

**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

SETTLEMENT AGREEMENT

I. RECITALS

1. The Litigation.

On or about January 9, 2021, Assistcare Home Health Services, LLC, d/b/a Preferred home Health Care of New York/Preferred Gold (“Preferred Home”) discovered a disruption on its computer network. Between January 8, 2021 and January 10, 2021, an unauthorized third-party cybercriminal had access to information concerning approximately 92,283 current and former patients and employees, including Plaintiffs Lisa Simmons and Kelly Peterson-Small (defined below), from Preferred Home’s computer network (the “Data Incident”). The compromised information contained Plaintiffs’ and Settlement Class Members’ (as defined below) personally identifiable information (as defined below) and protected health information (as defined below). The compromised information contained included 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. Preferred Home began notifying affected individuals about the Data Incident on March 10, 2021.

On May 14, 2021, Plaintiffs filed a Class Action Complaint in the Supreme Court of the State of New York, County of Kings, styled *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.), against Preferred Home. Plaintiff's 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. On June 30, 2021, Preferred Home filed a Motion to Compel Arbitration, to Stay Action or to Dismiss Complaint, arguing that Plaintiffs Peterson-Small's claims were subject to binding arbitration and that the entire action should be stayed pending the final outcome of that arbitration. 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. On February 9, 2022, the Court issued an Order denying Preferred Home's motion to compel arbitration and to stay the action pending arbitration. The Court also dismissed Plaintiff's' 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"). After the Court's ruling on Preferred Home's motion, the Parties agreed to mediate the matter. On March 14, 2022, the Court stayed all proceedings in the matter pending the outcome of the mediation.

On August 4, 2022, the Parties engaged in mediation with Bennett G. Picker, Esq. of Stradley Ronon Stevens & Young, LLP. Prior to the mediation, Preferred Home supplied

information to the mediator, including information about the cause and scope of the Data Incident and information about the class size. At the mediation, the Parties were able to reach an agreement on all the principal terms of settlement for this matter, subject to final mutual agreement on all necessary documentation. Since then, the Parties continued to negotiate in good faith and at arms' length, the finer points of the settlement and drafted and finalized 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.

2. Claims of Plaintiffs' and Benefits of Settling.

Plaintiffs believe that the claims asserted in the Lawsuit, as set forth in the Complaint, have merit. Plaintiff's and Settlement Class Counsel recognize and acknowledge, however, the expense and length of continued proceedings necessary to prosecute the Lawsuit against Preferred Home through motion practice, trial, and potential appeals. They have also taken into account the uncertain outcome and risk of further litigation, as well as the difficulties and delays inherent in such litigation. Settlement Class Counsel are experienced in class action litigation and knowledgeable regarding the relevant claims, remedies, and defenses at issue generally in such litigation and in this Lawsuit. They have determined that the settlement set forth in this Settlement Agreement is fair, reasonable, and adequate, and in the best interests of the Settlement Class.

3. Denial of Wrongdoing and Liability.

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 acted negligently toward anyone, denies that it impliedly breached any contract, and denies it invaded anyone's privacy. Nonetheless, Preferred Home has concluded that further defense of the Lawsuit would be protracted and

expensive, and that it is desirable that the Lawsuit be fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement Agreement. Preferred Home has considered the uncertainty and risks inherent in any litigation. Preferred Home has, therefore, determined that it is desirable and beneficial that the Lawsuit be settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.

II. TERMS OF SETTLEMENT

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among Plaintiffs, individually and on behalf of the Settlement Classes, Settlement Class Counsel, and Preferred Home that, subject to the approval of the Court, the Lawsuit and the Released Claims shall be finally and fully compromised, settled, and released, and the Lawsuit shall be dismissed with prejudice as to the Parties, the Settlement Classes, and the Settlement Class Members, except those Settlement Class Members who lawfully opt-out of the Settlement Agreement, upon and subject to the terms and conditions of this Settlement Agreement, as follows:

1. DEFINITIONS.

As used in this Settlement Agreement and its exhibits, the following terms have the meanings specified below:

1.1 “*Claim Deadline*” means a date certain, which is to be set forth in the Notice and which shall be no more than ninety (90) Days from the date Notice is mailed to the Settlement Class Members.

1.2 “*Claim Form*” means the form, attached as **Exhibit C** to this Settlement Agreement, which Settlement Class Members must complete and submit on or before the Claim Deadline in order to be eligible for the benefits described herein. The Claim Form shall require an actual or electronic sworn upon information and belief but shall not require a notarization or any other form of verification.

1.3 “*Claims Administration*” means the processing and payment of claims received from Settlement Class Members by the Settlement Administrator.

1.4 “*Complaint*” means the Class Action Complaint filed by Plaintiffs on May 14, 2021 in the Lawsuit.

1.5 “*Court*” means the Supreme Court for the State of New York, County of Kings.

1.6 “*Data Incident*” means cyberattack incident allegedly involving the potential viewing, access, and exfiltration of Plaintiffs’ and Settlement Class Members’ PII and PHI on Preferred Home’s computer network between January 8, 2021 and January 10, 2021

1.7 “*Days*” means calendar days; provided, however, when computing any period of time prescribed or allowed by this Settlement Agreement, does not include the day of the act, event, or default from which the designated period of time begins to run. Further, when computing any period of time prescribed or allowed by this Settlement Agreement, include the last day of the period, unless it is a Saturday, a Sunday, or a Federal legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Federal legal holiday.

1.8 “*Effective Date*” means the date defined in Paragraph 14.1 of this Settlement Agreement.

1.9 “*Final*” means that all of the following events have occurred: (a) the settlement pursuant to this Settlement Agreement is approved by the Court; (b) the Court has entered the Final Order and Judgment; and (c) either (i) no appeal has been taken from the judgment as of the date on which all times to appeal or seek permission to appeal therefrom have expired, or (ii) if an appeal or other review proceeding of the judgment has been commenced, such appeal or other review is finally concluded and no longer is subject to further review by any

court, whether by appeal, petitions or rehearing or re-argument, petitions for rehearing *en banc*, petitions for writ of certiorari, or otherwise, and such appeal or other review has been finally resolved in a manner that affirms the Final Order and Judgment in all material respects. Notwithstanding the above, any order modifying or reversing any Service Award or award of attorneys' fees or expenses shall not affect whether a judgment in this matter is Final or any other aspect of the judgment.

1.10 “*Final Approval Hearing*” means the hearing in the Lawsuit at which the Court considers final approval of this Settlement and the entry of the Final Order and Judgment.

1.11 “*Final Order and Judgment*” means the final judgment and order of dismissal with prejudice to be entered in the Lawsuit in connection with the approval of the Settlement after the Final Approval Hearing.

