

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS**

 LISA SIMMONS)
 and KELLY PETERSON-SMALL,)
 individually and on behalf of all others)
 similarly situated,)
)
 Plaintiffs,)
)
 v.)
)
 ASSISTCARE HOME HEALTH)
 SERVICES, LLC, d/b/a Preferred Home)
 Care of New York/Preferred Gold,)
)
 Defendant.)

Index No. 511490/2021

Judge: Hon. Larry D. Martin

**DECLARATION OF GARY M. KLINGER IN SUPPORT OF PLAINTIFFS’
UNOPPOSED MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

I, Gary M. Klinger, being competent to testify, make the following declaration based on my personal knowledge, and where stated, upon information and belief. I declare:

1. I am an adult, I have personal knowledge of the facts stated herein, and I am competent to so testify.

2. I am currently a partner of the law firm Milberg Coleman Bryson Phillips Grossman, PLLC (“Milberg”). I am counsel at Milberg for the proposed Settlement Class.¹ I submit this declaration in support of Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Action Settlement (“Motion for Preliminary Approval”). Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called upon to do so. A true and correct copy of the Settlement Agreement (“Settlement

¹ The capitalized terms used in this Declaration shall have the same meaning as defined in the Settlement Agreement, except as may otherwise be indicated.

Agreement”) is attached to the Motion for Preliminary Approval as **Exhibit 1**. Included with the Agreement are true and correct copies of following sub-exhibits:

Sub-Exhibit A: Short Form Notice

Sub-Exhibit B: Long Notice

Sub-Exhibit C: Claim Form

Sub-Exhibit D: [Proposed] Preliminary Approval Order

Sub-Exhibit E: [Proposed] Final Order and Judgment

Counsel Qualifications

3. I have extensive experience prosecuting complex class actions, especially in data breach litigation. I have been licensed to practice law in the State of Illinois since 2010, am a member of the bars of numerous federal district and appellate courts, and have decades of litigation and class action experience.

4. I have extensive experience in class action litigation generally and data breach class actions in particular. My experience, and that of my law partners, is described below.

5. Milberg Attorneys have served as Lead Counsel, Co-Counsel, or Class Counsel on hundreds of complicated and complex class actions. See Milberg Firm Resume, Exhibit A.

6. These cases recently include cutting-edge litigation, including: *In re Dealer Management Systems Antitrust Litigation*, Case No. 1:18-cv-00864 (N.D. Ill. 2018) (appointed co-lead counsel; partial settlement of \$29.5 million, case on-going); *In re Seresto Flea and Tick Collar Marketing, Sales Practices, and Products Liability Litigation*, Case No. 1:21-cv-04447 (N.D. Ill. 2021) (appointed co-lead counsel; case on-going); and *Carder v. Graco Children’s Products, Inc. et al.*, Case No. 2:20-cv-00137 (N.D. Ga. 2020) (appointed interim co-lead counsel; case on-going).

7. With respect to privacy cases, Milberg is presently litigating more than fifty (50) cases across the country involving violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.*, privacy violations, data breaches, and ransomware attacks. Milberg Attorneys have served as Lead Counsel, Co-Counsel, or Class Counsel on data breach and privacy litigations, including *In re Blackbaud, Inc. Consumer Data Security Breach Litigation*, MDL 2972, Case No. 3:20-mn-02972 (D.S.C. 2020) (appointed co-lead counsel; case on-going).

8. Milberg Attorneys have also participated in other data breach and privacy litigation, recently, which includes: *Veiga, et al. v. Respondus, Inc.*, Case No., 1:21-cv-02620 (N.D. Ill. 2021); *Dickerson v. CDPQ Colonial Partners, L.P., et. al*, Case No. 1:21-cv-02098 (N.D. Ga. 2021); *In re Wawa, Inc. Data Security Litigation*, 2:19-cv-06019 (E.D. Pa. 2019); *Whalen v. Facebook, Inc.*, Case No.4:20-cv-06361 (N.D. Cal. 2020); and *K.F.C. v. Snap, Inc.*, No. 21-2247 (7th Cir. 2021).

9. Milberg Attorneys were Co-Lead Counsel in *In re Department of Veterans Affairs (VA) Data Theft Litigation*, No. 1:06-MC-00506, 2007 WL 7621261 (D.D.C. Nov. 16, 2007) (unlawful disclosure of PPI of 28.5 million military veterans and active-duty personnel; \$20 million settlement fund).

10. Milberg Attorneys were court-appointed Lead Counsel in *In re Google Buzz Privacy Litigation*, No. C 10-00672 JW, 2011 WL 7460099 (N.D. Cal. June 2, 2011) (\$10 million settlement fund in case arising for unauthorized disclosure or personal information).

11. Milberg Attorneys have also served as Lead Counsel, Co-Counsel, or Class Counsel on dozens of class actions ranging from defective construction materials, *e.g.*, defective radiant heating systems, siding, shingles, and windows, to misrepresented and recalled products,

e.g., dog food, prenatal vitamins, to environmental incidents, such as the Exxon Valdez, BP Oil Spill.

12. It is noteworthy that, just in the time since 2020 through the present, I (either individually, or as a member of the law firms in which I have been a partner during that timeframe) have been appointed class counsel in a number of data breach and/or data privacy cases, including, but not limited to, the following:

- a. *Kenney et al. v. Centerstone of America, Inc.*, Case No. 3:20-cv-01007 (M.D. Tenn.) (appointed co-class counsel in data breach class action settlement involving over 63,000 class members; final approval granted Aug. 2021);
- b. *Baksh v. Ivy Rehab Network, Inc.*, Case No. 7:20-cv-01845-CS (S.D.N.Y.) (class counsel in a data breach class action settlement; final approval granted Feb. 2021);
- c. *Mowery et al. v. Saint Francis Healthcare System*, Case No. 1:20-cv-00013-SRC (E.D. Mo.) (appointed class counsel; final approval granted Dec. 2020);
- d. *Chatelain et al. v. C, L and W PLLC d/b/a Affordacare Urgent Care Clinics*, Case No. 50742-A (42nd District Court for Taylor County, Texas) (appointed class counsel; settlement valued at over \$7 million; final approval granted Feb. 2021);
- e. *Jackson-Battle v. Navicent Health, Inc.*, Civil Action No. 2020-CV-072287 (Superior Court of Bibb County, Georgia) (appointed class counsel in data breach case involving 360,000 patients; final approval granted Aug. 2021);
- f. *Bailey v. Grays Harbor County Public Hospital District et al.*, Case No. 20-2-00217-14 (Grays Harbor County Superior Court, State of Washington) (appointed class counsel in hospital data breach class action involving approximately 88,000 people; final approval granted Sept. 2020);
- g. *Richardson v. Overlake Hospital Medical Center et al.*, Case No. 20-2-07460-8 SEA (King County Superior Court, State of Washington) (appointed class counsel in data breach case, final approval granted September 2021);
- h. *Klemm et al. v. Maryland Health Enterprises Inc.*, Case No. C-03-CV-20-022899 (Circuit Court for Baltimore County, Maryland) (appointed class counsel; final approval granted November 2021);

