

**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

**[PROPOSED] FINAL ORDER AND JUDGMENT GRANTING
FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

Before the Court is Plaintiffs’ Motion for Final Approval of Class Action Settlement (“Motion for Final Approval”), requesting that the Court enter an Order and Judgment Granting Final Approval of the Class Action Settlement (“Final Order and Judgment”) involving Plaintiffs Lisa Simmons and Kelly Peterson-Small (“Plaintiffs” or “Class Representatives”) and Defendant Assistcare Home Health Services, LLC, d/b/a Preferred Home Care of New York/Preferred Gold (“Defendant” or “Preferred Home”), as fair, reasonable, adequate, and in the best interests of the Settlement Classes.

Having reviewed and considered the Settlement Agreement and the Motion for Final Approval, and having conducted a Final Approval Hearing, the Court makes the findings and grants the relief set forth below approving the Settlement upon the terms and conditions set forth in this Final Order and Judgment.

THE COURT not being required to conduct a trial on the merits of the case or determine with certainty the factual and legal issues in dispute when determining whether to approve a proposed class action settlement; and

THE COURT being required under N.Y. C.P.L.R. Ch. 8, Art. 9, § 908 to make the findings and conclusions hereinafter set forth for the limited purpose of determining whether the Settlement should be approved as being fair, reasonable, adequate, and in the best interests of the Settlement Classes; and

THE COURT having considered all the documents filed in support of the Settlement, and having fully considered all matters raised, all exhibits and affidavits filed, all evidence received at the Final Approval Hearing, all other papers and documents comprising the record herein, and all oral arguments presented to the Court;

IT IS ON THIS ____ day of _____, 202__.

ORDERED that:

1. The Settlement involves allegations in Plaintiffs' Class Action Complaint that Preferred Home failed to safeguard and protect the personally identifiable information ("PII") and/or protected health information ("PHI") of its current and former patients and employees and that this alleged failure caused injuries to Plaintiffs and the Settlement Classes.

2. The Settlement does not constitute an admission of liability by Preferred Home, and the Court expressly does not make any finding of liability or wrongdoing by Preferred Home.

3. Unless otherwise noted, words spelled in this Final Order and Judgment with initial capital letters have the same meaning as set forth in the Settlement Agreement.

4. On January 23, 2023, the Court entered an Order Granting Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement ("Preliminary Approval Order"),

which among other things: (a) approved the Notice to the Settlement Class, including approval of the form and manner of Notice under the Notice Program set forth in the Settlement Agreement; (b) conditionally certified a Settlement Class and a Settlement Subclass in this matter, including defining the classes, (c) provisionally appointed Plaintiffs as the Class Representatives, and (d) provisionally appointed Settlement Class Counsel; (e) preliminarily approved the Settlement Agreement and the Settlement; (f) set deadlines for opt-outs and objections; (g) approved and appointed the Settlement Administrator; and (h) set the date for the Final Approval Hearing.

5. In the Preliminary Approval Order, pursuant to N.Y. C.P.L.R. Ch. 8, Art. 9, §§ 901(1)(1)-(5) and 902, the Court conditionally certified the Settlement Class in this matter defined as follows:

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.

The Court also conditionally certified the Settlement Subclass in this matter defined as follows:

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.

Excluded from the Settlement Classes 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.

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 Court finally certifies the Settlement Class and Settlement Subclass, as defined above and in the Preliminary Approval Order, pursuant to N.Y. C.P.L.R. Ch. 8, Art. 9, § 901-902, 903, and 905.

6. The Court, having reviewed the terms of the Settlement Agreement submitted by the Parties, grants final approval of the Settlement Agreement and Settlement, pursuant to N.Y. C.P.L.R. Ch. 8, Art. 9, § 908. The Court finds that the Settlement is fair, reasonable, adequate, and in the best interest of the Settlement Class Members.

7. The Settlement Agreement provides, in part, and subject to a more detailed description of the settlement terms in the Settlement Agreement, for:

- a. A process for Settlement Class Members to submit claims for compensation that will be evaluated by a Settlement Administrator mutually agreed upon by Settlement Class Counsel and Preferred Home.
- b. Preferred Home to pay all Costs of Notice and Claims Administration.
- c. Preferred Home to pay a Court-approved amount for attorneys' fees and expenses of Settlement Class Counsel \$235,000.
- d. Preferred Home to pay Service Awards to Class Representatives not to exceed \$1,500 to each named Plaintiff (for a total of \$3,000).