1.12 “*Lawsuit*” means the lawsuit, styled *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.), pending in the Supreme Court, State of New York, County of Kings.

1.13 “*Notice*” means the written notice to be sent or published to Settlement Class Members and the Settlement Subclass Members pursuant to the Preliminary Approval Order, attached as **Exhibits A and B**.

1.14 “*Notice and Claims Administration Costs*” means actual costs and fees associated with or arising from providing notice to Settlement Class Members and from performing Claims Administration in connection with the Settlement.

1.15 “*Notice Program*” means the notice program described in Section 5.

1.16 “*Parties*” means Plaintiffs, individually and on behalf of the Settlement Class (as defined below) and Subclass (as defined below), and Defendant Assistcare Home Health Services, LLC, d/b/a Preferred Home Health Care of New York/Preferred Gold.

1.17 “*Person*” means an individual, corporation, partnership, limited partnership, limited liability company or partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity, and their respective spouses, heirs, predecessors, successors, representatives, or assignees.

1.18 “*Personally Identifiable Information*” or “*PII*” shall include, but is not limited to 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.

1.19 “*Plaintiffs*” or “*Class Representatives*” mean Lisa Simmons and Kelly Peterson-Small.

1.20 “*Plaintiffs’ counsel*” shall mean Gary M. Klinger, Milberg Coleman Bryson Phillips Grossman, PLLC.

1.21 “*Preferred Home*” means Assistcare Home Health Services, LLC, d/b/a Preferred Home Health Care of New York/Preferred Gold.

1.22 “*Preferred Home Counsel*” means Polsinelli PC and their attorneys.

1.23 “*Preliminary Approval Date*” means the date on which the Preliminary Approval Order has been entered by the Court.

1.24 “*Preliminary Approval Order*” means the order preliminarily approving the Settlement and providing for Notice to the Settlement Class, attached as **Exhibit D**.

1.25 “*Related Entities*” means Preferred Home’s past or present parents, subsidiaries, divisions, and related or affiliated entities, and each of Preferred Home’s and their respective predecessors, successors, directors, officers, employees, principals, agents, attorneys, insurers, and reinsurers, and includes, without limitation, any Person related to any such entity who is, was, or could have been named as a defendant in the Lawsuit, other than any Person who is found by a court of competent jurisdiction to be guilty under criminal law of initiating, causing, or aiding or abetting the criminal activity associated with the Data Incident or who pleads *nolo contendere* to any such charge.

1.26 “*Released Claims*” means any and all past, present, and future claims, causes of action, counterclaims, lawsuits, rights, demands, charges, complaints, actions, obligations, or liabilities under any legal or equitable theory, whether known, unknown, suspected, or unsuspected or capable of being known or suspected, and whether, accrued, unaccrued, matured, or not matured, including, but not limited to, negligence; negligence *per se*; negligent training and supervision; breach of fiduciary duty; invasion of privacy; breach of contract; breach of implied contract; misrepresentation (whether fraudulent, negligent, or innocent); bailment; wantonness; failure to provide adequate notice pursuant to any breach notification statute, regulation, or common law duty; and any causes of action under 18 U.S.C. §§ 2701 *et seq.*, and all similar statutes in effect in any states in the United States as defined herein; and including, but not limited to, any and all claims for damages, injunctive relief, disgorgement, declaratory relief, equitable relief, attorneys’ fees, costs and expenses, set-offs, losses, pre-judgment interest, credit monitoring services, the creation of a fund for future

damages, statutory damages, punitive damages, special damages, exemplary damages, restitution, the appointment of a receiver, and any other form of relief that either has been pleaded, or could have been pleaded, by any Settlement Class Member against any of the Released Persons based on, relating to, concerning, or arising out of, or are related in any way to the activities stemming from the Data Incident. Released Claims shall not include the right of any Settlement Class Member, Plaintiffs' counsel, Settlement Class Counsel, or any of the Released Persons to enforce the terms of the Settlement contained in this Settlement Agreement, and shall not include the claims of Persons who have timely and validly requested exclusion from the Settlement Class pursuant to the opt-out procedures set forth in this Settlement Agreement.

1.27 “*Released Persons*” means Preferred Home, the Related Entities, and each of their past or present parents, subsidiaries, divisions, and related or affiliated entities, and each of their respective predecessors, successors, assigns, owners, directors, officers, employees, principals, agents, attorneys, insurers, and reinsurers.

1.28 “*Settlement*” means the settlement of the Lawsuit upon the terms and conditions set forth in this Settlement Agreement.

1.29 “*Settlement Administrator*” means Postlethwaite & Netterville APC (“P&N”) or another company experienced in administering class action claims generally and specifically those of the type provided for and made in Lawsuit, if jointly agreed upon by the parties and approved by the Court.

1.30 “*Settlement Agreement*” means this Settlement Agreement, including all exhibits hereto.

1.31 “*Settlement Class*” and “*Settlement Subclass*”

(a) “*Settlement Class*” means “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.”

(b) “*Settlement Subclass*” means “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.”

(c) “*Settlement Classes*” means the Settlement Class and the Settlement Subclass combined.

(d) Excluded from the Settlement Subclasses 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.”

1.32 “*Settlement Class Counsel*” shall mean Milberg Coleman Bryson Phillips Grossman, PLLC.

(a) “Settlement Class Member[s]” and “Settlement Subclass Member[s]”

(i) “*Settlement Class Member[s]*” means all persons who fall within the definition of the Settlement Class.

(ii) “*Settlement Subclass Member[s]*” means all persons who fall within the definition of the Settlement Subclass.

(iii) For avoidance of doubt, Settlement Subclass Members are also Settlement Class Members, and

references herein to the Settlement Class therefore include the Settlement Subclass.

1.33 “*Settlement Website*” means a dedicated website created and maintained by the Settlement Administrator, which will contain relevant documents and information about the Settlement, including this Settlement Agreement, Notice, and Claim Form, among other things.

1.34 “*Valid Claim*” means a claim in an amount approved by the Settlement Administrator or found to be valid through the claims processing and/or dispute resolution process described in ¶ 4.

2. CLASS CERTIFICATION

2.1 Solely for the purpose of implementing this Settlement Agreement and effectuating the Settlement, Preferred Home agrees to stipulate to the certification of the Settlement Class and will not oppose Plaintiff’s request for certification.

2.2 Solely for the purpose of implementing this Settlement Agreement and effectuating the Settlement, Preferred Home stipulates that Plaintiffs are adequate representatives of the Settlement Classes, and that Settlement Class Counsel is adequate counsel for the Settlement Classes.