- i. *In re: GE/CBPS Data Breach Litigation*, 1:2020-cv-02903, Doc. 35 (S.D.N.Y.) (appointed co-lead counsel in nationwide class action);
- j. *Nelson, et al. v. Idaho Central Credit Union*, No. CV03-20-00831 (Bannock County, Idaho) (appointed co-lead counsel in data breach class action involving 17,000 class members; granted final approval of settlement valued at \$3.3 million);
- k. *In Re: Canon U.S.A. Data Breach Litigation*, Master File No. 1:20-cv-06239-AMD-SJB (E.D.N.Y.) (appointed co-lead counsel);
- l. *Suren et al. v. DSV Solutions, LLC*, Case No. 2021CH000037 (Circuit Court for the Eighteenth Judicial Circuit of DuPage County, Illinois) (appointed Settlement Class Counsel, final approval granted Sept. 27, 2021);
- m. *Chacon v. Nebraska Medicine*, Case No. 8:21-cv-00070-RFR-CRZ (D. Neb.) (appointed class counsel in data breach settlement, final approval granted Sept. 2021).
- n. *Aguallo et al v. Kemper Corporation et al.*, Case No. 1:21-cv-01883 (N.D. Ill.) (appointed Co-lead Counsel, final approval granted of \$17.1 million class settlement);
- o. *In re: Herff Jones Data Breach Litigation*, Master File No. 1:21-cv-1329-TWP-DLP (S.D. Ind.) (appointed co-lead counsel in data breach involving over 1 million persons; preliminary approval of \$4.35 million settlement granted Jan. 2022);
- p. *In Re: CaptureRx Data Breach Litigation*, No. 5:21-cv-00523-OLG (W.D. Tex.) (appointed co- lead counsel in data breach case involving over 2.4 million class members; preliminary approval of \$4.75 million settlement granted Feb. 2022);
- q. *In re Arthur J. Gallagher Data Breach Litigation*, No. 1:21-cv-04056 (N.D. Ill.) (appointed co- lead counsel in data breach case involving over 3 million class members);
- r. *Heath v. Insurance Technologies Corp.*, No. 21-cv-01444 (N.D. Tex.) (\$11 million settlement for a major data breach involving more than 4 million consumers).
- s. *Hough v. Navistar, Inc.*, Case No.: 2021L001161 (Ill. 18th Jud. Cir. Crt., DuPage Cnty.); (appointed co-lead class counsel; final approval granted May 2022);

- t. *Clark v. Mercy Hospital, et al*, Case No. CVCV082275 (Iowa Dist. Crt, Johnson Cnty.) (appointed class counsel; final approval granted July 2022);
- u. *Myschka, et al v. Wolfe Clinic, P.C. d/b/a Wolfe Eye Clinic*, (Iowa Dist. Crt., Marshall Cnty.) (appointed class counsel; final approval granted June 2022);
- v. *Devine, et al v. Health Aid of Ohio, Inc.*, (Ohio Court of Common Pleas, Cuyahoga Cnty.) (appointed class counsel; final approval granted September 2022);
- w. *Davidson v. Healthgrades Operating Company, Inc.*, Case No. 1:21-cv-01250-RBJ (D. Colo.), (appointed class counsel; final approval granted August 2022);
- x. *Bodie v. Capitol Wholesale Meats, Inc.*, Case No. 2022CH000020 (Ill. 18th Jud. Cir. Crt., DuPage Cnty.) (appointed class counsel; final approval granted March 2022);
- y. *Culp v. Bella Elevator LLC*, Case No. 2021-CH-00014 (Ill. 10th Jud. Cir. Crt., Peoria Cnty.) (appointed class counsel; final approval granted May 2022);
- z. *Cain, et al. v. OSF Healthcare*, Case No. 21-L-00231 (Circuit Court for the Tenth Judicial Circuit of Peoria County, Illinois) (appointed settlement class counsel; preliminary approval granted September 2022);
- aa. *Nelson, et al. v. Bansley & Kiener*, Case No. 2021-CH-06274 (Ill. Cir. Ct., Cook Cnt'y) (appointed class counsel; preliminary approval granted August 2022);
- bb. *Steen v. The New London Hospital Association, Inc.*, Civil Action No. 217-2021-CV-00281 (Merrimack Superior Court, New Hampshire) (appointed class counsel; preliminary approval granted September 8, 2022);
- cc. *Summers II v. Sea Mar Community Health Ctrs.*, Case No. 22-2-00773-7 SEA (Wash. Sup. Ct., King Co.) (appointed class counsel; preliminary approval granted August 2022);
- dd. *In re Forefront Data Breach Litigation*, Master File No. 1:21-cv-00887-LA (E.D. Wisc.) (appointed settlement class counsel; preliminary approval granted October 2022);
- ee. *Engle v. Talbert House*, Case No.: A2103650 (Court of Common Pleas, Hamilton County, Ohio) (appointed class counsel; preliminary approval granted August 2022);

- ff. *Cain et al. v. OSF Healthcare*, Case No. 21-L-00231 (Tenth Judicial Circuit, Peoria County, Illinois (appointed Class Counsel; preliminary approval granted September 1, 2022));
- gg. *Henderson et al. v. San Juan Regional Medical Center*, Case No. D-1116-CV-2021-01043 (11th Jud. Dist. Ct., County of San Juan, NM) (appointed class counsel; preliminary approval granted October 13, 2022);
- hh. *Cathy Shedd v. Sturdy Memorial Hospital, Inc.*, Civ. Action No: 2173 CV 00498 (Mass. Sup. Ct. Dept.) (appointed class counsel; preliminary approval granted October 17, 2022), and;
- ii. *Hawkins et al. v. Startek, Inc.*, Case No. 1:22-cv-00258-RMR-NRN (USDC CO)(appointed class counsel; preliminary approval granted October 21, 2022).

