

## SETTLEMENT AND RELEASE AGREEMENT

### PARTIES

This Settlement and Release Agreement (hereinafter this "Agreement"), is entered into by and among Ralph Delgado, an individual (hereinafter referred to as "Delgado" or "the Undersigned"), and GCI-MP, Inc., a California corporation (hereinafter referred to as "GCI-MP" or "Releasee") (together referred to as the "Settling Parties").

### RECITALS

A. Delgado alleges he visited GCI-MP's restaurant, Daily Grill, located at 612 S. Flower St., #220, Los Angeles, CA 90017 (the "Restaurant"), and alleges that he documented violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 codified at Cal. Health & Safety Code §25249.5 *et seq.* (hereinafter referred to as "Proposition 65"). Specifically Delgado alleges GCI-MP sells alcohol to its customers without first giving clear and reasonable warning to them as required by Proposition 65. GCI-MP denies these allegations and asserts that at all times it has and continues to have a Proposition 65 warning that gives clear and reasonable warnings to customers who purchase alcohol at the Restaurant.

B. Delgado sent a 60-Day Notice of Violation to GCI-MP regarding the alleged violations under Proposition 65 on January 4, 2013 (hereinafter referred to as the "Notice").

C. The Settling Parties wish to settle any and all disputes between them.

**NOW THEREFORE, IN CONSIDERATION OF THE PROVISIONS HEREINBEFORE AND HEREINAFTER SET OUT, THE PARTIES AGREE AS FOLLOWS:**

### TERMS AND CONDITIONS

1. **Recitals Incorporation.**

The Recitals as set forth above are incorporated herein by this reference and are made a part hereof as though set forth in full.

2. **Consideration.**

2.1 Payment.

GCI-MP agrees to make a payment in the total amount of three thousand dollars (\$3,000 USD) as follows: one hundred dollars (\$100 USD) in civil penalties and two

thousand nine hundred dollars (\$2,900) for attorney's fees, by check, cashier's check, or money order made payable to the Law Offices of Miguel A. Custodio, Jr. and Ralph Delgado. Said Payment will be made by GCI-MP within ten (10) days after Delgado provides GCI-MP with a signed copy of the final version of this Agreement and a legible, properly-executed W-9 Form as to the recipient of said Payment.

## 2.2 Proposition 65 Warnings.

GCI-MP warrants that a Proposition 65 warning that gives clear and reasonable warnings to customers who purchase alcohol is posted at the Restaurant and will not be removed unless otherwise permitted by law.

Delgado's attorneys will report the settlement to the California Attorney General's office as required by Proposition 65.

## 2.3 Consent Judgment.

At any time following the execution of this Agreement, GCI-MP may request in writing that Delgado's attorneys draft and file a complaint incorporating the terms of this Agreement into a proposed consent judgment, and seek the court approval of the consent judgment pursuant to Health & Safety Code § 25249.7. If requested, Delgado and his attorneys agree to reasonably cooperate with GCI-MP and use best efforts to support the entry of the terms of this Agreement as a consent judgment by a superior court in California in a timely manner.

Delgado and his counsel will incur the reasonable fees and costs incurred in drafting and filing the complaint, converting this Agreement into a proposed consent judgment, and seeking judicial approval of the settlement in an amount not to exceed \$3,000, exclusive of court costs.

## 2.4 No Admission of Liability.

It is understood and agreed that this settlement is the compromise of a disputed and doubtful claim, and that the payment made is not to be construed as an admission of liability on the part of any of the releasees and that these releasees deny liability therefore and intend merely to avoid litigation and to buy their peace.

## 3. **Confidentiality.**

As material consideration for entering into this Settlement Agreement, the Parties, and each of them, including their respective counsel, hereby agree that the terms of this settlement shall be confidential, including but not limited to the amounts paid for settlement. The release of any such information to any person shall be deemed

to be a violation of this Agreement. The Parties, however, are not restricted in providing any necessary information pertaining to this release with their attorneys, accountants, or other professionals wherein the release of such information is of a necessity, or as required by any order of a court of competent jurisdiction. The Parties acknowledging the difficulty of asserting damages for such a violation, acknowledge the need for a liquidated damages provision as a means of fixing the damages for such breach and not as a penalty. As such, for each such disclosure which amounts to a violation of this confidentiality agreement, the person(s) so disclosing agrees to pay to each of the offended parties liquidated damages in the amount of \$1,000.00 per violation.