2.3 If the Settlement set forth in this Settlement Agreement is not approved by the Court, or if the Settlement Agreement is terminated or cancelled pursuant to the terms of this Settlement Agreement, this Settlement Agreement, and the certification of the Settlement Classes provided for herein, shall be vacated, and the Lawsuit shall proceed as though the Settlement Classes had never been certified, without prejudice to any Person’s or Party’s position on the issue of class certification or any other issue. The Parties’ agreement to the certification of the Settlement Classes is also without prejudice to any position asserted by the

Parties in any other proceeding, case, or action, as to which all of their rights are specifically preserved. In the event of non-approval, termination or cancellation of this Settlement Agreement, Preferred Home or its insurer shall be responsible for administration and notification costs incurred, if any, but shall have no other payment, reimbursement, or other financial obligation of any kind as a result of this Settlement Agreement.

3. SETTLEMENT BENEFITS.

Subject to the terms of this Settlement Agreement, Preferred Home or its insurer shall make available the following compensation to Settlement Class Members:

3.1 Monetary Compensation for Losses: Settlement Class Members who submit a valid and timely Claim Form may choose all applicable claim categories below. The overall compensation cap for any individual claimant is \$400.00 for all amounts claimed in Claims A and B, and \$3,500.00 for all amounts claimed in Claim B. Claims will be subject to review for completeness and plausibility by the Settlement Administrator, and Claimants 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.

(a) Claim A: Compensation for Ordinary Losses. Settlement Class Members will be eligible for compensation for unreimbursed ordinary losses, as defined below, up to a total of \$400.00 per claimant, upon submission of a valid Claim Form and supporting documentation (except for claims for lost time). Ordinary losses may include: (i) 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; (ii) fees for credit reports, credit monitoring, or other identity theft insurance product purchased between the January 8, 2021 and the Claims Deadline; and (iii) 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 claimant certifies that the lost time was spent responding to issue raised by the Data Incident. The maximum amount any one claimant may recover under Claim A is \$400.00.

(b) Claim B: Compensation for Extraordinary Losses. Settlement Class Members will be eligible for compensation for extraordinary losses, including proven actual monetary losses, upon submission of a valid Claim Form and supporting documentation, provided that: (i) the loss is an actual, documented, and unreimbursed monetary loss; (ii) the loss was more likely than not caused by the Data Incident; (iii) the loss occurred between January 8, 2021 and the Claims Deadline; (iv) the loss is not already covered by one or more of the normal reimbursement categories (including Section 3.1(a) above); (v) the claimant made reasonable efforts to avoid the loss 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.

(c) Credit Monitoring. Settlement Class Members shall be offered one (1)-year membership of three bureau (3B) credit monitoring. Settlement Subclass Members shall be offered one (1) additional year membership of 3B credit monitoring (for a total of two (2) years offered).

3.2 Limitation on Monetary Relief. Preferred Home's and/or its insurers' maximum payment obligation under this Settlement Agreement for any and all payments under ¶¶ 3.1(a)-(c) 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. Nothing in this Settlement Agreement shall be construed as requiring Preferred Home to provide, and Preferred home shall not be required to provide, for a double payment for the same loss or injury that was reimbursed or compensated by any other source. No payment shall be made for emotional distress, personal/bodily injury, or punitive damages, as all such amounts are not recoverable pursuant to the terms of the Settlement Agreement.

3.3 Injunctive Relief. Defendant shall continue to provide security for patient, employee, and former employee private information and personal health information. Preferred Home shall provide Plaintiffs' counsel with a confidential declaration or affidavit outlining the alleged security-related issues involved in the Data Incident and attesting that security-related measures have been implemented to remediate said security-related issues. Costs associated with these security-related measures have been paid by Preferred Home separate and apart from other settlement benefits. Preferred Home shall also provide a reasonable estimated cost of all security enhancements and remediation measures to date, and all planned security enhancements and remediation measures reasonably related to the Data Incident.

3.4 Confirmatory Discovery. Preferred Home agrees to provide confirmatory discovery on establishing the appropriateness of the settlement terms as contemplated under Federal Rule of Civil Procedure 23(b)(1) and its N.Y. C.P.L.R. Ch. 8, Art. 9, §§ 901 *et seq.*

4. SETTLEMENT ADMINISTRATION.

4.1 Preferred Home or its insurer will pay the entirety of all Notice and Claims Administration Costs.

4.2 The Parties have agreed to request that the Court appoint P&N as Settlement Administrator. The Notice is estimated to cost \$112,937. Once approved by the Court, the

Settlement Administrator will be an agent of the Court and will be subject to the Court's supervision and direction as circumstances may require.

4.3 The Settlement Administrator will cause the Notice Program to be effectuated in accordance with the terms of this Settlement Agreement and any orders of the Court. The Settlement Administrator may request the assistance of the Parties to facilitate providing Notice and to accomplish such other purposes as may be approved by Preferred Home Counsel and Settlement Class Counsel. The Parties shall reasonably cooperate with such requests.

4.4 The Settlement Administrator will administer and update the Settlement Website in accordance with the terms of this Settlement Agreement. Settlement Class Counsel and Preferred Home Counsel shall agree on all information and documents to be posted on the Settlement Website.

4.5 The Settlement Administrator will conduct Claim Administration in accordance with the terms of the Settlement Agreement, any additional processes agreed to by Settlement Class Counsel and Preferred Home Counsel, and subject to the Court's supervision and direction as circumstances may require.

4.6 To make a claim for monetary compensation, a Settlement Class Member must complete and submit a valid, timely, and sworn Claim Form. Claim Forms shall be submitted by U.S. mail or electronically through the Settlement Website and must be postmarked or submitted no later than the Claim Deadline.

4.7 The Settlement Administrator will review and evaluate each Claim Form, including any required documentation submitted, for timeliness, completeness, and validity.

4.8 Claims will be subject to review for completeness and plausibility by the Settlement Administrator, and Claimants 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.

4.9 The Settlement Administrator, in its sole discretion to be reasonably exercised, will determine whether: (1) the claimant is a Settlement Class Member; (2) the claimant has provided all documentation or information needed to complete the Claim Form, including any documentation required to support claims for compensation under Paragraph 3.1 above; and (3) when applicable, the information submitted could lead a reasonable person to conclude that the claimant is eligible for the category and/or amount for which a claim is submitted ("Facially Valid"). The Settlement Administrator's initial review will be limited to whether the claim is Facially Valid.