13. I have been appointed by state and federal courts to act as Class Counsel for millions of consumers and recovered hundreds of millions of dollars for consumers throughout the country. Presently, I am lead or co-lead counsel in more than thirty (30) active class action lawsuits pending in state and federal courts across the country.

14. Indeed, I recently obtained final approval of a class-wide settlement for a major data breach class action involving more than six million consumers. See *Carrera Aguallo v. Kemper Corp.*, Case No. 1:21-cv-01883 (N.D. Ill. Oct. 27, 2021) (where I, as appointed co-lead counsel, obtained preliminary approval of a \$17.6 million dollar settlement to resolve similar data breach class action claims against Kemper Corporation in a case involving more than six million class members).

15. I presently serve as one of two Court-appointed Lead Counsel in the data breach case, *In re Canon U.S.A. Data Breach Litigation*, No. 1:20-cv-06239-AMD-SJB (S.D.N.Y. filed Dec. 23, 2020).

16. I was also appointed Co-Lead Counsel in the data breach case, *In re: Herff Jones Data Breach Litigation*, Master File No. 1:21-cv-1329-TWP-DLP (S.D. Ind.), which involved more than one million class members and was finally approved on a class-wide basis for a \$4.35 million settlement.

17. I also served as co-lead counsel in the consolidated data breach litigation styled, *In Re: CaptureRx Data Breach Litigation*, No. 5:21-cv-00523-OLG (W.D. Tex.), which involved more than 2.4 million class members and was finally approved on a class-wide basis for a \$4.75 million settlement.

18. I was also recently as appointed co-lead counsel to represent more than three million class members in another major data breach class action in the Seventh Circuit. *See In re Arthur J. Gallagher Data Breach Litig.*, No. 1:21-cv-04056 (N.D. Ill.).

19. I have successfully litigated privacy class actions through class certification. *In Karpilovsky v. All Web Leads, Inc.*, No. 17 C 1307, 2018 WL 3108884, at *1 (N.D. Ill. June 25, 2018), where I certified, over objection, a nationwide privacy class action involving more than one million class members.

20. In a recent nationwide privacy class settlement hearing in the U.S. District Court for the Northern District of California, Judge Richard Seeborg personally commended me for having achieved “quite a substantial recovery for class members.” Judge Seeborg further stated he could not recall any class action case where “the amounts going to each class member were as substantial” as that obtained by me (and my co-counsel).

21. In addition to concentrating my practice on class action litigation involving consumer, privacy, and product liability matters, I also make substantial efforts to stay apprised of the current law on these issues. In recent years, I have attended various legal training seminars and

conferences, such as the dri™ conference for Class Actions, The Consumer Rights Litigation Conference and Class Action Symposium, as well as attended various seminars offered by Strafford on class action issues.

22. I am also a member of the International Association of Privacy Professionals and a Certified Information Privacy Professional (CIPP/US).

23. I graduated from the University of Illinois at Urbana-Champaign in 2007 (B.A. Economics), and from the University of Illinois College of Law in 2010 (J.D., cum laude). While at the U of I College of Law, I was a member of, and ultimately appointed as the Executive Editor for the Illinois Business Law Journal. My published work includes: *The U.S. Financial Crisis: Is Legislative Action the Right Approach?*, Ill. Bus. L. J. (Mar. 2, 2009).

24. I am presently pursuing my Master of Laws (LLM) in Data Privacy and Cybersecurity from the University of Southern California Gould School of Law.

25. I became licensed to practice law in the State of Illinois in 2010 and am a member of the Trial Bar for the Northern District of Illinois, as well as the U.S. Bankruptcy Court for the Northern District of Illinois. Additionally, I am admitted to practice in federal courts across the country, including, but not limited to, the U.S. District Courts for the District of Colorado, the Central District of Illinois, the Northern District of Illinois, Northern District of Indiana, Southern District of Indiana, Eastern District of Michigan, and the Eastern District of Texas.

26. My years of experience representing individuals in complex class actions—including data breach actions—contributed to an awareness of Plaintiffs' settlement leverage, as well as the needs of Plaintiffs and the proposed Settlement Class. I believe that our clients would ultimately prevail in the litigation on a class-wide basis. However, I am also aware that a

successful outcome is uncertain and would be achieved, if at all, only after prolonged, arduous litigation with the attendant risk of drawn-out appeals.

27. In the sections that follow, I will detail the hard-fought negotiations that resulted in the Agreement now before the Court for preliminary approval. As described below, the Settlement provides significant relief to Members of the Settlement Classes, and I strongly believe that it is favorable for the Settlement Class. It is, in the opinion of the undersigned, fair, reasonable, adequate, and in the best interests of the Settlement Class Members, and is and worthy of preliminary approval.

Initial Investigation and Communications

28. This is a putative class action brought by Plaintiffs Lisa Simmons and Kelly Peterson-Small (collectively, “Plaintiffs” or “Class Representatives”), individually and on behalf of all others similarly situated (the “Settlement Class”), against Defendant Assistcare Home Health Services, LLC, d/b/a Preferred Home Health Care of New York/Preferred Gold (“Preferred Home”) arises out of an alleged cyberattack and data breach, which allowed an unauthorized third-party cybercriminal to view, access, and likely exfiltrate the personally identifiable information (“PII”) and protected health information (“PHI”) of Preferred Home’s current and former patients and employees from January 8 through January 10, 2021 (the “Data Breach”). Preferred Home allegedly detected the intrusion on January 9, 2021 and notified Settlement Class Members about the Data Breach beginning March 10, 2021.

29. After receiving notice that their PII and PHI Personal Information had been impacted by the Data Breach, Plaintiffs retained my firm.

30. I and my team vigorously and aggressively gathered all the information that was available regarding Preferred Home and the alleged Data Breach—including publicly-available

documents concerning announcements of the Data Breach and notice of the Data Breach to Preferred Home's current and former patients and employees.

