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September 15, 2022

VIA ELECTRONIC SUBMISSION

Natalie Palugyai
Acting Secretary
California Labor & Workforce Development Agency
800 Capital Mall, Suite 5000 (MIC-55)
Sacramento, CA 95814

Re: **Angel Perez v. Hilton Manor, LLC, Bright Sky Home Health Care, Inc.,
Bright Sky Hospice Care Inc., and Eleanor Iswinari Posner**
California Labor Code section 2698, *et seq.* violations

Dear Ms. Palugyai:

I am writing on behalf of aggrieved employee Angel Perez ("Perez"). This notice is being made to the Labor & Workforce Development Agency pursuant to the requirement of Labor Code section 2698 *et al.* that Perez, and other aggrieved employees, who were employed by Hilton Manor, LLC, Bright Sky Home Health Care, Inc., Bright Sky Hospice Care Inc., and/or Eleanor Iswinari Posner as well as Does 1-10 who may also operate as part of Bright Sky but are as yet unidentified (herein all of the above are collectively referred to as "Bright Sky"), as non-exempt hourly employees in California (the "Aggrieved Employees").

Perez, and each of the Aggrieved Employees described above, suffered from one or more of the following Labor Code violations by their current or former employer Bright Sky. All of the entities and individuals in Bright Sky noted above are joint employers of the Aggrieved Employees both statutorily and under the common law with shared control over all conditions of employment, payments of wages, and management of the work of the Aggrieved Employees. Bright Sky is owned and controlled by Eleanor Iswinari Posner who personally sets all conditions of employment, makes all employment decisions, sets all employment policies, sets all wages, and personally enacts all decisions of consequence as well as serves as agent for service of process of all Bright Sky entities. As such Eleanor Iswinari Posner is a person acting as an employer under Labor Code sections 558 and 558.1. Furthermore, Bright Sky is an integrated enterprise which employing the same employees with shared ownership, payroll processing, conditions of employment, human resources, employee relations, common decision making, and common management. Bright Sky uses all of the Aggrieved Employees interchangeably moving them between locations freely in order to serve their business needs.

Perez and the other Aggrieved Employees' employment with Bright Sky was governed by the California Wage Orders, and California Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 558, 558.1, 1174, 1175, 1194, 1194.2, 1197, 1197.1, 1198 and 2802.

Perez worked for Bright Sky as a non-exempt hourly employee in San Bernardino County California at multiple Bright Sky locations. Perez and the other Aggrieved Employees were not paid overtime for all time worked after 8 hours of work in a workday/shift, 7 workdays in a workweek, and/or 40 hours worked in a workweek. For many years Bright Sky did not pay overtime until ten (10) hours and/or twelve (12) hours were worked in a workday without a valid alternative workweek schedule ("AWS"). On around November of 2020 Bright Sky held sham AWS elections which failed to abide by the requirements set forth in the IWC Wage Orders and Labor Code. Bright Sky's AWS elections failed to provide the required disclosures, required notice, meeting procedures, and secret ballot procedures, as well as other formalities required by the IWC Wage Orders for the election to be valid. Bright Sky has used these invalid AWS elections to avoid paying statutory overtime to Perez and the other Aggrieved employees. Furthermore, Bright Sky failed to include all non-hourly compensation, such as bonuses and shift differentials into the regular rate of pay for the purposes of correctly calculating overtime and failed to correctly pay all overtime earned when Perez and the other Aggrieved Employees worked at multiple rates of pay in a single workweek.

Perez and the other Aggrieved Employees also were not provided with legally adequate meal periods and rest breaks and Bright Sky does not pay premiums for non-complaint meal periods and rest breaks. If any premiums were ever paid, Bright Sky did not pay any premiums at the Aggrieved Employees' correct regular rate of pay/compensation. Perez and the other Aggrieved Employees are not provided with duty free meal periods and rest breaks as they are always on call for Bright Sky's clients and supervisors, and could not leave the premises for a meal period or rest break. Bright Sky's clients are typically elderly or infirmed and Bright Sky chooses not to provide enough staff to provide legally sufficient duty free meal periods and rest breaks for the Aggrieved Employees in order to increase profits. Additionally, when Perez and the Aggrieved Employees work more than 10 hours in a workday, they are not provided with a third paid duty free rest break, or a second meal period, as required by California law. These policies are in violation of Labor Code §§ 226.7, 512, 1198, and the IWC Wage Orders.

Perez is informed and believes that it is Bright Sky's uniform practice and procedure to not reimburse its non-exempt employees for the use of their personal cellular devices and associated cellular service and/or data service plans which they use in the performance of their job, for the purchase and upkeep of their uniforms, and for the purchase of equipment and miscellaneous supplies necessary to their job duties but not provided by Bright Sky. Perez and the other Aggrieved Employees are expected to use their personal cellular telephones to communicate with Bright Sky management/staff and to help its clients as part of their job duties as discussed above.

Perez is also informed and believes that Bright Sky's above mentioned uniform policies and procedures are unlawful and have further caused Bright Sky to intentionally provide incorrect wages statements which do not accurately display all of the information required by Labor Code § 226(a), including but not limited to not accurately providing the gross wages earned, total hours worked by the employees, net wages earned and all hourly rates in effect in the pay period and the corresponding correct number of hours worked at each hourly rate by the employee. This has also resulted in a failure to keep accurate employment records under Labor

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Code §§ 226(b), 1174, and 1175, which Bright Sky already fails to keep for the time required by statute. Bright Sky additionally has a policy of not paying all wages at termination by waiting several days or until the next regularly scheduled payday to pay termination wages. Bright Sky's failure to pay all earned overtime and premium wages also results in a failure to pay all wages at termination. All of these policies and practices are in violation of Labor Code sections 201, 202(a), 203, 226(a) and (b), 226.7, 510, 512, 558, 558.1, 1174, 1175, 1194, 1194.2, 1197, 1197.1, 1198 and 2802, as well as the relevant IWC Wage Orders.

Sincerely,

GLEASON & FAVAROTE LLP

A handwritten signature in black ink, appearing to read 'Torey Favarote', with a long horizontal line extending to the right.

Torey Joseph Favarote

TJF/dd

cc Hilton Manor, LLC, Bright Sky Home Health Care, Inc., Bright Sky Hospice Care Inc., and Eleanor
Iswinari Posner