4.10 Upon receipt of an incomplete or unsigned Claim Form or a Claim Form that is not accompanied by sufficient documentation (other than claims for lost time) to determine whether the claim is Facially Valid, the Settlement Administrator shall request additional information ("Claim Supplementation") and give the Settlement Class Member twenty-one (21) days to cure the defect before rejecting the claim. Requests for Claim Supplementation shall be made within thirty (30) days of receipt of such Claim Form. In the event of unusual circumstances interfering with compliance during the twenty-one (21) day period, the claimant may request and, for good cause shown (*e.g.*, illness, military service, out of the country, mail failures, lack of cooperation of third parties in possession of required information, etc.), shall be given, a reasonable extension of the twenty-one (21) day deadline in which to comply, as determined by the Settlement Administrator; however, in no event shall

the deadline be extended for longer than six (6) months from the date of the request for Claim Supplementation. If the defect is not timely cured, the claim will be deemed incomplete and thus invalid, and Preferred Home shall bear no obligation to pay the claim.

4.11 Following receipt of additional information requested by the Settlement Administrator, the Settlement Administrator shall have ten (10) days to assess the validity of the claim and either accept (in whole or at a lesser amount) or reject each claim. If, after review of the claim and all documentation submitted by the claimant, the Settlement Administrator determines that such a claim is valid, then the claim shall be a Valid Claim and paid according to ¶ 4.15. If the Settlement Administrator determines that such a claim is not valid, then the Claims Administrator may reject the claim without any further action.

4.12 Settlement Class Members shall have thirty (30) days from receipt of the final determination by the Settlement Administrator to accept or reject the determination regarding an award. If the Settlement Class Member approves the final determination, then the approved amount shall be the amount to be paid (pursuant to the process described in ¶ 4.15). If the Settlement Class Member rejects the Settlement Administrator's final determination, the Settlement Administrator shall submit that claim to the Parties (one Plaintiffs' lawyer and one of Preferred Home's lawyers shall be designated to fill this role). If, after meeting and conferring, the Parties do not agree regarding the Settlement Administrator's final determination, then the claim shall be referred to a Claims Referee for resolution. The Settlement Parties will mutually agree on the Claims Referee should one be required. If the Parties are unable to mutually agree on a Claims Referee, the Parties will submit the Settlement Class Member's claim to the Court for final resolution.

4.13 Within thirty (30) days of a dispute being submitted to the Claims Referee, the Claims Referee shall decide the dispute. The Claims Referee's determination shall be based on whether the Claims Referee is persuaded that the claimed amounts are reasonably supported in fact and are fairly traceable to the Data Incident. The Claims Referee shall have the power to reject a claim or approve a claim in full or in part. The Claims Referee's decision will be final and non-appealable. Any Settlement Class Member referred to the Claims Referee shall reasonably cooperate with the Claims Referee, including by either providing supplemental information as requested or, alternatively, signing an authorization allowing the Claims Referee to verify the claim through third-party sources, and failure to cooperate shall be grounds for denial of the claim in full.

4.14 The Settlement Administrator will maintain records of all Claim Forms submitted until the later of (a) one hundred and eighty (180) Days after the Effective Date or (b) the date all Claim Forms have been fully processed. Claim Forms and supporting documentation may be provided to the Court upon request and to Settlement Class Counsel and/or Preferred Home Counsel to the extent requested or necessary to resolve Claims Administration issues pursuant to this Settlement Agreement. Preferred Home or the Settlement Administrator will provide other reports or information as requested by the Court.

4.15 Subject to the terms and conditions of this Settlement Agreement, Preferred Home or its insurer shall transmit needed claimant compensation funds to the Settlement Administrator, and the Settlement Administrator shall mail or otherwise provide checks for approved claims within sixty (60) Days of the Effective Date, or within sixty (60) Days of the date that the Claim is approved, whichever is later.

4.16 Checks for approved Claims shall be mailed to the address provided by the Settlement Class Member on his or her Claim Form.

4.17 Cashing a check for an approved Claim is a condition precedent to any Settlement Class Member's right to receive benefits under this Settlement Agreement. All checks issued under this section shall be void if not negotiated within ninety (90) Days of their date of issue and shall bear the language "This check must be cashed within 90 days, after which time it is void." Checks issued pursuant to this section that are not negotiated within ninety (90) Days of their date of issue shall not be reissued. If a Settlement Class Member fails to cash a check issued under this section before it becomes void, the Settlement Class Member will have failed to meet a condition precedent to recovery of settlement benefits, the Settlement Class Member's right to receive monetary relief under the Settlement shall be extinguished, and Preferred Home shall have no obligation to make payments to the Settlement Class Member for compensation or loss reimbursement under Paragraph 3.1 or to make any other type of monetary relief to the Settlement Class Member. Such Settlement Class Member remains bound by all terms of the Settlement Agreement.

4.18 The settlement funds and benefits that Preferred Home shall create or provide will not be subject to any non-claim statutes or any possible rights of forfeiture or escheat. All monies that might be paid are not vested, contingently due, or otherwise monies in which a Settlement Class Member has an enforceable right and shall remain the property of Preferred Home and its insurer until all conditions for payment have been met. No interest shall accrue or be payable in connection with any payment due under this Settlement Agreement.

4.19 Information submitted by Settlement Class Members in connection with submitted claims for benefits under this Settlement Agreement shall be deemed confidential

and protected as such by the Settlement Administrator, Claims Referee, Settlement Class Counsel, and Preferred Home Counsel.

5. NOTICE TO SETTLEMENT CLASS MEMBERS.

5.1 The Parties agree that the following Notice Program provides reasonable notice to the Settlement Class.

5.2 Notice shall be provided to Settlement Class Members via (1) direct notice; and (2) notice on the Settlement Website.

5.3 Within seven (7) Days of the entry of the Preliminary Approval Order and engagement of a Settlement Administrator, Preferred Home shall 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 shall, by using the National Change of Address (“NCOA”) database maintained by the United States Postal Service (“Postal Service”), obtain updates, if any, to the mailing addresses.

5.4 Within seventy-five (75) Days of the entry of the Preliminary Approval Order (the “Notice Deadline”), the Settlement Administrator shall send the Notice in forms substantially similar to those attached hereto as **Exhibits A-1 and A-2**, respectively, as approved by the Court, to all Settlement Class Members whose addresses are known to Preferred Home by First Class U.S.P.S. Mail.

5.5 If any Notice is returned by the Postal Service as undeliverable, the Settlement Administrator shall remail 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 whose Notice was returned undeliverable and remail the Notice. Other than as set forth in the preceding sentence, neither the Parties

nor the Settlement Administrator shall have any obligation to remain a Notice to a Settlement Class Member.