31. The initial investigation into the facts and circumstances of the alleged Data Breach revealed that the cyberattack against Preferred Home likely involved the PII and PHI of some of its current and former current and former patients and employees that was contained in Preferred Home's computer network.

Procedural Posture

32. After an initial investigation, I, along with other members of my team, filed a Class Action Complaint (the "Complaint") in the Supreme Court of the State of New York for the County of Kings on behalf of Plaintiffs, individually and on behalf of others similarly situated, on May 14, 2021. (NYSEF Doc. No. 1.) Plaintiffs alleged causes of action for: (1) Negligence; (2) Breach of Implied Contract; (3) Violation of the New York General Business Law, § 349; (4) Invasion of Privacy; and (5) Breach of Confidence. *Id.* Plaintiffs alleged, among other things, which Preferred Home failed to take adequate measures to safeguard and protect their and other putative Settlement Class Members' PII and PHI and failed to disclose that Preferred Home's computer systems were susceptible to a cyberattack. *Id.*

33. On June 30, 2021, Preferred Home filed a Motion to Compel Arbitration, to Stay Action or to Dismiss Complaint, arguing that Plaintiff Peterson-Small's claims were subject to binding arbitration and that the entire action should be stayed pending the final outcome of that arbitration. (NYSCEF Doc. No. 17.) In the alternative, Preferred Home argued that, to the extent any claims in the Complaint were not compelled to arbitration or stayed, such claims were legally insufficient and should be dismissed. *Id.*

34. On February 9, 2022, the Court issued an Order denying Preferred Home's motion to compel arbitration and to stay the action pending arbitration. (NYSCEF Doc. No. 36.) The Court also dismissed Plaintiffs' causes of action for Violation of the New York General Business Law, § 349 and Breach of Confidence, but denied Preferred Home's motion in all other respects (the "Lawsuit"). *See id.* Plaintiffs' remaining causes of action in the Lawsuit are; (1) Negligence; (2) Breach of Implied Contract; and (3) Invasion of Privacy. *See id.*

35. After the Court's ruling on Preferred Homes' motion, the Parties agreed to mediate the Lawsuit. On March 14, 2022, the Court stayed all proceedings in the matter pending the outcome of the mediation. (NYSCEF Doc. No. 38.)

The Class Settlement

History of Negotiations

36. This Settlement came about as the result of protracted, arms' length negotiations after a day-long mediation with a preeminent data breach mediator, Bennett G. Picker of the firm, Stradley Ronon Stevens & Young, LLP, which took place on August 4, 2022. (NYSCEF Doc. No. 42.) Throughout the negotiations, Defendant was ably represented by the well-regarded defense firm Polsinelli – one of the foremost cyber-security investigation and litigation firms in the country.

37. The Parties were able to reach an agreement on all the principal terms of settlement for this matter at the mediation, subject to final mutual agreement on all necessary documentation. After the mediation, the Parties negotiated and executed a Term Sheet. Since then, the Parties continued to negotiate in good faith and at arms' length, the finer points of the settlement and drafted the Settlement Agreement and accompanying Notice documents and other exhibits. While negotiations were always collegial and professional between the Parties, there is

no doubt that the negotiations were also adversarial in nature, with both Parties strongly advocating their respective client's positions.

38. After the mediation, the Parties negotiated and executed a Term Sheet which was later reduced to a formal settlement agreement. The Settlement Agreement and the various exhibits thereto ("S.A.") were ultimately finalized and signed on November 3, 2022.

The Settlement Classes

39. Under the terms of the Settlement, the Parties agreed to certification of the following Settlement Class for settlement purposes only:

All persons Preferred Home identified as being among those individuals impacted by the Data Breach, including all who were sent a notice of the Data Breach.

The Settlement Class is comprised of approximately 92,283 individuals (each, a "Settlement Class Member").

40. The Parties also agreed to certification of the following Settlement Subclass for settlement purposes only:

All persons Preferred Home identified as being among those individuals impacted by the Data Breach, who were further identified as being among those whose Social Security Numbers were potentially compromised, and who were sent a notice of the Data Breach.

The Settlement Subclass is comprised of approximately 34,938 individuals (each, a "Settlement Subclass Member"), which are included in the 92,283 individuals in the Settlement Class.

41. For avoidance of doubt, Settlement Subclass Members are also Settlement Class Members, and references herein to the Settlement Class include the Settlement Subclass. In addition, the Settlement Class and Settlement Subclass are combined referred to as the "Settlement Classes."

42. Excluded from the Settlement Class definition are:

(i) officers and directors of Preferred Home and/or the Related Entities; (ii) all Settlement Class Members who timely and validly request exclusion from the Settlement Class; (iii) the members of the judiciary who have presided or are presiding over this matter and their families and staff; and (iv) any other Person found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, aiding, or abetting the criminal activity occurrence of the Data Breach or who pleads *nolo contendere* to any such charge.

Settlement Benefits

43. The Settlement provides the approximately 92,283 Settlement Class Members with significant benefits that would not otherwise be available to them unless a settlement was reached. Each Settlement Class Member will be eligible to receive reimbursement for documented monetary losses incurred by him or her as a result of the Data Breach. Specifically, each eligible Settlement Class Member may choose from all applicable claim categories below—Claim A (Compensation for Ordinary Losses) and Claim B (Compensation for Extraordinary Losses). The overall compensation cap for any Settlement Class Member is \$400.00 for all amounts claimed in Claim B, and \$3,500.00 for all amounts claimed in Claim C.

44. Claim A—Compensation for Ordinary Losses. Settlement Class Members who submit timely, valid claims, with supporting documentation (other than claims for Lost Time (defined below), are eligible to receive compensation for unreimbursed ordinary losses for up to a total of 400.00 per Settlement Class Member. Ordinary losses include: (i) out-of-pocket expenses incurred as a result of the Data Breach, including bank fees, long distance phone charges, cell phone charges (only if charged by the minute), data charges (only if charged based on the amount of data used), postage, or gasoline for local travel; (ii) fees for credit reports, credit monitoring, or other identity theft insurance product purchased between January 8, 2021 and the Claim Deadline; and (iii) up to four (4) hours of lost time (“Lost Time”), calculated at \$20/hour, if at least one (1)

full hour was spent dealing with the Data Breach, provided that the Settlement Class Member attests that the claimed lost time was spent responding to issues raised by the Data Breach. *See* Claims for Lost Time are subject to the same \$400.00 cap on ordinary losses.

