Law Offices of
MIGUEL A. CUSTODIO, JR.
Attorney at Law

January 31, 2013

Rosey Spot 91105, LLC
VCorp Services CA, Inc.
c/o Shai Stern
5670 Wilshire Blvd., Suite 1530
Los Angeles, CA 90036

Re: NOTICE OF VIOLATION AGAINST ROSEY SPOT 91105, LLC, OF CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.6

Dear Mr. Stern and Appropriate Public Enforcement Agencies:

Rafael Delgado, Jr. ("Delgado") is a citizen of the state of California acting in the interest of the general public seeking to further, among other causes, the protection of the environment, toxics reduction, the promotion and improvement of human health, the improvement of workers and consumer rights, environmental education and corporate accountability. Mr. Delgado has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65" or "Act"), which is codified at Cal. Health & Safety Code §25249.5 *et seq.*

**Mr. Delgado has documented violations of Proposition 65 by Rosey Spot 91105, LLC, a California limited liability company (the "Violator"). Mr. Delgado has numerous photographs of the Violator's restaurant clearly indicating a lack of the Proposition 65 warning(s) required for the sale of alcoholic beverages. Along with the Certificate of Merit that is being sent to the Attorney General, Mr. Delgado has attached a sworn declaration attesting to the existence and authenticity of these photographs. These photographs are available to the Attorney General upon request.**

This letter serves to provide Mr. Delgado's notification of these violations to the Violator. Pursuant to §25249.7(d) of the statute, Mr. Delgado intends to bring an enforcement action sixty (60) days after effective service of this notice unless the appropriate public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

Information available to Mr. Delgado as of the date of this letter indicates that ongoing violations have occurred every day since July 26, 2012, at the Violator's Umami Burger located at 49 E. Colorado Blvd., Pasadena, CA 91105, and will continue every day until clear and reasonable warnings are provided to customers.

A copy of the Proposition 65 summary prepared by the Office of Environmental Health Hazard Assessment is attached, to the copy of this letter served to the Violator.

766 E. Colorado Blvd. Suite 108 Pasadena, California 91101
(213) 785-2909 (213) 785-2899 – Facsimile
dubey@custodiolaw.com www.custodiolaw.com

In the course of its business, the Violator knowingly and intentionally sells alcohol to its customers without first giving the following clear and reasonable warning to such individuals, as required by Title 22, CCR §12601(b)(1)(D)(2): "WARNING: Drinking Distilled Spirits, Beer, Coolers, Wine and Other Alcoholic Beverages May Increase Cancer Risk, and, During Pregnancy, Can Cause Birth Defects."

By doing so, the Violator has exposed consumers to the following chemicals without the proper required Proposition 65 warnings:1) Alcoholic beverages, when associated with alcohol abuse, which have been a listed carcinogen under Proposition 65 since 1988, and; 2) Ethyl alcohol in alcoholic beverages, which has been a listed carcinogen under Proposition 65 since 1987.

Mr. Delgado intends to file a private enforcement action as provided for in the Act for the alleged violations by the Violator, unless California agrees in an enforceable written instrument to: (1) recall the listed products so as to eliminate further exposures to the identified chemicals; or (2) affix clear and reasonable Proposition 65 warning labels; and (3) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65, Mr. Delgado is interested in seeking a constructive resolution to this matter, and invites violator, should it seek early resolution of this matter, to communicate directly with Delgado's attorneys. Such resolution will avoid further unwarned consumer exposures, as well as resource intensive litigation.

Please direct all questions concerning this notice to Mr. Delgado's attorneys, Vineet Dubey (dubey@custodiolaw.com) or Miguel A. Custodio, Jr.(custodio@custodiolaw.com), 766 E. Colorado Blvd., Ste 108, Pasadena, CA 91101, 213-785-2909.

Sincerely,

Miguel A. Custodio, Jr.
Law Offices of Miguel A. Custodio, Jr.

cc: Attorney General of California
cc: Los Angeles County District Attorney

Enclosures:
Proposition 65 Summary
Certificate of Merit
Certificate of Service

## CERTIFICATE OF SERVICE

I am over the age of 18 and not a party to this case. I am a resident of or employed in the county where the mailing occurred. My business address is 766 E. Colorado Blvd., Ste 108, Pasadena, CA 91101.

On the date shown below, I served the following:

1) 60-Day Notice of Intent to Sue Under Health and Safety Code section 25249.6
2) Certificate of Merit; Health and Safety Code Section 25249.7(d)
3) Certificate of Merit (Attorney General Copy); Factual information sufficient to establish the basis of the certificate of merit *(only sent to Attorney General)*
4) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65); A Summary

on the alleged violator listed below via First Class Certified Mail through the United States Postal Service by placing a true and correct copy in a sealed envelope, addressed to the entity's agent for service of process listed below and providing such envelope to a United States Postal Service Representative:

Rosey Spot 91105, LLC
VCorp Services CA, Inc.
c/o Shai Stern
5670 Wilshire Blvd., Suite 1530
Los Angeles, CA 90036

as well as providing copies of the notice to the public enforcers by placing a true and correct copy in a sealed envelope, addressed to the party listed below, and served as follows:

Office of the Attorney General
PO Box 70550
Oakland, CA 94612

Los Angeles County District Attorney
210 W. Temple St., 18th Floor
Los Angeles, CA 90012

I declare under penalty of perjury that under the laws of the State of California that the foregoing is true and correct.

January 31, 2013

Miguel A. Custodio, Jr.

**CERTIFICATE OF MERIT**
Health and Safety Code Section 25249.7(d)

**Re: Rafael Delgado Jr.'s Notice of Proposition 65 Violations by Rosey Spot 91105, LLC.**

I, Miguel A. Custodio, Jr., hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience, extensively reviewed Title 22, CCR §12601(b)(1)(D)(2), and have assembled evidence attached to the copy for the California Attorney General as Exhibits 1 and 2 to this Certificate of Merit regarding the lack of warnings for the listed chemical that is the subject of the notice.

4. Based on the information obtained; Title 22, CCR §12601(b)(1)(D)(2); and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.

5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2).

Dated: January 31, 2013

Miguel A. Custodio, Jr., Attorney at Law

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