

**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

**PLAINTIFFS’ NOTICE OF MOTION AND UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

Plaintiffs Lisa Simmons and Kelly Peterson-Small (“Plaintiffs” or “Class Representatives”), individually and on behalf of all others similarly situated, hereby move this court to:

1. Preliminarily approve the Settlement Agreement between Plaintiffs and Defendant Assistcare Home Health Services, LLC, d/b/a Preferred Home Health Care of New York Preferred Gold (“Preferred Home”), and the attachments thereto. A true and correct copy of the Settlement Agreement (“Settlement Agreement” or “S.A.”) is attached to Plaintiffs’ Memorandum in Support of Unopposed Motion for Preliminary Approval of Class Action Settlement as **Exhibit 1**. Included with the Settlement Agreement are the following sub-exhibits:

Sub-Exhibit A: Short Notice

Sub-Exhibit B: Long Notice

Sub-Exhibit C: Claim Form

Sub-Exhibit D: [Proposed] Preliminary Approval Order

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

2. Conditionally certify the Settlement Class¹ and Settlement Subclass;
3. Preliminarily approve the Settlement as sufficiently fair, reasonable, adequate, and in the best interest of the Settlement Class Members to warrant providing Notice to Settlement Class Members;
4. Appoint Postlethwaite & Netterville APC (“P&N”) as Settlement Administrator;
5. Approve the Notice Program set forth in the Settlement Agreement;
6. Direct the Settlement Administrator and Preferred Home to provide Notice to Settlement Class Members in accordance with the Notice Program;
7. Approve a customary form of short notice to be mailed to the Settlement Class (the “Short Form Notice for Settlement Class”) and the Settlement Subclass (the “Short Form Notice for Settlement Subclass”) in form substantially similar to that attached to the Settlement Agreement as **Exhibit A** and a customary long form of notice (“Long Form Notice”) in a form substantially similar to that attached to the Settlement Agreement as **Exhibit B**, which together shall include a fair summary of the Parties’ respective litigation positions, the general terms of the Settlement set forth in this Settlement Agreement, instructions for how to object to or opt-out of the Settlement, the process and instructions for making claims to the extent contemplated in the Settlement Agreement, and the date, time, and place of the Final Approval Hearing;

¹ The capitalized terms in this Notice of Motion and Unopposed Motion for Preliminary Approval of Class Action Settlement shall have the same meaning as set forth in the Settlement Agreement, unless otherwise indicated.

8. Approve a Claim Form in a form substantially similar to that attached to the Settlement Agreement as **Exhibit C**;
9. Direct the Settlement Administrator to conduct Settlement Administration in accordance with the provisions of this Settlement Agreement;
10. Approve the Opt-Out and Objection procedures outlined in the Settlement Agreement;
11. Provisionally appoint Plaintiffs Lisa Simmons and Kelly Peterson-Small as Class Representatives;
12. Provisionally appoint Milberg Coleman Bryson Phillips Grossman, PLLC as Settlement Class Counsel;
13. Set a hearing date and schedule for the Final Approval Hearing for the Settlement and consideration of Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards.

This Motion is made pursuant to N.Y. C.P.L.R. Ch. 8, Art. 9, §§ 901-904, and 908 and is based on: (1) this Motion; (2) Plaintiffs' Memorandum in Support of Unopposed Motion for Preliminary Approval of Class Action Settlement ("Memorandum"), and; (3) the Declaration of Gary M. Klinger, attached as **Exhibit 2** to the Memorandum; (4) the Settlement Agreement; (5) the Notices of Class Action Settlement (including the Short Form Notice and Long Form Notice); (6) the Claim Form; (7) the [Proposed] Order Granting Preliminary Approval of Class Action Settlement; (8) the [Proposed] Final Approval Order and Judgment Granting Final Approval of Class Action Settlement; (9) the records, pleadings, and papers filed in this action; and (10) upon such other documentary and oral evidence or argument as may be presented to the Court at or prior to the hearing of this Motion.

Dated: November 4, 2022

Respectfully submitted,

/s/ Gary M. Klinger

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*Counsel for Plaintiffs Lisa Simmons and
Kelly Peterson-Small and Proposed Class*

CERTIFICATION OF COMPLIANCE WITH RULE 202.8-b

I hereby certify that the foregoing contains 625 words and is in compliance with the Court's word count limit.

Gary M. Klinger

CERTIFICATE OF SERVICE

I, Gary M. Klinger, hereby certify that on this 4th day of November, 2022, I caused a true and correct copy of the foregoing Plaintiffs' Notice of Motion and Unopposed Motion for Preliminary Approval of Class Action Settlement to be electronically filed using the Court's NYSCEF system, which will serve all counsel of record.

/s/ Gary M. Klinger

Gary M. Klinger