45. Claim B—Compensation for Extraordinary Losses. Settlement Class Members who submit timely, valid claims, with supporting documentation, are eligible to receive claim up to \$3,500.00 per Settlement Class Member for proven monetary losses if: (a) the loss is an actual, documented, and unreimbursed monetary loss; (b) the loss was more likely than not caused by the Data Breach; (c) the loss occurred between January 8, 2021 and the Claim Deadline; (d) the loss is not already covered by one or more of the normal reimbursement categories; and (e) the Settlement Class Member made reasonable efforts to avoid, or seek reimbursement for, the loss, including, but not limited to, exhaustion of all available credit monitoring insurance and identity theft insurance. The maximum amount any one Claimant may recover under Claim B is \$3,500.00.

46. Preferred Home's and/or its insurers' maximum payment obligation under this Settlement Agreement for any and all payments under ¶¶ 3.1(a)-(b) is \$1,000,000, and payments to Settlement Class Members who make Valid Claims shall be reduced on a *pro rata* basis according to the number of claims made if the total exceeds the overall \$1,000,000 cap.

47. Credit Monitoring Services. Settlement Class Members shall be offered a one (1)-year membership of three-bureau (3B) credit monitoring services (Claim A). Settlement Subclass Members shall be offered an additional one (1)-year membership of 3B credit monitoring (or a total of two (2) years offered).

48. Injunctive Relief. Plaintiffs also negotiated for and received commitments from Preferred Home that it will continue to provide security for current and former patient and employee PII and PHI going forward. Preferred Home agrees to provide Plaintiff's counsel with a

confidential declaration or affidavit outlining the alleged security-related issues involved in the Data Breach and attesting that the security-related measures have been implemented to remediate said security-related issues. Preferred Home will also provide the reasonable estimated costs of all security enhancements and remediation measures to date, and all planned security enhancements and remediation measures reasonably related to the Data Breach to Plaintiffs' counsel. Preferred Home has agreed to pay the costs of these security-related measures separate and apart from other settlement benefits.

49. Confirmatory Discovery. Preferred Home agrees to provide confirmatory discovery on establishing the appropriateness of the settlement terms contemplated under Federal Rule of Civil Procedure 23(b)(1) and its New York state law equivalent.

Release

50. The relief provided to Settlement Class Members in the Lawsuit is tailored to the claims that have been pleaded or could have been pleaded that are related in any way to the activities stemming from the Data Breach.

51. Settlement Class Members who do not exclude themselves from the Settlement Agreement will release claims related to the Data Breach.

Notice

52. This settlement will be administered by Postlethwaite & Netterville APC ("P&N").

53. Preferred Home has agreed to pay for the Costs of the Notice and Claims Administration, separate and apart from the benefits to the Settlement Class Members, which is a benefit to the Settlement Class. Preferred Home and/or its insurer has the resources to pay for the proposed Settlement.

54. The Notice Program is designed to be reasonable notice of the commencement of a class action. The estimated Costs of the Notice and Claims Administration are \$112,937.

55. Within seven (7) Days of entry of the Preliminary Approval Order and engagement of a Settlement Administrator, Preferred Home will provide the Settlement Administrator with the names and mailing addresses of the Settlement Class Members whose mailing addresses are known to Preferred Home. The Settlement Administrator will, by using the National Change of Address (“NCOA”) database maintained by the U.S Postal Service (“Postal Service”) obtain updates, if any, to the mailing addresses.

56. Within seventy-five (75) Days of entry of the Preliminary Approval Order (the “Notice Deadline”), the Settlement Administrator shall send the Short Form Notice in form substantially similar to that attached to the Settlement Agreement as **Exhibit A** to all Settlement Class Members, respectively, whose addresses are known to Preferred Home via First Class U.S.P.S. mail.

57. If any Notice is returned by the Postal Service as undeliverable, the Settlement Administrator will re-mail the Notice to the forwarding address, if any, provided by the Postal Service on the face of the returned mail. Where the undeliverable Notice is returned without a forwarding address, the Settlement Administrator shall make reasonable efforts to ascertain the correct address of the Settlement Class Member and re-mail the Notice. Other than as set forth in the preceding sentence, neither the Parties, nor the Settlement Administrator, shall have any further obligation to re-mail a Notice to a Settlement Class Member or Settlement Subclass Member.

58. No later than seventy-five (75) Days following the Preliminary Approval Order and engagement of P&N, and prior to the mailing of the Short Form Notices, P&N will establish and maintain a dedicated Settlement Website. Subject Court approval, P&N will make available the

Settlement Agreement, the Complaint, the Short Form Notices for the Settlement Classes, the Long Form Notice in a form substantially similar to that attached to the Settlement Agreement as **Exhibit B**, the Claim Form in a form substantially similar to that attached to the Settlement Agreement as **Exhibit C**, as well as other relevant filings, including Plaintiffs' Motion for Attorneys' Fees, Costs, and Service Awards for Class Representatives and Plaintiffs' Motion for Final Approval of the Class Action Settlement, to be made available on the Settlement Website.

59. The Settlement Website will allow Settlement Class Members to submit the Claim Form electronically by the Claim Deadline, or to download the Claim Form and submit it by mail to the Settlement Administrator postmarked by the Claim Deadline. The website address and the fact that the Long Form Notice and the Claim Form are available through the Settlement Website will be included in the Notice mailed to Settlement Class Members. The Short Form Notice provides clear, concise information about the Settlement. The Long Form Notice explains the terms of the Settlement Agreement and provides contact information for proposed Settlement Class Counsel, understandable information about the Settlement, including explanations for the different options available to Settlement Class and Subclass Members. The Settlement Website will be maintained and updated until thirty (30) Days after the Claim Deadline has passed.

60. The Notice Program is intended to reach as many potential Settlement Class Members as possible, is designed to be "reasonable notice of the commencement of a class action." As such, the Notice Program set forth in the Settlement Agreement comports with N.Y. C.P.L.R. Ch. 8, Art. 9, §§ 904 and 908.

Claims Process

61. The timing of the claims process is structured to ensure that all Settlement Class Members have adequate time to receive Notice, to review the terms of the Settlement Agreement

and other relevant documents, and decide whether they would like to make a claim or opt-out or object.

