

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

If you were mailed a notice by Assistcare Home Health Services, LLC, d/b/a Preferred Home Health Care of New York/Preferred Gold (“Preferred Home”) regarding a Data Incident that occurred on or about January 9, 2021, you may be eligible for monetary compensation and credit monitoring.

*A state superior court authorized this Notice. This is not junk mail, an advertisement, or a solicitation from a lawyer.*

**To: All Persons Preferred Home Identified as Being Among Those Individuals Impacted by the Data Incident, Including All Those Who Were Sent a Notice of the Data Incident (“Settlement Class”).**

**To: All Persons Preferred Home Identified as Being Among Those Individuals Impacted by the Data Incident, Who Were Further Identified as Being Among Those Whose Social Security Numbers Were Potentially Compromised, and Who Were Sent a Notice of the Data Incident (“Settlement Subclass”).**

A settlement has been proposed in a class action lawsuit against Assistcare Home Health Services, LLC, d/b/a Preferred Home Health Care of New York/Preferred Gold (“Preferred Home”) relating to the potential compromise of potential personally identifiable information (“PII”) and protected health information (“PHI”) of current and/or former employees and patients of Preferred Home due to a cybersecurity attack on Preferred Home’s computer network that occurred between January 8 through January 10, 2021 (the “Data Incident”). The PII and PHI potentially compromised during the Data Incident includes names, addresses, email addresses, phone numbers, demographic information, Social Security numbers, dates of birth, financial information, such as bank account numbers, Medicaid Numbers, and medical information, such as dates of service, incidents involving care, records of complaints regarding service, health assessments, physicals, drug screens, vaccinations, TB tests, and Family Medical Leave Act and workers compensation claims.

**Settlement Class:** If you received a notice of the Data Incident from Preferred Home, you may be included in this Settlement as a “Settlement Class Member.”

**Settlement Subclass:** If you received a notice of the Data Incident from Preferred Home, and you were further identified as being among those whose Social Security Number was potential compromised, you may be included in this Settlement as a “Settlement Subclass Member.”

**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 the Settlement Subclass are referred to as the “Settlement Classes” combined.**

- The Settlement provides payments to people who submit valid claims for ordinary unreimbursed losses, such as out-of-pocket expenses, fees incurred for credit reports, credit monitoring, or other identity theft insurance product purchased between January 8, 2021 and the Claim Deadline, and lost time, and for other extraordinary unreimbursed monetary losses. The Settlement also provides all Settlement Class and Settlement Subclass Members the opportunity to claim a one (1)-year membership of three bureau (3B) credit monitoring services. In addition to these monetary and nonmonetary benefits, Preferred Home has or will be implementing data-security enhancements to its computer systems to better protect your PII and PHI in the future. Your legal rights are affected regardless of whether you do or do not act. Read this notice carefully.

| <b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b> |   | <b>DEADLINE</b> |
|---|---|-----------------|
| <b>SUBMIT A CLAIM FORM</b>                              | This is the only way you can get payment.   | May 22, 2023    |
| <b>EXCLUDE YOURSELF FROM THE SETTLEMENT</b>             | You will not get any payment from the Settlement, but you also will not release your claims against Preferred Home. This is the only option that allows you to be part of any other lawsuit against Preferred Home or related parties for the legal claims resolved by this Settlement. | April 24, 2023  |
| <b>OBJECT TO THE SETTLEMENT</b>                         | Write to the Court with reasons why you do not agree with the Settlement.   | April 24, 2023  |
| <b>GO TO THE FINAL FAIRNESS HEARING</b>                 | You may ask the Court for permission for you or your attorney to speak about your objection at the Final Fairness Hearing.  | June 27, 2023   |
| <b>DO NOTHING</b>                                       | You will not get any payment from this Settlement, and you will give up certain legal rights. Submitting a Claim Form is the only way to obtain payment under this Settlement.  | No Deadline     |

- These rights and options—and the deadlines to exercise them—are explained in this Notice. For complete details, view the Settlement Agreement, available at [www.AssistcareDataSettlement.com](http://www.AssistcareDataSettlement.com). The Court in charge of this case still has to decide whether to grant final approval of the Settlement. Payments will only be made after the Court grants final approval of the Settlement and after any appeals are resolved.