5.6 The Notice mailed to Settlement Class Members will consist of a Short Form Notice for the Settlement Class and a Short Form Notice for the Settlement Subclass in a form substantially similar to that attached hereto as **Exhibits A-1 and A-2**, respectively, as approved by the Court. The Settlement Administrator shall have discretion to format this Short Form Notice in a reasonable manner to minimize mailing and administrative costs. Before Notices are mailed, Settlement Class Counsel and Preferred Home Counsel shall first be provided with a proof copy (reflecting what the items will look like in their final form) and shall have the right to inspect the same for compliance with the Settlement Agreement and any orders of the Court.

5.7 No later than thirty (30) Days following entry of the Preliminary Approval Order and engagement of a Settlement Administrator, and prior to the mailing of the Notice to Settlement Class Members, the Settlement Administrator will create a dedicated Settlement Website. The Settlement Administrator shall cause the Settlement Agreement, the Complaint, the Short Form Notice, the Long Form Notice (in a form substantially similar to the in the form attached to the Settlement Agreement attached hereto as **Exhibit B**), as approved by the Court, and the Claim Form (in a form substantially similar to the form attached hereto as **Exhibit C**), as approved by the Court, as well as other relevant filings, including Plaintiffs' Motion for attorneys' fees, costs, expenses and Service Awards and Plaintiffs' Motion for Final Approval of the Class Action Settlement, to be made available on the Settlement Website. The website address and the fact that the Long Form Notice and a Claim Form are

available through the website shall be included in the Notice mailed to Settlement Class Members.

5.8 The Settlement Website shall be maintained and updated until thirty (30) Days after the Claim Deadline has passed.

5.9 Claim Forms shall be returned or submitted to the Settlement Administrator through the Settlement Website or via U.S. Mail by the Claim Deadline set by the Court or be forever barred.

5.10 Prior to the Final Approval Hearing, the Settlement Administrator shall provide to Settlement Class Counsel and Preferred Home Counsel to file with the Court an appropriate affidavit or declaration from the Settlement Administrator with respect to its compliance with the Court-approved Notice Program.

6. OPT-OUT PROCEDURE.

6.1 Each Settlement Class Member shall have the right to opt-out and not participate in the Settlement Agreement, as provided for in the Preliminary Approval Order.

6.2 The Notice shall inform each Settlement Class Member of his or her right to request exclusion from the Settlement Class and not to be bound by this Settlement Agreement, if, within such time as is ordered by the Court (“Opt-Out Period”), the Settlement Class Member personally signs and timely submits, completes, and mails 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”).

6.3 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.

6.4 For a Settlement Class Member's Opt-Out Request to be valid, it 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; (b) 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 (c) state unequivocally the Settlement Class Member's intent to be excluded from the Settlement. The Settlement Administrator shall promptly inform Settlement Class Counsel and Preferred Home Counsel of any Opt-Out Requests.

6.5 All Settlement Class Members who submit timely and valid Opt-Out Requests in the manner set forth in Paragraph 6.4, above, referred to herein as "Opt-Outs," shall receive no benefits or compensation under this Settlement Agreement, shall gain no rights from the Settlement Agreement, shall not be bound by the Settlement Agreement, and shall have no right to object to the Settlement or proposed Settlement Agreement or to participate at the Final Approval Hearing. All Settlement Class Members who do not request to be excluded from the Settlement Class in the manner set forth in Paragraph 6.4, above, shall be bound by the terms of this Settlement Agreement, including the Release contained herein, and any judgment entered thereon, regardless of whether he or she files a Claim Form or receives any monetary benefits from the Settlement.

6.6 An Opt-Out Request or other request for exclusion that does not fully comply with the requirements set forth in Paragraph 6.4, above, or that is not timely submitted or postmarked, or that is sent to an address other than that set forth in the Notice, shall be invalid, and the person submitting such request shall be treated as a Settlement Class Member and be

bound by this Settlement Agreement, including the Release contained herein, and any judgment entered thereon.

6.7 No person shall purport to exercise any exclusion rights of any other person, or purport (a) to opt-out Settlement Class Members as a group, in the aggregate, or as a class involving more than one Settlement Class Member; or (b) to opt-out more than one Settlement Class Member on a single paper, or as an agent or representative. Any such purported Opt-Out Requests shall be void, and the Settlement Class Member(s) who is or are the subject of such purported Opt-Out Requests shall be treated as a Settlement Class Member and be bound by this Settlement Agreement, including the Release contained herein, and the Final Order and Judgment entered thereon, unless he or she submits a valid and timely Opt-Out Request.

6.8 Within fourteen (14) Days after the last Day of the Opt-Out Period, the Settlement Administrator shall furnish to Settlement Class Counsel and to Preferred Home Counsel a complete list of all timely and valid Opt-Out Requests (the "Opt-Out List").

7. OBJECTIONS TO THE SETTLEMENT.

7.1 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 (as defined below). Such notice 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 Incident); (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.

7.2 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 (the "Objection Date") and mailed or hand delivered concurrently upon Settlement Class Counsel and Preferred Home Counsel at addresses set forth in the Notice. The deadline for filing Objections shall be included in the Notice.

7.3 An objector is not required to attend the Final Approval Hearing. If an objecting Settlement Class Member intends to appear at the Final Approval Hearing, either with or without counsel, he or she must also file with the Court, and mail or hand-deliver to Settlement Class Counsel and MDMC Counsel, a notice of appearance no later than ninety (90) Days after the Preliminary Approval Date.

7.4 If the objecting Settlement Class Member intends to appear at the Final Approval Hearing through counsel, the notice of appearance filed with the Court must also identify the attorney(s) representing the objector who will appear at the Final Approval Hearing and include each such attorney's name, address, phone number, email address, state bar(s) to which counsel is admitted, as well as associated state bar numbers, and a list identifying all objections such counsel has filed to class action settlements in the past three

(3) years, the results of each objection, any court opinions ruling on the objections, and any sanctions issued by a court in connection with objections filed by such attorney.

7.5 If the objecting Settlement Class Member intends to request permission from the Court to call witnesses at the Final Approval Hearing, the objecting Settlement Class Member must provide a list of any such witnesses together with a brief summary of each witness's expected testimony at least thirty (30) Days before the Final Approval Hearing.

7.6 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. The exclusive means for any challenge to the Settlement Agreement shall be through the provisions set forth in this Section. Without limiting the foregoing, any challenge to the Settlement Agreement, the Final Order and Judgment approving this Settlement Agreement, or the Judgment to be entered upon final approval, shall be pursuant to appeal under the New York Rules of Appellate Procedure and not through a collateral attack. Any objecting Settlement Class Member who appeals final approval of the Settlement Agreement will be required to post an appeal bond.