62. Individuals in the Settlement Class who are seeking any benefits under the Settlement will have no more than ninety (90) Days from the date Notice is mailed to the Settlement Class Members to complete and submit a claim either submitted online via the Settlement Website or postmarked by the Claim Deadline to the Settlement Administrator.

63. The Claim Form is written in plain language to facilitate Settlement Class Members' and Settlement Subclass Members' ease in completing it.

64. Claims will be subject to review for completeness and plausibility by the Settlement Administrator, and Settlement Class and Subclass Members will have the opportunity to seek review by a third-party Claims Referee, at Preferred Home's expense, if they dispute the Settlement Administrator's initial determination.

65. The 90-day notice period provides ample time for Settlement Class Members to decide whether to make a claim for reimbursement for monetary relief.

Exclusions and Objections

66. Similar to the timing of the claims process, the timing with regard to objections and exclusions is structured to give Settlement Class Members sufficient time to review the Settlement documents—including Plaintiff's Motion for Attorneys' Fees, Costs, and Service Awards to Class Representatives, which will be filed fourteen (14) Days prior to the deadline for Settlement Class Members to object or exclude themselves from the settlement.

Exclusions

67. Settlement Class Members who seek to be excluded from the Settlement Class must personally sign and timely submit, complete, and mail a request for exclusion (“Opt-Out Request”) to the Settlement Administrator at the address set forth in the Notice. To be effective, an Opt-Out Request must be postmarked no later than the final date of the Opt-Out Period (the “Opt-Out Date”). The Parties will recommend to the Court that the Opt-Out Period be the ninety (90) Day period beginning upon the entry of the Preliminary Approval Order.

68. A written opt-out notice must: (a) the case name, *Simmons v. Assistcare Home Health Services, LLC, d/b/a Preferred Home Care of New York/Preferred Gold*, Index No. 511490/2021; (b) the Settlement Class Member’s full name, address, and telephone number; (c) the Settlement Class Member’s personal and original signature (or the personal and original signature of a Person previously authorized by law to act on behalf of the Settlement Class Member with respect to the claims asserted in this Lawsuit); and (d) state unequivocally the Settlement Class Member’s intent to be excluded from the Settlement.

69. An Opt-Out Request or other request for exclusion that does not fully comply with these requirements, which is not timely postmarked, or that is sent to an address other than that set forth in the Notice, will be invalid, and the Settlement Class Member will be bound by the Settlement Agreement, including the Release, and any judgment thereon.

70. Settlement Class Members who opt-out of the class shall not be eligible to receive any Settlement Benefits and shall not be bound by the terms of the Settlement Agreement. They also waive and forfeit any and all rights they may have to object to the Settlement or to participate at the Final Approval Hearing.

71. Requests for exclusion may only be done on an individual basis, and no person may request to be excluded from the Settlement Class through “mass,” “group,” or “class” opt-outs.

Objections

72. Any Settlement Class Member who wishes to object to the Settlement Agreement must submit a timely written notice of his or her objection (“Objection”) by the Objection Date (defined below).

73. The Objection shall: (i) state the case name, *Simmons v. Assistcare Home Health Services, LLC, d/b/a Preferred Home Care of New York/Preferred Gold*, Index No. 511490/2021, (ii) the objecting Settlement Class Member’s full name, current address, telephone number, and email address (if any); (iii) contain the objecting Settlement Class Member’s original signature; (iv) set forth information identifying the objector as a Settlement Class Member, including proof that the objector is within the Settlement Class (e.g., copy of the Notice or copy of original notice regarding the Data Breach); (v) set forth a statement of all grounds for the objection, including any legal support for the objection that the objector believes applicable; (vi) identify all counsel and counsels’ address representing the objector; (vii) state whether the objector and/or his or her counsel will appear at the Final Approval Hearing; (viii) a list of all persons who will be called to testify at the Final Approval Hearing in support of the objector’s objection; (ix) a statement confirming whether the objector intends to personally appear and/or testify at the Final Approval Hearing; and (x) contain the signature of the objector’s duly authorized attorney or other duly authorized representative (if any), along with documentation setting forth such representation.

74. To be timely, an Objection in the appropriate form must be filed with the Clerk of the Court no later than ninety (90) Days from the entry of the Preliminary Approval Order (the

“Objection Date”) and mailed or hand delivered concurrently upon Settlement Class Counsel and Preferred Home Counsel at addresses set forth in the Notice.

75. Any Settlement Class Member who fails to comply in full with the requirements for objecting set forth in this Settlement Agreement, the Notice, and any applicable orders of the Court shall forever waive and forfeit any and all rights he or she may have to raise any objection to the Settlement Agreement, shall not be permitted to object to the approval of the Settlement at the Final Approval Hearing, shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by appeal or other means, and shall be bound by the Settlement Agreement and by all proceedings, orders, and judgments in the Lawsuit.

Service Awards, Fees, and Costs

76. Preferred Home agrees not to oppose an application by Plaintiffs’ counsel for an award of attorneys’ fees, costs, and expenses not to exceed \$235,000. This amount was negotiated after the primary terms of the Settlement were negotiated. Preferred Home shall pay the attorneys’ fees, costs, and expenses in addition to any other benefits provided to Settlement Class Members and the Costs of Notice and Claims Administration.

77. Plaintiffs shall seek and Preferred Home agrees to pay Service Awards of \$1500 or each named Plaintiff (for a total of \$3000) (“Service Awards”). The Service Awards are meant to recognize Plaintiffs for their efforts on behalf of the Settlement Class, including assisting in the investigation of the case, reviewing the pleadings, remaining available for consultation throughout the mediation and settlement negotiations, answering counsel’s many questions, and reviewing the terms of the Settlement Agreement. The Service Awards were negotiated after the primary terms of the Settlement were negotiated. The Service Awards will be paid separate and apart from any other sums agreed upon under this Settlement Agreement.

78. Settlement Class Counsel will submit a separate motion seeking Plaintiff's Award of Attorneys' Fees, Costs, and Service Awards to Class Representatives fourteen (14)-Days prior to Settlement Class Members' deadline to exclude themselves from the Settlement Class or to object to the Settlement Agreement.

79. I believe Plaintiffs have no conflicts of interest with the other members of the Settlement Class, Plaintiffs had their Personal Information allegedly comprised in the same Data Breach as the other Class Members, and Plaintiffs share the Settlement Class's interests of maximizing their recovery and preventing future harm.