## What This Notice Contains

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## **BASIC INFORMATION**

### **1. Why is this Notice being provided?**

The Court directed that this Notice be provided because you have a right to know about a proposed settlement that has been reached in this class action lawsuit and about all of your options before the Court decides whether to grant final approval of the Settlement. If the Court approves the Settlement, and after objections or appeals, if any, are resolved, the Settlement Administrator appointed by the Court will distribute the payments that the Settlement allows. This Notice explains the lawsuit, the Settlement, your legal rights, what payments are available, who is eligible for them, and how to get them.

The Court in charge of this case is the Supreme Court for the State of New York for Kings County. The case is styled as *Simmons v. Assistcare Home Health Services, LLC, d/b/a Preferred Home Health Care of New York/Preferred Gold*, Index No. 511490/2021 (Kings Co. Sup. Ct., 2d Jud. Dist.) ((the “Lawsuit”). The persons who filed the Lawsuit are called the Plaintiffs, and the company they sued is, Preferred Home, who is called the Defendant.

### **2. What is this lawsuit about?**

The Lawsuit claims that Preferred Home was responsible for the Data Incident and asserts claims such as: (1) negligence; (2) breach of implied contract; and (3) invasion of privacy. The Lawsuit seeks, among other things, payment for persons who were injured by the Data Incident. Preferred Home denies each and all of the claims and contentions alleged against it in the Lawsuit. Preferred Home denies all allegations of wrongdoing or liability as alleged, or which could be alleged, in the Lawsuit. Preferred Home denies it breached any contract (expressed or implied), denies that it has been negligent, and denies that it has invaded anyone’s privacy.

### **3. What is a class action?**

In a class action, one or more people called Class Representatives (in this case, Lisa Simmons and Kelly Peterson-Small) sue on behalf of people who have similar claims. Together, all these people are called a Class or Class Members. One Court and one judge – in this case, Judge Larry D. Martin – resolves the issues for all Class Members, except for those who exclude themselves from the Settlement Class.

### **4. Why is there a Settlement?**

The Court did not decide in favor of the Plaintiffs or Preferred Home. Instead, the Plaintiffs negotiated a settlement with Preferred Home that allows both Plaintiffs and Preferred Home to avoid the risks and costs of lengthy and uncertain litigation and the uncertainty of a trial and appeals. It also allows Settlement Class Members to obtain payment without further delay. Plaintiffs and their attorneys think the Settlement is best for all Settlement Class Members. This Settlement does not mean that Preferred Home did anything wrong.

## WHO IS INCLUDED IN THE SETTLEMENT?

### **5. How do I know if I am part of the Settlement?**

The “Settlement Class” is defined as “all persons Preferred Home identified as being among those individuals impacted by the Data Incident, including all who were sent a notice of the Data Incident.”

You are part of the Settlement if you received notice of the Data Incident from Preferred Home. The “Settlement Subclass” is defined as “all persons Preferred Home identified as being among those individuals potentially impacted by the Data Incident, who were further identified as being among those whose Social Security Numbers were potentially compromised, and who were sent a notice of the Data Incident.”

You are part of this Settlement Subclass if you received notice of the Data Incident from Preferred Home that your Social Security Number was potentially compromised in the Data Incident.

### **6. Are there exceptions to being included in the Settlement?**

Yes. Specifically excluded from the Settlement Class 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 Incident or who pleads *nolo contendere* to any such charge.

“Related Entities” is defined in Section 1.25 of the Settlement Agreement.

## THE SETTLEMENT BENEFITS—WHAT YOU GET IF YOU QUALIFY

### **7. What does the Settlement provide?**

The Settlement will provide benefits to people who submit valid claims.