#### 4. **Release.**

##### 4.1 General Release

This private, out-of-court settlement is on behalf of Delgado acting solely in his individual capacity. In order for this settlement to bind other members of the public, a complaint and consent agreement must be filed and approved by a superior court in California, in the manner described in Section 2.3 of this Agreement.

Delgado hereby forever releases and discharges GCI-MP and its respective successors, assigns, partners, affiliated or related entities, directors, officers, agents, employees, servants, representatives, indirectly or on behalf of the corporation, all other persons, firms associations, or corporations connected with each and all of the above, including, but not limited to their insurers and attorneys (the "Releasee") and from any and all claims, demands, causes of action, liens, damages, loss, costs, attorneys' fees or expenses of any kind or nature whatsoever, known or unknown which any of the parties may now have or may hereafter have against any and all of them by reason of any matter, cause or thing, arises out of or connected to the Notice including any and all allegations of violations under Proposition 65. This Agreement is intended to discharge the Releasee from any liability, known or unknown, present or future, in connection with the claims and disputes embodied in the Notice including any and all allegations of violations under Proposition 65 and stated in this Agreement, pursuant to the full performance of the terms and conditions in the manner prescribed herein.

This Release, however, does not otherwise relieve any of the Settling Parties from fulfilling any obligation under this Agreement.

4.2 *Civil Code* Section 1542 Waiver.

The Releases set forth in this Agreement are specifically intended as full and complete releases as specified herein, arising from the Incident, the Action and the Complaint of any nature whatsoever, for all damage, injury, loss, expense, including any consequential expense, loss or damage, whether the same be known or unknown, suspected or unsuspected or have appeared or developed and all rights under California *Civil Code* Section 1542, which provides as follows:

"A general release does not extend to claims which the creditor does not know or expect to exist in his or her favor at the time of executing the release which, if known by him or her, must have materially affected his or her settlement with the debtor."

Except as specifically provided herein, *Delgado waives and relinquishes any rights and benefits which he has or may have under Civil Code §1542* to the full extent that he may lawfully do so pertaining to the subject matter of this Agreement.

**5. Claims Not Assigned.**

Delgado represents and warrants that he has not sold, assigned, transferred, conveyed, or otherwise disposed of any claim, demand, or cause of action relating to any matter covered by this Agreement.

**6. Successors.**

The provisions of this Agreement shall be deemed to obligate, extend to and inure to the benefit of the legal successors, assigns, transferees, grantees and heirs of the respective Parties.

**7. Preparation of Agreement.**

7.1 Opportunity to Consult with Counsel.

The Settling Parties further acknowledge and represent that they have been given an opportunity to consult and be represented by, and have consulted and been represented by, attorneys of their own choice in connection with the execution of this Agreement, and have relied upon the advice of such attorneys in executing this Agreement.

## 7.2 Construction of Agreement.

The Settling Parties further acknowledge that they, by and through attorneys of their choice, have participated in the construction and drafting of this Agreement and acknowledge that none of the Settling Parties participated more than any other with respect to the construction and drafting of this Agreement.

## 7.3 Inducement and Reliance.

The Parties acknowledge that no promise, representation or warranty whatsoever, express or implied has been made that is not contained in this Agreement for the purposes of inducing any party to execute this Agreement.

## 7.4 Binding on Successors, Affiliates, and Subsidiaries.

The provisions of this Agreement shall inure to the benefit of, and shall be binding upon the heirs, executors, administrators, assigns, affiliated or related entities, subsidiaries, and successors in interest of each of the undersigned.

## 7.5 Integration.

This Agreement constitutes an integration of the entire understanding and agreement of the Parties with respect to the subject matter hereof. Any representations, warranties, promises, or conditions, whether written or oral, not specifically incorporated in this Agreement shall not be binding on any of the Settling Parties, and the Settling Parties acknowledge that they have not relied, in entering into this Agreement, on any representation, warranty, promise, condition not specifically set forth in this Agreement. All prior discussions, negotiations, and writings have been, and are, merged and integrated into, and are superseded by, this Agreement.

## 7.6 Assumption of Risk of Differences in Facts.

Other than the representations and warranties made herein, the Settling Parties acknowledge that, if the facts with respect to which this Agreement are executed are found hereafter to be different from the facts in that connection now believed by them to be true, each expressly accepts and assumes the risk of such possible differences in facts, and agrees that this Agreement shall be, and shall remain, effective, notwithstanding such differences in facts.