80. In my opinion, I believe the Settlement is fair, reasonable, and adequate and provides significant benefits for Plaintiffs and the Settlement Class Members, and I strongly support the Settlement.

81. My years of experience representing individuals in complex class actions—including data breach actions—contributed to an awareness of Plaintiffs' settlement leverage, as well as the needs of Plaintiffs and the proposed Settlement Class. I believe that Plaintiffs would ultimately prevail in the litigation on a class-wide basis. However, I am also aware that a successful outcome is uncertain and would be achieved, if at all, only after prolonged, arduous litigation with the attendant risk of drawn-out appeals. It is my individual opinion, based on my substantial experience, that the Settlement provides significant relief to the Settlement Class Members and warrants the Court's preliminary approval.

82. I believe this Settlement is a positive resolution for the Settlement Class and falls comfortably within the range of reasonableness and represents a fair and reasonable discount from the potential recovery. It is also my considered opinion that the Claim Form, Short Notice, and Long Notice accurately and plainly explain the Settlement Benefits and how to obtain them, offer

a clear opportunity for members of the Settlement Class to exclude themselves if they so choose, and provide a mechanism for the Settlement Class to share their opinions about the Settlement with the Court.

83. Attached to this Declaration as **Exhibit A** is Milberg's Firm Resume.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 4th day of November, 2022 at Chicago, Illinois.

/s/ Gary M. Klinger _____

Gary M. Klinger

Gary M. Klinger

CERTIFICATION OF COMPLIANCE WITH RULE 202.8-b

I hereby certify that the foregoing contains 6,554 words and is in compliance with the Court's word count limit.

Gary M. Klinger _____

EXHIBIT A

Milberg.
COLEMAN BRYSON PHILLIPS GROSSMAN

Who We Are

Established by members of Milberg Phillips Grossman LLP, Sanders Phillips Grossman LLC, Greg Coleman Law PC, and Whitfield Bryson LLP, the firm represents plaintiffs in the areas of antitrust, securities, financial fraud, consumer protection, automobile emissions claims, defective drugs and devices, environmental litigation, financial and insurance litigation, and cyber law and security.

For over 50 years, Milberg and its affiliates have been protecting victims' rights and have recovered over \$50 billion for our clients. Our attorneys possess a renowned depth of legal expertise, employ the highest ethical and legal standards, and pride ourselves on providing stellar client service. We have repeatedly been recognized as leaders in the plaintiffs' bar and appointed to leadership roles in prominent national mass torts and class actions.

Milberg challenges corporate wrongdoing through class action, mass tort, consumer, and shareholder rights services, both domestically and globally.

Milberg's previous litigation efforts helped to create a new era of corporate accountability that put big companies on notice. The strategic combination of four leading plaintiffs' firms offers clients expanded capabilities, greater geographical coverage, enhanced financial breadth, and increased operational capacity. It also enables the firm to serve diverse and global clients who are seeking to enforce their rights against well-financed corporations—wherever they operate.

www.milberg.com



Practice Areas

Antitrust & Competition Law

Today, on a global scale, consolidated corporate entities exercise dominating market power, but proper enforcement of antitrust law ensures a fair, competitive marketplace. Milberg prosecutes complex antitrust class actions against large, well-funded corporate defendants in healthcare, technology, agriculture, and manufacturing. Our leading practitioners successfully represent plaintiffs affected by price-fixing, monopolization, monopoly leveraging tying arrangements, exclusive dealing, and refusals to deal. The firm continues aggressively vindicating rights of plaintiffs victimized by antitrust violations, holding companies accountable for anticompetitive behavior.

Complex Litigation

With 50 years of vetted success, Milberg handles complex, high-stakes cases at any stage of the litigation process. Our attorneys have experience litigating complex cases for business and plaintiffs outside of class action context, business torts, contract disputes, anti-SLAPP motions, corporations, LLCs, partnerships, real estate, and intellectual property. The repeated success of our attorneys against well-funded adversaries with top-tier counsel has established Milberg as the go-to firm for complex litigation.

Consumer Products

Milberg's consumer litigation group focuses on protecting victims of deceptive marketing and advertising of goods and services, or those who have bought defective products. Our attorneys are experienced in handling a wide array of consumer protection lawsuits, including breach of contract, failure to warn, false or deceptive advertising of goods and services, faulty, dangerous, or defective products, warranty claims, unfair trade practices, and notable product cases. Milberg has achieved real-world recoveries for clients, often requiring corporations to change the way they do business. Our team of attorneys has extensive experience representing plaintiffs against well-resourced and sophisticated defendants.

Consumer Services

Consumers have rights, and companies providing consumer services have a legal obligation to abide by contractual agreements made with customers. Companies must also follow state and federal laws that prohibit predatory, deceptive, and unscrupulous business practices. Milberg's Consumer Services litigation group protects consumers whose rights have been violated by improperly charged fees, predatory and discriminatory lending, illegal credit reporting practices, and invasion of privacy. We also enforce consumer rights by upholding The Fair Credit Reporting Act and Telephone Consumer Protection Act.

Class Action Lawsuits

Milberg pioneered federal class action litigation is recognized as a leader in defending the rights of victims of corporate and large-scale wrongdoings. We have the manpower, resources, technology, and experience necessary to provide effective representation in nationwide class action lawsuits. Our attorneys have led class actions resulting in settlements up to billions of dollars across a variety of practice areas, including defective consumer products, pharmaceutical drugs, insurance, securities, antitrust, environmental and toxic torts, consumer protection, and breach of contract.

Dangerous Drugs & Devices

For some patients, medication and medical devices improve their lives. For others, the drugs and equipment have questionable benefits, at best, and serious, unintended side effects at worst. Taking on drug and device makers requires a law firm that can stand up to the world's largest, most powerful companies. Our defective drug lawyers have held leadership roles in many national drug and device litigations, recovering billions of dollars in compensation.

Data Breach, Cyber Security & Biometric Data Lawsuits

Technology changes faster than laws regulate it. Staying ahead of legal technical issues requires a law firm that can see the full picture of innovation and apply past lessons to navigate fast-moving developments, putting consumers ahead of corporate interests. Our data breach and privacy lawyers work at the cutting edge of technology and law, creating meaningful checks and balances against technology and the companies that wield it. Cyber security threats continue evolving and posing new consumer risks. Milberg will be there every step of the way to protect consumer privacy and hold big companies accountable.