8. ATTORNEYS' FEES AND EXPENSES AND SERVICE AWARD.

8.1 Plaintiffs shall seek and Preferred Home agrees to pay Service Awards of \$1,500 for each named Plaintiffs (for a total of \$3,000), which award is intended to recognize Plaintiffs for their efforts in the litigation and commitment on behalf of the Settlement Classes

("Service Awards"). The Service Awards were negotiated after the primary terms of the Settlement were negotiated. The Service Awards shall be paid separate and apart from any other sums agreed upon under this Settlement Agreement. If approved by the Court, Preferred Home will pay or cause to be paid the Service Awards to an account established by Settlement Class Counsel no later than twenty-one (21) Days after the later of (1) the Effective Date or (2) the date Settlement Class Counsel provides and independently confirms payee account information and W-9. .

8.2 Preferred Home agrees not to oppose an application by Plaintiffs' counsel for an award of attorneys' fees and litigation costs 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 and litigation costs in addition to any other benefits provided to Settlement Class Members and the Notice and Claims Administration Costs. If approved by the Court, Preferred Home will pay or cause to be paid the Court-approved amount for attorneys' fees and litigation costs to an account established by Settlement Class Counsel no later than twenty-one (21) Days after the later of (1) the Effective Date or (2) the date Settlement Class Counsel provides and independently confirms payee account information and W-9. ..

8.3 Payment of compensation to Settlement Class Members and payment of the Service Awards are understood and agreed by the Parties to be payments in compromise of disputed claims and not payments of contractually based obligations of Preferred Home, such as, for example, refunds of amounts paid or payable to Preferred Home for medical care. It is also understood and agreed by the Parties that payment of compensation to Settlement Class Members and the payments of Service Awards to Class Representatives are not subject to set-

off or recoupment in the event unpaid bills or other amounts are due Preferred Home from the payee of such compensation or award.

8.4 Settlement Class Counsel will file the applications with the Court for a Service Award and attorneys' fees and expenses no less than fourteen (14) Days prior to the opt-out and objection deadlines, unless otherwise ordered by the Court.

8.5 The Parties agree that Preferred Home will not in any event or circumstance be required to pay any amounts to Plaintiffs or Settlement Class Counsel for a Service Award or attorneys' fees and litigation costs in excess of the amounts identified above in Paragraphs 8.1 and 8.2.

8.6 The Parties agree that the Court's approval or denial of any request for a Service Award and/or attorneys' fees and litigation costs are not conditions to this Settlement Agreement. The Parties further agree that the amount(s) of a Service Award, and of any award of attorneys' fees or litigation costs, are intended to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement. No order of the Court, or modification, reversal, or appeal of any order of the Court, concerning the amount of a Service Award or any attorneys' fees or expenses, ordered by the Court to be paid to Settlement Class Counsel or Plaintiffs shall affect whether the Final Order and Judgment is Final, cancel or terminate this Settlement Agreement, or constitute grounds for cancellation or termination of this Settlement Agreement.

9. NOTICES.

9.1 All notices (other than the Notice) required by the Settlement Agreement shall be made in writing and communicated by mail to the following addresses:

All notices to Settlement Class Counsel or Plaintiffs shall be sent to:

Gary M. Klinger
Milberg Coleman Bryson Phillips Grossman, PLLC
227 W. Monroe Street, Suite 2100
Chicago, IL 60606

All notices to Preferred Home Counsel or Preferred
Home shall be sent to:

John C. Cleary, Esq.
Polsinelli PC
600 Third Avenue, 42nd Floor
New York, NY 10016

9.2 Upon the request of any of the Parties, the Parties agree to promptly provide each other with copies of comments, Objections, requests for exclusion, or other documents, communications, or filings received as a result of the Notice.

10. SETTLEMENT APPROVAL PROCESS.

10.1 As soon as practicable after execution of this Settlement Agreement, the Parties shall jointly submit this Settlement Agreement to the Court and file a motion for preliminary approval of the settlement, requesting entry of a Preliminary Approval Order in a form substantially similar to the one attached hereto as **Exhibit D**, or as approved by the Court, which:

- (a) Preliminarily approves this Settlement Agreement;
- (c) Certifies the Settlement Class and Settlement Subclass for settlement purposes only pursuant to Section 2;
- (b) Preliminarily approve the proposed Settlement as sufficiently fair, reasonable, and adequate to warrant providing notice to Settlement Class Members;
- (d) Appoints the Settlement Administrator in accordance with the provisions of Paragraph 4.2;

(c) Approves the Notice Program and directs the Settlement Administrator and Preferred Home to provide notice to Settlement Class Members in accordance with the Notice Program provided for in this Settlement Agreement;

(e) Approves a customary form of short notice to be mailed to Settlement Class Members (the “Short-Form Notice”) in a form substantially similar to the one attached hereto as **Exhibit A** and a customary long form of notice (“Long-Form Notice”) in a form substantially similar to the one attached hereto 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 herein, and the date, time, and place of the Final Approval Hearing;

(f) Approves a Claim Form in a form substantially similar to that attached hereto as **Exhibit C**;

(g) Directs the Settlement Administrator to conduct Claims Administration in accordance with the provisions of this Settlement Agreement;

(h) Approves the Opt-Out and Objection procedures as outlined in this Settlement Agreement;

(i) Schedules a Final Approval Hearing to consider (a) the fairness, reasonableness, and adequacy of the proposed Settlement and whether it should be finally approved by the Court; and (b) Settlement Class Counsel’s Motion for an award of attorneys’ fees, costs, expenses, and Service Awards;

(j) Provisionally appoints Plaintiffs Lisa Simmons and Kelly Peterson-Small as the Class Representatives;

(k) Provisionally appoints Milberg Coleman Bryson Phillips Grossman, PLLC as Settlement Class Counsel; and

(l) Contains any additional provisions agreeable to the Parties that might be necessary or advisable to implement the terms of this Settlement Agreement.

11. FINAL APPROVAL HEARING.

11.1 Settlement Class Counsel and Preferred Home Counsel shall request that after Notice is completed, the Court hold a Final Approval Hearing and grant final approval of the Settlement set forth herein. The Parties will recommend that the Final Approval Hearing be scheduled no earlier than one hundred twenty (120) Days after the entry of the Preliminary Approval Order.

11.2 The Parties will file with the Court their briefs in support of final approval, attorneys' fees and expenses, and Service Awards, no later than thirty (30) Days before the Final Approval Hearing, or as directed by the Court.

11.3 The Parties shall ask the Court to enter a Final Order and Judgment in substantially similar to the attached hereto as **Exhibit E**, or as approved by the Court.

11.4 If and when the Final Order and Judgment becomes Final, the Lawsuit shall be dismissed with prejudice, with the Parties to bear their own attorneys' fees, costs, and expenses not otherwise provided in accordance with this Settlement Agreement.