### 7.7 Counterparts and Facsimile Signatures.

This Agreement may be executed in counterparts and via facsimile signatures, each of which, when solely executed, shall be deemed an original, but all of which counterparts shall constitute one and the same instrument.

### 7.8 Headings.

The headings within this Agreement are for the purpose of reference only, and shall not limit or otherwise affect any of the terms or provisions of this Agreement.

### 7.9 Writing Required for Modification.

This Agreement, and any provision in it, may not be modified, waived, or amended in any way, except by a written agreement signed by all of the Settling Parties, expressly consenting to a specific modification or waiver.

## 8. **Enforcement.**

### 8.1 Governing Law.

This Agreement has been negotiated, drafted, and executed, and became effective, in the state of California, and shall in all respects be interpreted, enforced and governed by and under the laws of the State of California. In the event that any statute, judicial precedent or other laws of the State of California shall require or otherwise dictate that the laws of another state or jurisdiction be applied in any such action or proceeding, it shall be superseded by this paragraph and the remaining laws of the State of California shall nonetheless be applied in such action or proceeding.

### 8.2 Attorneys' Fees.

In the event that any party to this Agreement, or any person or entity acting for them, commences an action or proceeding to enforce any provision of this Agreement, including breach of confidentiality, or are required to defend any action or proceeding the defense to which is any provision of this Agreement, the unsuccessful Party or Parties agrees to pay the successful Party or Parties all recoverable attorneys' fees and costs allowed under *Code of Civil Procedure* Section 1033.5 which are incurred by the successful Party or Parties in any such action or proceeding.

### 8.3 Severability.

Should any provision of this Agreement be declared or determined by the aforementioned Court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provision shall not be deemed to a part of this Agreement.

9. Execution.

9.1 Counterparts.

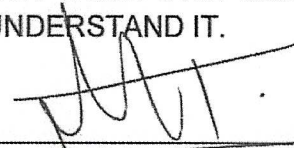
This Agreement can be executed in duplicate/ multiple counterparts, each of which shall constitute an original of this Agreement once each Party hereto has signed and delivered at least one such counterpart to all other Parties. This Agreement will be deemed fully executed and effective when it has been duly signed by all of the Parties named herein. Signatures may be sent by facsimile or electronic mail.

9.2 Authority to Execute.

Each of the individuals executing this Agreement warrants and represents that the individual has full authority to do so on behalf of the Party for whom that individual has signed.

BY SIGNING THIS AGREEMENT, THE PARTIES CERTIFY THAT THEY HAVE READ IT, THAT THEY HAVE CONSULTED WITH THEIR OWN LEGAL COUNSEL ABOUT ITS EFFECT, AND THAT THEY FULLY UNDERSTAND IT.


Dated: 6/4/2013

  
\_\_\_\_\_  
Ralph Delgado

Dated:

\_\_\_\_\_  
GCI-MP, Inc.  
Authorized Officer

APPROVED AS TO CONTENT AND FORM ONLY:

  
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Miguel A. Custodio, Jr., Esq.  
Law Offices Miguel A. Custodio, Jr.  
Attorneys for Ralph Delgado

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Tonya N. Malek, Esq.  
Bradley & Gmelich  
Attorneys for GCI-MP, Inc.

**9.2 Authority to Execute.**

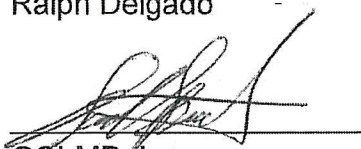
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Dated:

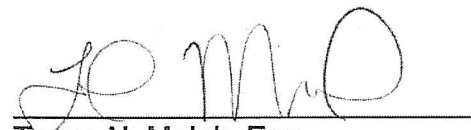
\_\_\_\_\_  
Ralph Delgado

Dated: 01/12/13

  
\_\_\_\_\_  
GCI-MP, Inc.  
Authorized Officer

APPROVED AS TO CONTENT AND FORM ONLY:

\_\_\_\_\_  
Miguel A. Custodio, Jr., Esq.  
Law Offices Miguel A. Custodio, Jr.  
Attorneys for Ralph Delgado

  
\_\_\_\_\_  
Tonya N. Malek, Esq.  
Bradley & Gmelich  
Attorneys for GCI-MP, Inc.