Environmental and Toxic Torts Litigation

Litigation is key in fighting to preserve healthy ecosystems and hold environmental lawbreakers accountable. But in today's globalized world, pollutants—and polluters—are not always local. Corporations have expanded their reach and ability to cause harm. Our environmental litigation practice focuses on representing clients in mass torts, class actions, multi-district litigation, regulatory enforcement, citizen suits, and other complex environmental and toxic tort matters. The companies involved in harmful environmental practices are large, wealthy, and globally influential, but as an internationally recognized plaintiffs' firm, Milberg has the strength and resources to present clients seeking to enforce their environmental rights against well-financed corporations—wherever they operation.

Finance & Insurance Litigation

Big banks and public insurance firms are obligated by their corporate charters to put shareholders' interests ahead of client interests. However, that doesn't mean they can deceive clients to profit at their expense. Milberg's attorneys handle hundreds of insurance-related disputes, including first party bad faith insurance cases, business interruption cases, and hurricane insurance cases. As one of the nation's stop class action law firms, we are well-positioned to pursue insurance bad faith cases on a statewide or nationwide basis.

Public Client Representation

The ability of governments to serve and protect their residents is often threatened by the combination of lower revenues and rising costs. Budget shortfalls are increasing in part because private companies externalize costs, but while corporate profits grow, public interest pays the price. Effectuating meaningful change through litigation, Milberg partners with state and local governments to address the harms facing its residents. Internationally, Milberg's Public Client Practice has achieved success against global powerhouse corporations, including drug, tobacco, mining, and oil and gas companies.

Securities Litigation

Over 50 years ago, Milberg pioneered litigation claims involving investment products, securities, and the banking industry by using class action lawsuits. Our litigation set the standard for case theories, organization, discovery, methods of settlement, and amounts recovered for clients. Milberg continues to aggressively pursue these cases on behalf of institutional and individual investors harmed by financial wrongdoing. Inventors of securities class actions, Milberg has decades of experience holding companies accountable both in the United States and globally.

Whistleblower & Qui Tam

Blowing the whistle on illegal or unethical conducted is a form of legally protected speech. Milberg's whistleblower attorneys have led actions that returned hundreds of millions of dollars in ill-gotten gains, resulting in significant awards of our clients. Our legacy of standing up to corporate power extends to advocating for greater transparency. In addition to representing whistleblowers, we fight back against corporate-backed laws seeking to deter them from making disclosures.

“Scoring impressive victories against companies guilty of outrageous behavior.”

- Forbes

“ A powerhouse that compelled miscreant and recalcitrant businesses to pay billions of dollars to aggrieved shareholders and customers”

- New York Times

Recent Leadership Roles

In re **Google Play** Consumer Antitrust Litigation, 20-CV-05761 (N.D. Cal.)

In re: **Elmiron** (Pentosan Polysulfate Sodium) Products Liability Litigation MDL No. 2973

In re: **Johnson & Johnson** Talcum Powder Products Marketing, Sales Practices & Products Liability Litigation

In re: **Blackbaud** Data Privacy MDL No. 2972

In re: **Paragard** IUD Products Liability Litigation MDL No. 2974

In re: **Seresto** Flea & Tick Collar, Marketing Sales Practices & Product Liability Litigation MDL No. 3009, Master Case No. 21-cv-04447

In re: **Zicam**

In re: **Ortho Evra**

In re: **Yaz**

In re: **Kugel Mesh**

In re: **Medtronic Sprint Fidelis Leads**

In re: **Depuy Pinnacle**

In re: **Stand 'N Seal**

In re: **Chantix**

In re: **Fosamax**

In re: **Mirena**

In re: **Incretin**

In re: **Depuy Pinnacle**

In re: **Fluoroquinolones**

In re: **Olmесartan**

In re: **Zimmer Nexgen Knee**

In re: **Fresenius Granuflo**

In re: **Propecia**

In re: **Transvaginal Mesh**

In re: **Guidant Corp.** Implantable Defibrillators

In re: **Onglyza (Saxagliptin) And Kombiglyze XR**

State Court:

In Re **Risperdal & Invega** Product Liability Cases, CA

In Re **Chantix**, NY

In Re **Reglan**, NJ

In Re **Propecia**, NJ

In Re **Levaquin** Litigation, NJ

Notable Recoveries

\$3.2 Billion Settlement – In re **Tyco International Ltd.**, Securities Litigation, MDL 1335 (D.N.H.)

\$4 Billion Settlement – In re **Prudential Insurance Co.** Sales Practice Litigation, No. 95-4704 (D.N.J.)

\$1.14 Billion Settlement – In re **Nortel Networks Corp.** Securities Litigation, No. 01-1855 (S.D.N.Y.)

\$1 Billion-plus Trial Verdict – **Vivendi Universal, S.A.** Securities Litigation

\$1 Billion Settlement – **NASDAQ Market-Makers** Antitrust Litigation

\$1 Billion Settlement – **W.R. Grace & Co**

\$1 Billion-plus Settlement – **Merck & Co., Inc.** Securities Litigation

\$775 Million Settlement – **Washington Public Power Supply System** Securities Litigation

Locations

CHICAGO

227 W. Monroe Street Suite, Suite 2100
Chicago, Illinois 60606

NEW JERSEY

1 Bridge Plaza North, Suite 275
Fort Lee, New Jersey 07024

NEW YORK

100 Garden City Plaza
Garden City, New York 11530

NORTH CAROLINA

900 W. Morgan Street
Raleigh, North Carolina 27603

PUERTO RICO

1311 Avenida Juan Ponce de León
San Juan, Puerto Rico 00907

SEATTLE

1420 Fifth Ave, Suite 2200
Seattle, Washington 98101

SOUTH CAROLINA

825 Lowcountry Blvd, Suite 101
Mount Pleasant, South Carolina 29464

TENNESSEE

800 S. Gay Street, Suite 1100
Knoxville, Tennessee 37929

518 Monroe Street

Nashville, Tennessee 37208

WASHINGTON D.C.

5335 Wisconsin Avenue NW , Suite 440
Washington, D.C., 20015





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