12. TERMINATION OF THIS SETTLEMENT AGREEMENT.

12.1 Each Party shall have the right to terminate this Settlement Agreement if:

(a) The Court denies preliminary approval of this Settlement Agreement (or grants preliminary approval through an order that is not substantially similar in form and substance to **Exhibit D** hereto);

(b) The Court denies final approval of this Settlement Agreement (or grants final approval through an order that materially differs in substance from **Exhibit E** hereto);
or

(c) The Final Order and Judgment do not become Final because a higher court reverses final approval by the Court.

12.2 If a Party elects to terminate this Settlement Agreement under this Section 12, that Party must provide written notice to the other Party's counsel, by hand delivery, mail, or email within ten (10) Days of the occurrence of the condition permitting termination.

12.3 Nothing shall prevent Plaintiffs or Preferred Home from appealing or seeking other appropriate relief from an appellate court with respect to any denial by the Court of final approval of the Settlement. In the event such appellate proceedings result, by order of the appellate court or by an order after remand or a combination thereof, in the entry of an order(s) whereby the Settlement is approved in a manner substantially consistent with the substantive terms and intent of this Settlement Agreement, and dismissing all claims in the Lawsuit with prejudice, and otherwise meeting the substantive criteria of this Settlement Agreement for approval of the Settlement, such order shall be treated as a Final Order and Judgment.

12.4 If this Settlement Agreement is terminated or disapproved, or if the Effective Date should not occur for any reason, then: (i) this Settlement Agreement and all orders entered in connection therewith shall be rendered null and void; (ii) the terms and provisions of the Settlement Agreement shall have no further force and effect with respect to the Parties and shall not be used in the Lawsuit or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Settlement Agreement shall be treated as vacated, *nunc pro tunc*; (iii) Preferred Home shall be responsible

for all Notice and Claims Administration Costs incurred prior to the termination or disapproval; (iv) all Parties shall be deemed to have reverted to their respective positions and status in the Lawsuit as of the date this Settlement Agreement was executed and shall jointly request that a new case schedule be entered by the Court; and (v) Preferred Home or its insurer shall have no payment, reimbursement, or other financial obligation of any kind as a result of this Settlement Agreement, other than as stated in Sub-Part (iii) above.

13. RELEASE.

13.1 On the Effective Date, the Parties and each and every Settlement Class Member shall be bound by this Settlement Agreement and shall have recourse only to the benefits, rights, and remedies provided hereunder. No other action, demand, suit, arbitration, or other claim may be pursued against Preferred Home or any Released Persons with respect to the Released Claims.

13.2 Upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member, including Plaintiffs, shall, either directly, indirectly, representatively, as a member of or on behalf of the general public or in any capacity, be permanently barred and enjoined from commencing, prosecuting, pursuing, or participating in any recovery in any action in this or any other forum (other than participation in the Settlement as provided herein) in which any of the Released Claims is asserted.

13.3 On the Effective Date and in consideration of the promises and covenants set forth in this Settlement Agreement, (i) Plaintiffs and each Settlement Class Member, and each of their respective spouses and children with claims on behalf of the Settlement Class Member, executors, representatives, guardians, wards, heirs, estates, successors, predecessors, next friends, co-borrowers, co-obligors, co-debtors, legal representatives, attorneys, agents, and assigns, and all those who claim through them or who assert claims (or

could assert claims) on their behalf (including the government in the capacity as *parens patriae* or on behalf of creditors or estates of the releasors), and each of them (collectively and individually, the “Releasing Persons”), and (ii) Settlement Class Counsel and each of their past and present law firms, partners, or other employers, employees, agents, representatives, successors, or assigns will be deemed to have, and by operation of the Final Order and Judgment shall have, fully, finally, completely, and forever released and discharged the Released Persons from the Released Claims. The release set forth in the preceding sentence (the “Release”) shall be included as part of any judgment, so that all Released Claims shall be barred by principles of res judicata, collateral estoppel, and claim and issue preclusion.

13.4 Without in any way limiting the scope of the Release, the Release covers, without limitation, any and all claims for attorneys’ fees, costs, and expenses incurred by Settlement Class Counsel or any other counsel representing Plaintiffs or Settlement Class Members, or any of them, in connection with or related in any manner to the Lawsuit, the Settlement, the administration of such Settlement and/or the Released Claims, as well as any and all claims for the Service Award to Plaintiffs.

13.5 Subject to Court approval, as of the Effective Date, all Settlement Class Members shall be bound by this Settlement Agreement and the Release and all of their claims shall be dismissed with prejudice and released, irrespective of whether they received actual notice of the Lawsuit or this Settlement.

13.6 As of the Effective Date, the Released Persons are deemed, by operation of the entry of the Final Order and Judgment, to have fully released and forever discharged Plaintiffs, the Settlement Class Members, Settlement Class Counsel, or any other counsel representing Plaintiffs or Settlement Class Members, or any of them, of and from any claims arising out of

the Lawsuit or the Settlement. Any other claims or defenses Preferred Home or other Released Persons may have against Plaintiffs', the Settlement Class Members, Settlement Class Counsel, or any other counsel representing Plaintiffs' or Settlement Class Members, including, without limitation, any claims based upon or arising out of any employment, debtor-creditor, contractual, or other business relationship that are not based upon or do not arise out of the institution, prosecution, assertion, settlement, or resolution of the Lawsuit or the Released Claims are not released, are specifically preserved and shall not be affected by the preceding sentence.

13.7 As of the Effective Date, the Released Persons are deemed, by operation of entry of the Final Order and Judgment, to have fully released and forever discharged each other of and from any claims they may have against each other arising from the claims asserted in the Lawsuit, including any claims arising out of the investigation, defense, or Settlement of the Lawsuit.

13.8 Nothing in the Release shall preclude any action to enforce the terms of this Settlement Agreement, including participation in any of the processes detailed herein.

14. EFFECTIVE DATE.

14.1 The "Effective Date" of this Settlement Agreement shall be ten (10) Days after the date when each and all of the following conditions have occurred:

- (a) This Settlement Agreement has been fully executed by all Parties and their counsel;
- (b) Orders have been entered by the Court certifying the Settlement Class and Settlement Subclass, granting preliminary approval of this Settlement Agreement and approving the Notice Program and Claim Form, all as provided above;

(c) The Court-approved Notice has been sent and the Settlement Website has been duly created and maintained as ordered by the Court;

(d) The Court has entered a Final Order and Judgment finally approving this Settlement Agreement, as provided above;

(e) The Final Order and Judgment has become Final; and

(f) The time for any appeal of the Final Order and Judgment has expired.

15. MISCELLANEOUS PROVISIONS.

15.1 The recitals and exhibits to this Settlement Agreement are an integral part of the Settlement and are expressly incorporated and made a part of this Settlement Agreement.