There are two types of payments that are available: (1) Ordinary Loss Compensation (Question 8, below); and (2) Extraordinary Loss Compensation (Question 9, below). To claim each type of payment, you must provide the information and documentation called for by the Claim Form.

The Settlement also provides all Settlement Class and Settlement Subclass Members the opportunity to claim a one (1)-year membership of three bureau (3B) credit monitoring services.

After the Court has entered the Final Order and Judgment approving the Settlement, Settlement Class Members and Settlement Subclass Members who claim this benefit will be sent an activation code to activate their 3B credit monitoring services.

## 8. What payments are available for Ordinary Loss Compensation?

Settlement Class Members are eligible to receive compensation of up to \$400.00 (in total) for the following categories of ordinary losses resulting from the Data Incident:

- Unreimbursed out-of-pocket expenses incurred as a result of the Data Incident, 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;
- Unreimbursed fees for credit reports, credit monitoring, or other identity theft insurance product purchased between January 8, 2021 and May 22, 2023; and
- Reimbursement for up to four (4) hours of lost time, calculated at \$20/hour, if at least one (1) full hour was spent dealing with the Data Incident, provided that the Settlement Class Member attests that the claimed lost time was spent responding to issues raised by the Data Incident.

More details are provided in the Settlement Agreement, which is available at [www.AssistcareDataSettlement.com](http://www.AssistcareDataSettlement.com).

## 9. What payments are available for Extraordinary Loss Compensation?

Settlement Class Members who had extraordinary unreimbursed proven monetary losses are eligible to receive compensation for up to \$3,500.00. As part of the claim, the Settlement Class Member must show that: (1) the loss is an actual, documented, and unreimbursed monetary loss; (2) the loss was more likely than not caused by the Data Incident; (3) the loss occurred between January 8, 2021 and May 22, 2023; (4) the loss is not already covered by one or more of the normal reimbursement categories in Question 8; and (5) a reasonable effort was made to avoid or seek reimbursement for the loss, including but not limited to, exhaustion of all available credit monitoring insurance and identity theft insurance.

More details are provided in the Settlement Agreement, which is available at [www.AssistcareDataSettlement.com](http://www.AssistcareDataSettlement.com).

### **HOW TO GET BENEFITS – SUBMITTING A CLAIM FORM**

## 10. How do I get monetary benefits from the Settlement?

**Monetary Benefits:** The only way you can get a payment is by submitting a claim form. Claim Forms must be submitted either online at the settlement website, [www.AssistcareDataSettlement.com](http://www.AssistcareDataSettlement.com), or by mail to:

Assistcare Claims Administrator  
PO Box 5125  
Baton Rouge, LA 70821

Claims must be submitted online or postmarked by **May 22, 2023**.

### **11. How will claims be decided?**

The Claims Administrator will initially decide whether the information provided on a Claim Form is complete and valid. The Claims Administrator may require additional information from any claimant. If the required information is not provided timely, the claim will be considered invalid and will not be paid.

If the claim is complete and the Claims Administrator denies the claim entirely or partially, the claimant will be provided an opportunity to have his or her claim reviewed by an impartial Claims Referee.

### **12. When will I get my payment?**

The Court will hold a Final Fairness Hearing at 2:30 p.m. on June 27, 2023 to decide whether to approve the Settlement. If the Court approves the Settlement, there may be appeals. It is always uncertain whether any appeals can be resolved favorably, and resolving them can take time, perhaps more than a year. It also takes time for all the Claim Forms to be processed, depending on the number of claims submitted and whether any appeals are filed. Please be patient.

## **REMAINING IN THE SETTLEMENT**

### **13. Do I need to do anything to remain in the Settlement?**

You do not have to do anything to remain in the Settlement, but if you want a payment, you must submit a Claim Form, submitted online on the Settlement Website at [www.AssistcareDataSettlement.com](http://www.AssistcareDataSettlement.com) or mailed to the Settlement Administrator postmarked by **May 22, 2023**.