8. The terms of the Settlement Agreement are fair, reasonable, and adequate and are hereby approved, adopted, and incorporated by the Court. The Parties, their respective attorneys, and the Settlement Administrator are hereby directed to consummate the Settlement in accordance with this Final Order and Judgment and the terms of the Settlement Agreement.

9. Notice of the Final Approval Hearing, the proposed motion for attorneys' fees, costs, and Service Awards have been provided to Settlement Class Members as directed by this Court's Orders, and an affidavit or declaration of the Settlement Administrator's compliance with the Notice Program has been filed with the Court.

10. The Court finds that such Notice as therein ordered, constitutes reasonable notice of the commencement of the class action as directed by the Court in compliance with the requirements of N.Y. C.P.L.R. Ch. 8, Art. 9, §§ 904 and 908.

12. The deadline for Settlement Class Members to object to, or to exclude themselves from, the Settlement has passed.

13. No objections were filed by Settlement Class Members..

14. All Settlement Class Members who have not objected to the Settlement Agreement in the manner provided in the Settlement Agreement are deemed to have waived any objections by appeal, collateral attack, or otherwise.

15. As of the final date of the Opt-Out Period, eight potential Settlement Class Members have submitted a valid Opt-Out Request to be excluded from the Settlement. The names of those persons are set forth in **Exhibit B** to the Declaration of the Settlement Administrator filed with Plaintiffs' Motion for Final Approval of Class Action Settlement. Those persons are not bound by this Final Order and Judgment, as set forth in the Settlement Agreement.

16. The Court has considered all the documents filed in support of the Settlement, and has fully considered all matters raised, all exhibits and affidavits filed, all evidence received at the Final Approval Hearing, all other papers and documents comprising the record herein, and all oral arguments presented to the Court.

17. Pursuant to the Settlement Agreement, Preferred Home and the Settlement Administrator shall implement the Settlement in the manner and timeframe as set forth therein.

18. The Court appoints Plaintiffs Lisa Simmons and Kelly Peterson-Small as Class Representatives.

19. The Court appoints Milberg Coleman Bryson Phillips Grossman, PLLC as Settlement Class Counsel.

19. The Court hereby grants the Plaintiffs' Motion for Attorneys' Fees, Expenses, and Service Awards, finds that the amounts sought are fair and reasonable, and awards Class Counsel combined attorneys' fees and expenses in the amount of \$235,000, and service awards in the amount of \$1,500 for each Class Representative (\$3,000 total).

20. Pursuant to the Settlement Agreement, Plaintiff and the Settlement Class Members release claims against Preferred Home and all Released Persons, as defined in the Settlement Agreement, as follows:

[A]ny 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, Plaintiff's counsel, Settlement Class Counsel, or any of the Released Persons to enforce the terms of the Settlement contained in the Settlement Agreement and shall not include the claims of those persons identified in **Exhibit A** to this Final Order and Judgment, who have timely and validly requested exclusion from the Settlement Class.

21. 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.

22. 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.

23. 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.

24. The matter is hereby dismissed with prejudice and without costs, except that the Court reserves jurisdiction over the consummation and enforcement of the Settlement.

25. This Final Order and Judgment resolves all claims against all parties in the Lawsuit and is a final order. There is no just reason to delay the entry of final judgment in this matter, and the Clerk is directed to file this Final Order and Judgment as the final judgment in this matter.

IT IS SO ORDERED this ____ day of _____, 202__.

Hon. Larry D. Martin
Justice of the Supreme Court
Second Judicial District

EXHIBIT A

Exclusion Requests

Simmons v. Assisicare Home Health Services, LLC., Index No. 511490/2021

Date Received	Settlement Claim ID	First Name	Last Name	State
3/1/2023	WDR-1742379	Clyburn	Sowell	NY
3/25/2023	CBG-1417443	Joanne	O'Brien	NY
4/4/2023	VZV-1215446	Sara Ben	Yaakov	NY
4/3/2023	DZW-1121317	Providencia	Garces	NY
3/30/2023	PZL-1753473	Novelette	Radway	NY
3/28/2023	FSC-1242769	Iliana	Delocienda	NY
3/28/2023	HZH-1750712	Edward H.	Johnson	NY
4/18/2023	DJP-1320124	Jean	Caracciolo	NY