15.2 The Parties (i) acknowledge that it is their intent to consummate this agreement; and (ii) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Settlement Agreement, and to exercise their best efforts to accomplish the terms and conditions of this Settlement Agreement.

15.3 This Settlement Agreement is for settlement purposes only. No provision contained in this Settlement Agreement or any action taken hereunder shall constitute or be construed as an admission of the merit or validity of any claim or any fact alleged in the Lawsuit or of any wrongdoing, fault, violation of law, or liability of any kind on the part of Preferred Home or the Released Persons or any admission by Preferred Home or the Released Persons with respect to any claim or allegation made in any action or proceeding or any concession as to the merit of any of the claims asserted by Plaintiffs in the Lawsuit. This Settlement Agreement shall not be offered or be admissible in evidence against either Party or the Released Persons or cited or referred to in any action or proceeding, except in an action or proceeding brought to enforce its terms. Nothing contained herein is or shall be construed

or admissible as an admission by Preferred Home or the Released Persons that Plaintiffs' claims or any similar claims are suitable for class treatment outside of this Settlement.

15.4 In the event that there are any developments in the effectuation and administration of this Settlement Agreement that are not dealt with by the terms of this Settlement Agreement, then such matters shall be dealt with as agreed upon by the Parties, and failing such agreement, as shall be ordered by the Court. The Parties shall execute all documents and use their best efforts to perform all acts necessary and proper to promptly effectuate the terms of this Settlement Agreement and to take all necessary or appropriate actions to obtain judicial approval of this Settlement Agreement in order to give this Settlement Agreement full force and effect.

15.5 No Person shall have any claim against Plaintiffs, Settlement Class Counsel, Preferred Home, Preferred Home Counsel, the Settlement Administrator, the Claims Referee, the Released Persons, or their agents based on administration of the Settlement substantially in accordance with the terms of the Settlement Agreement or any court order.

15.6 This Settlement Agreement constitutes the entire agreement between the Parties with respect to the settlement of the Lawsuit. This Settlement Agreement supersedes all prior negotiations and agreements with respect to the settlement of the Lawsuit and may not be modified or amended, except by a writing signed by or on behalf of the Parties or their respective successors-in-interest. The Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, or understanding concerning any part of the subject matter of this Settlement Agreement has been made or relied on, except as expressly set forth in this Settlement Agreement.

15.7 There shall be no waiver of any term or condition absent an express writing to that effect by the waiving Party. No waiver of any term or condition in this Settlement Agreement shall be construed as a waiver of a subsequent breach or failure of the same term or condition, or waiver of any other term or condition of this Settlement Agreement.

15.8 In the event a third party, such as a bankruptcy trustee, former spouse, or other third party, has or claims to have a claim against any payment made or to be made to a Settlement Class Member, it is the sole responsibility of the Settlement Class Member to transmit the funds to such third party in satisfaction of such claims.

15.9 The Parties intend this Settlement to be a final and complete resolution of all disputes between them with respect to the Lawsuit. The Settlement compromises and releases claims that are contested and shall not be deemed an admission by any Party as to the merits of any claim or defense. The Parties each agree that the Settlement was negotiated in good faith by the Parties and was reached voluntarily after consultation with competent legal counsel. The Parties reserve their right to rebut, in a manner that such Party determines to be appropriate, any contention made in any public forum that the Lawsuit was brought or defended in bad faith or without a reasonable basis. It is agreed that neither Party shall have any liability to one another as it relates to the Lawsuit, except as set forth herein.

15.10 This Settlement Agreement shall not be construed more strictly against one Party than another merely because of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that because of the arm's-length negotiations resulting in the Settlement Agreement, all Parties hereto have contributed substantially and materially to the preparation of the Settlement Agreement. All terms, conditions, and exhibits are

material and necessary to this Settlement Agreement and have been relied upon by the Parties in entering into this Settlement Agreement.

15.11 The Court shall retain jurisdiction, after entry of the Final Order and Judgment, with respect to implementation and enforcement of the terms of this Settlement Agreement, and all Parties and Settlement Class Members submit to the exclusive jurisdiction of the Court for purposes of the implementation and enforcement of the Settlement embodied in this Settlement Agreement and any dispute with respect thereto.

15.12 This Settlement Agreement shall be construed under and governed by the laws of the state of New York without regard to its choice of law provisions.

15.13 In the event that any one or more of the provisions contained in this Settlement Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions, which shall remain in full force and effect as though the invalid, illegal, or unenforceable provision had never been a part of this Settlement Agreement, as long as the benefits to Preferred Home or the Settlement Class Members are not materially altered as the result of the invalid, illegal, or unenforceable provision.

15.14 This Settlement Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties.

15.15 The headings used in this Settlement Agreement are for the convenience of the reader only and shall not affect the meaning or interpretation of this Settlement Agreement. In construing this Settlement Agreement, the use of the singular includes the plural (and vice-versa), and the use of the masculine includes the feminine (and vice-versa).

15.16 All dollar amounts are in United States dollars (USD).

15.17 This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original as against any Party who has signed it and all of which shall be deemed a single Settlement Agreement.

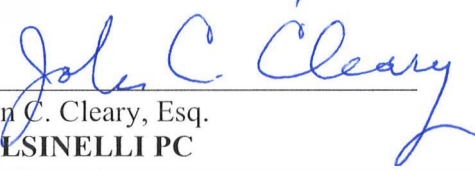
15.18 Each Party to this Settlement Agreement and the signatories thereto warrant that he, she, or it is acting upon his, her, or its independent judgment and the advice of his, her, or its counsel and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other Party, other than the warranties and representations expressly made in this Settlement Agreement.

15.19 Each signatory below warrants that he or she has authority to execute this Settlement Agreement and bind the Party on whose behalf he or she is executing the Settlement Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused the Settlement Agreement to be executed, by their duly authorized attorneys.

Dated: NOVEMBER 3, 2022

/s/


John C. Cleary, Esq.
POLSINELLI PC
600 Third Avenue, 42nd Floor
New York, NY 10016
Tel: (212) 413-2837
john.cleary@polsinelli.com

Attorneys for Assistcare Home Health Services, LLC, d/b/a Preferred Home Health Care of New York/Preferred Gold

Dated: 11/3/2022

/s/


Gary M. Klinger
**MILBERG COLEMAN BRYSON
PHILLIPS GROSSMAN, PLLC**
227 W. Monroe Street, Suite 2100
Chicago, IL 60606
847-208-4585
gklinger@milberg.com

Attorneys for Plaintiffs' Lisa Simmons and Kelley Peterson-Small and the Settlement Classes