### **14. What am I giving up as part of the Settlement?**

If the Settlement becomes final, you will give up your right to sue Preferred Home for the claims being resolved by this Settlement. The specific claims you are giving up against Preferred Home are described in Section 1.26 of the Settlement Agreement. You will be “releasing” Preferred Home and all related people or entities as described in Sections 1.25 and 13.3 of the Settlement Agreement. The Settlement Agreement is available at [www.AssistcareDataSettlement.com](http://www.AssistcareDataSettlement.com).

The Settlement Agreement describes the released claims with specific descriptions, so read it carefully. If you have any questions you can talk to the Settlement Class Counsel listed in Question 18 for free or you can, of course, talk to your own lawyer at your own expense if you have questions about what this means.

## **EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you do not want a payment from this Settlement, but you want to keep the right to sue Preferred Home about issues in the Lawsuit, then you must take steps to get out of the Settlement Class. This is called excluding yourself from – or is sometimes referred to as “opting out” of – the Settlement Class.

**15. If I exclude myself, can I still get payment from the Settlement?**

No. If you exclude yourself from the Settlement, you will not be entitled to any benefits of the Settlement, but you will not be bound by any judgment in this case.

**16. If I do not exclude myself, can I sue Preferred Home for the same thing later?**

No. Unless you exclude yourself from the Settlement, you give up any right to sue Preferred Home for the claims that this Settlement resolves. You must exclude yourself from the Settlement Class to start your own lawsuit or to be part of any different lawsuit relating to the claims in this case. If you exclude yourself, do not submit a Claim Form to ask for a payment.

**17. How do I get out of the Settlement?**

To exclude yourself from the Settlement, you must send a letter by mail stating that you want to be excluded from the Settlement in *Simmons v. Assistcare Home Health Services, LLC, d/b/a Preferred Home Health Care of New York/Preferred Gold*, Index No. 511490/2021. Your letter must also include your full name, address, telephone number, personal and original signature (or the personal and original signature of a Person previously authorized by law to act on your behalf with respect to the claims asserted in this Lawsuit) and must also contain a statement to the effect that “I/We hereby request to be excluded from the proposed Settlement Class in *Simmons v. Assistcare Home Health Services, LLC, d/b/a Preferred Home Health Care of New York/Preferred Gold*, Index No. 511490/202.”

You must mail your exclusion request postmarked no later than **April 24, 2023** to:

Assistcare Settlement Exclusions  
P.O. Box 5125  
Baton Rouge, LA 70821

**THE LAWYERS REPRESENTING YOU**

**18. Do I have a lawyer in this case?**

Yes. The Court appointed Gary M. Klinger, Milberg Coleman Bryson Phillips Grossman, PLLC, 227 W. Monroe Street, Suite 2100, Chicago, IL 60606 to represent you and other Settlement Class Members. This lawyer is called Settlement Class Counsel. You will not be charged for this lawyer. If you want to be represented by your own lawyer, you may hire one at your own expense.

**19. How will Settlement Class Counsel be paid?**

If the Settlement is approved and becomes final, Settlement Class Counsel will ask the Court to award attorneys’ fees and costs in the total amount of \$235,000. Settlement Class Counsel will also request approval of a service award of \$1,500 for each Class Representative (for a total of \$3,000). If approved, these amounts, as well as the costs of notice and settlement administration, will be paid separately by Preferred Home.

## OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the Settlement or some part of it.

### **20. How do I tell the Court that I do not like the Settlement?**

If you are a Settlement Class Member, you can object to the Settlement if you do not like it or a portion of it. You can give reasons why you think the Court should not approve the Settlement. The Court will consider your views before deciding.

To object, you must file with the Court and mail copies to Settlement Class Counsel and Preferred Home's Counsel a written notice stating that you object to the Settlement in *Simmons v. Assistcare Home Health Services, LLC, d/b/a Preferred Home Health Care of New York/Preferred Gold*, Index No. 511490/2021.

