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September 27, 2016

***Via Certified Return Receipt U.S. Mail and Email***

Thom Gilday  
BrightStar Franchising, LLC  
1790 Nations Drive  
Suite 105  
Gurnee, IL 60031  
[thom@BrightStarcare.com](mailto:thom@BrightStarcare.com)

**Re: 2016 Early Renewal Proposal to Franchisees**

Dear Mr. Gilday:

Dady & Gardner, P.A. represents the BrightStar Franchisees listed on the attached **Exhibit A** in connection with evaluating Franchisor BrightStar Franchising, LLC's ("BrightStar" or "Franchisor") recent Early Renewal Proposal.

These Franchisees have some interest in the idea of Early Renewal, but they have some significant concerns about the 2016 Franchise agreement proposed by BrightStar and do not want to sign the Early Renewal Addendum and 2016 Franchise Agreement as currently proposed. Some of the concerns that the Franchisees have include, but are not limited to, the following:

**1. Increased Fees and Additional Fees**

While the Early Renewal Addendum does provide some reduction for some fees from the level set forth in the standard form 2016 Franchise Agreement, many Franchisees are paying for lower royalty fees currently than are being proposed. It would be a significant cost increase for these Franchisees to renew early. There are also additional "nickel and dime" fees being proposed which add additional costs.

**2. Transfers and Fees (Including a "Lead" Fee)**

Section 12.4.7 of the 2016 Franchise Agreement provides different fees depending upon the transfer involved (e.g. transfers of more or less than 50%). Franchisees are also required to pay the Franchisor a "Lead" fee in certain circumstances of 10% of the sale price. There does not seem to be any good reason for this new "lead" fee, particularly since it applies to any sale to

an existing Franchisee.

### **3. Lost Future Royalties**

Section 14.2 is an extremely unfavorable addition to the 2016 Franchise Agreement. If a Franchisee were to shut down his/her business without the right to do so (or the Franchisor were to terminate the Agreement due to Franchisee's breach), the Franchisor could attempt to sue Franchisee for all future royalties the Franchisor would have received over the remaining term of the Agreement (*i.e.*, the royalties Franchisee would have paid, less any monies the Franchisor would have saved by not having to perform).

### **4. "Reasonableness" Language Regarding Changes to the Operations Manual Has Been Removed**

Section 7.3 in the 2016 Franchise Agreement removes the requirement found in, for example, the 2009 Franchise Agreement that any changes to the Operations Manual must be applied reasonably, and applied in a non-discriminatory manner. Here, BrightStar is attempting to authorize itself to make unreasonable changes to the franchise system.

### **5. Protection Against Web-based Encroachment ("Care Together" or other services)**

The Franchisees are concerned that allowing BrightStar's "web-based" services to compete with Franchisees could be damaging to the Franchisees' bottom line. Perhaps we could discuss why the Franchisor wants/needs to compete so directly in this manner.

### **6. Staffing and Hiring in Conjunction with Training and Conferences**

Section 3.1.10 in the 2016 Franchise Agreement now includes different "major roles" for the operation of the franchise, including a Director of Nursing, branch/operations manager, and a sales person. Section 3.1.10 in the 2016 Franchise Agreement also includes a requirement that Franchisee complete training tracks within the first 12 months of signing, and that each of the employees hired to fill the positions of the "major roles" must complete training. These new "major role" employees must also attend all Branch Leadership Conferences at Franchisee's expense. *See* 2016 Franchise Agreement § 6.19; FDD Item 6 (noting fees of \$2,000 and \$1,000 per person for the Annual Conference and the Branch Leadership Conference, respectively).

In addition, Section 6.6.1 requires Franchisee, and Franchisee's employees in "major roles" such as Director of Nursing and sales personnel to complete training programs at Franchisee's expense. These training requirements apparently apply even if Franchisee is merely signing the Early Renewal Agreement and is already operating a franchise.

Section 6.12 in the 2016 Franchise Agreement also now requires Franchisee to maintain a 24 hour live client service support staff.

## **7. Purchases**

Section 6.11.1 in the 2016 Franchise Agreement further allows the Franchisor or its affiliates to be the only approved supplier of any item *and* that Franchisee will pay the then-current price, which may be higher than the cost of other or similar supplies and products on the market. This addition to the 2016 Franchise Agreement may greatly affect Franchisees' bottom line.

## **8. Advertising and Marketing**

Section 8.1 in the 2016 Franchise Agreement now includes a provision allowing the Franchisor to use the General Marketing Fund to cover costs and expenses associated with the Annual Conference and branch leadership conference. This may result in lesser advertising on behalf of the brand generally.

## **9. Termination**

Section 13.2.6 in the 2016 Franchise Agreement contains a new provision ("If Franchisor sends Franchisee more than 2 notices for failure to achieve Annual Performance Standards during the term of this Agreement.") *See also* Section 1.5.1 – Franchisor may terminate if Franchisee fails to meet the Annual Performance Standard more than two times during the term of the Agreement.

## **10. Indemnification**

Section 19.1 of the 2016 Franchise Agreement now provides that Franchisor has no duty to mitigate its losses.

## **11. National Accounts – Mandatory Services**

Sections 1.7 and 6.9.8 of the 2016 Franchise Agreement require Franchisees to service National Accounts, and Section 13.4.2 provides that failure to service National Accounts is grounds for termination. Currently Franchisees have discretion on their handling of National Accounts. Handling all National Accounts may impose a significant burden on Franchisees.

## **12. Individual Franchisees have certain individual issues that may need addressing that are either site-specific or business specific.**

We believe that the Early Renewal Proposal offers an opportunity for the parties to

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discuss their respective business interests and try to come up with an amended Early Renewal Addendum that would be acceptable to most (if perhaps not all) Franchisees in the BrightStar system. We would like the opportunity to engage with the Franchisor and/or your counsel and discuss these issues.

Further, we do not see this as an adversarial process, but, instead, we see it as a way for the Franchisees and the Franchisor to reach a mutually agreeable resolution that serves everyone's interest. The Franchisees are under no obligation to accept the Early Renewal Proposal, but, since there appears to be some value to the Franchisor in getting folks to renew in advance, we would like to discuss whether Early Renewal makes both business sense and legal sense for the Franchisees who are represented by Dady & Gardner.

Please take some time to review the issues we have set forth and let me know whether the Franchisor is interested in engaging in discussions about the Franchisees' stated issues and how best to resolve them. Thank you.

Sincerely,  
DADY & GARDNER, P.A.

Jeffery S. Haff

JSH/jmc  
Enclosure  
cc: Franchisees (Exhibit A)  
Ms. Shelly Sun