all of their  
3 legally married California employees regardless of sexual orientation. No amount of money can  
4 compensate Plaintiff for the injuries described in this Complaint.

5 **SECOND CAUSE OF ACTION**

6 **(Constructive Wrongful Termination in Violation of Public Policy)**

7 30. Plaintiff Bernard repeats and realleges by reference each and every  
8 allegation contained in paragraphs 1 through 29 and incorporate the same herein as though  
9 fully set forth.

10 31. Plaintiff Bernard was subjected to discriminatory disparate treatment  
11 because of his sexual orientation. As set forth above, Plaintiff complained verbally and in  
12 writing that he was the victim of discrimination, specifically that he was being denied health  
13 insurance benefits for his same-sex spouse to whom he is legally married. Defendants, and  
14 each of them, advised Plaintiff that they only provide spousal health insurance benefits to  
15 legally married opposite sex spouses. After he was advised by Defendants that they refused to  
16 provide health insurance benefits for his same-sex spouse, Plaintiff Bernard felt he had no  
17 viable option other than to constructively terminate his employment as he could no longer work  
18 for a company that blatantly discriminated against him on account of his sexual orientation.

19 32. It is the public policy of the State of California, as expressed in the California  
20 Fair Employment and Housing Act, that employees shall not be subjected to disparate treatment  
21 on account of their sexual orientation.

22 33. As a direct and proximate result of Plaintiff's constructive termination in  
23 violation of the public policy, Plaintiff has suffered and will continue to extreme and severe  
24 mental anguish and emotional distress; and he may have to incur medical expenses for  
25 treatment by health professionals and for other incidental expenses. Plaintiff is thereby entitled  
26 to general and compensatory damages in amounts to be proven at trial.

27 34. Plaintiff is informed and believes, and based thereon alleges, that the outrageous  
28 conduct of Defendants described above was done with malice, fraud and oppression and with

1 conscious disregard for his rights and with the intent, design and purpose of injuring Plaintiff.  
2 Defendants, through its officers, managing agents and/or its supervisors, authorized, condoned  
3 and/or ratified the unlawful conduct of all of the other Defendants named in this action. By  
4 reason thereof, Plaintiffs are entitled to punitive or exemplary damages from Defendants in a  
5 sum according to proof at trial.

6 **WHEREFORE**, Plaintiff prays that judgment be entered in their favor  
7 and against Defendants as follows:

8 **AS TO THE FIRST CAUSE OF ACTION:**

- 9 1. That Plaintiff Bernard be awarded general and compensatory damages in an  
10 amount according to proof at trial;
- 11 2. That this Court issue a permanent injunction mandating that Defendants  
12 change their policy in order to provide equal health insurance benefits to their legally married  
13 California employees regardless of sexual orientation, including but not limited to spousal  
14 health insurance benefits;
- 15 3. That Plaintiff Bernard be awarded punitive damages in an amount according to  
16 proof at trial;
- 17 4. That Plaintiff Bernard be awarded reasonable attorneys' fees and costs of suit  
18 and interest incurred; and
- 19 5. That this Court award such other and further relief as the Court deems just and  
20 proper.

21 **AS TO THE SECOND CAUSE OF ACTION:**

- 22 1. That Plaintiff Bernard be awarded general and compensatory damages, including  
23 prejudgment interest, in an amount according to proof at trial;
- 24 2. That Plaintiff Bernard be awarded punitive damages in an amount according to  
25 proof at trial;
- 26 3. That this Court award such other and further relief as the Court deems just and  
27 proper.

28



1 DATED: August \_\_\_\_, 2014

ALLRED, MAROKO, & GOLDBERG

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

BY: \_\_\_\_\_  
GLORIA ALLRED  
Attorney for Plaintiff,  
**FRANK BERNARD**