Your objection must include:

- 1) Your full name, address, telephone number, and e-mail address (if any);
- 2) Information identifying you as a Settlement Class Member, including proof you are within the Settlement Class (e.g., a copy of the Notice you received or a copy of original notice you received regarding the Data Incident);
- 3) A statement of all grounds for your objection, including any legal support for your objection that you believe are applicable;
- 4) The name and address of your attorney(s) if you have retained one;
- 5) The name and address of any attorneys representing you that may appear at the Final Approval Hearing;
- 6) A list of all persons who will be called to testify at the Final Approval Hearing in support of your objection;
- 7) A statement confirming whether you intend to personally appear and/or testify at the Final Approval Hearing; and
- 8) Your original signature or the signature of your attorney or other duly authorized representative (along with documentation setting forth such representation).

Your objection must be filed with the Clerk of Court, Supreme Court of the State of New York, County of Kings, 360 Adams Street, Room 189, Brooklyn, New York 11201 no later than **April 24, 2023**. You must also mail copies of your objection to Settlement Class Counsel and Preferred Home's Counsel postmarked no later than **April 24, 2023**, at the addresses below.

| SETTLEMENT CLASS COUNSEL  | PREFERRED HOME'S COUNSEL  |
|---|---|
| Gary M. Klinger<br><b>MILBERG COLEMAN BRYSON<br/>PHILLIPS GROSSMAN, PLLC</b><br>227 W. Monroe Street, Suite 2100<br>Chicago, IL 60606<br>847-208-4585<br>gklinger@milberg.com | John C. Cleary ( <i>pro hac vice</i> )<br><b>POLSINELLI PC</b><br>600 Third Avenue, 42nd Floor<br>New York, NY 10016<br>Phone: (212) 413-2837<br>john.cleary@polsinelli.com |

**21. What is the difference between objecting to and excluding myself from the Settlement?**

Objecting is telling the Court that you do not like something about the Settlement. Excluding yourself is telling the Court that you do not want to be part of the Class in this Settlement. If you exclude yourself from the Settlement, you have no basis to object or submit a Claim Form because the Settlement no longer affects you.

**THE COURT’S FINAL APPROVAL HEARING**

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you do not have to. You cannot speak at the hearing if you exclude yourself from the Settlement.

**22. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Final Approval Hearing at 2:30 p.m. on June 27, 2023, in the Supreme Court of the State of New York, County of Kings, 360 Adams Street, Courtroom 741, Brooklyn, New York 11201. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will take into consideration any properly filed written objections and may also listen to people who have asked to speak at the hearing (*see* Question 20). The Court will also decide whether to approve fees and expenses requested by Settlement Class Counsel, and the Service Award requested for the Class Representatives.

**23. Do I have to come to the Final Approval Hearing?**

No. Settlement Class Counsel will answer any questions the Court may have. However, you are welcome to attend at your own expense. If you file an objection, you do not have to come to Court to talk about it. You may also hire your own lawyer to attend, at your own expense, but you are not required to do so.

**24. May I speak at the Final Approval Hearing?**

Yes, you may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must follow the instructions provided in Question 20 above. You cannot speak at the hearing if you exclude yourself from the Settlement.

**IF YOU DO NOTHING**

**25. What happens if I do nothing?**

If you do nothing, you will not receive any benefits from this Settlement. If the Court approves the Settlement, you will be bound by the Settlement Agreement and the Release. This means you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Preferred Home or related parties about the issues involved in the Lawsuit, resolved by this Settlement, and released by the Settlement Agreement.

## GETTING MORE INFORMATION

### **26. Are more details about the Settlement available?**

Yes. This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement, which is available at [www.AssistcareDataSettlement.com](http://www.AssistcareDataSettlement.com).

### **27. How do I get more information?**

You may visit [www.AssistcareDataSettlement.com](http://www.AssistcareDataSettlement.com) for more information. You may also call 1-844-966-4825 or write to Assistcare Data Settlement Administrator, P.O. Box 5125, Baton Rouge, LA 70821.

***Please do not call the Court or the Clerk of the Court or Preferred Home or Preferred Home's Counsel for additional information.***

***They cannot answer any questions regarding the Settlement or the Lawsuit.***