

Lifecare Pays \$3M To Clear Drivers' Wage Claims

By **Daniel Siegal**

Law360, Los Angeles (May 8, 2014, 6:07 PM EDT) -- A California federal judge on Thursday said he would grant final approval to Lifecare Solutions Inc.'s \$3 million settlement of class claims that the home health care agency didn't pay its drivers for time spent on the road and completing paperwork.

During a fairness hearing in Los Angeles, U.S. District Judge Fernando M. Olguin said he had no major problems with the proposed final settlement submitted by the plaintiffs, which would see Lifecare pay \$3 million to 245 current and former drivers to settle their claims that the company's practices deprived them of minimum wage and overtime pay rates by not paying them for all time spent on call.

Judge Olguin, however, said he would delay signing off the order granting final approval until the defendant submitted a declaration confirming that it had provided notice to state and federal regulatory authorities as required by the Class Action Fairness Act of 2005, and gave Lifecare until Monday to submit such a declaration.

The judge said he was otherwise happy with the motion for final approval. In that motion, the plaintiffs say the settlement is a fair compromise because it provides immediate relief — from \$50 to \$31,491 per class member, with an average recovery of \$6,362 — for the class balanced against the risks of continuing litigation.

"While the maximum recoverable damages was calculated to be \$11.9 million, this assumes that plaintiffs would succeed at certifying a class for all claims, winning on every theory at trial, and be awarded the full amount of damages and penalties afforded by the applicable laws," the motion said. "There are numerous risks to proceeding. For instance, defendants strongly dispute plaintiffs' on-call claims which represented the overwhelming majority of damages in this action at \$8,627,161.42."

The settlement also include attorneys' fees of just under \$1 million, which surpasses the Ninth Circuit benchmark of 25 percent of the settlement, but which Judge Olguin said were justifiable and would receive his approval.

The suit was filed in October 2012 by named plaintiff Ricardo Corral against Lifecare alleging the providers of home care equipment and supplies such as wheelchairs, hospital beds, oxygen tanks and other medical necessities required its drivers to work on duty during their meal periods or provided shortened meal periods, and didn't pay for time spent waiting for calls to come in or on completing required paperwork.

A month later the case was removed to federal court, and in a first amended complaint filed almost a year later, in October 2013, the case incorporated claims of plaintiffs Edgar Gutierrez and Lloyd Swanson, who had filed separate class actions against home care agencies Founders Healthcare LLC, doing business as Preferred Homecare, and Option One Home Medical Equipment Inc, who were added as defendants to the Lifecare suit.

On April 17, the plaintiffs filed their motion for final approval of the settlement, saying the proposed settlement was reached through a full day mediation and further negotiations, and met with an "overwhelmingly" positive response within the class, with no objections and one one class member opting out.

The plaintiffs are represented by Graham S.P. Hollis and Brian R. Short of Graham Hollis APC, Matthew J. Matern and Tagore O. Subramaniam of The Matern Law Group, and Joseph Lavi and

Leonard H. Sansanowicz of Lavi & Ebrahimian LLP.

Lifecare is represented by Stacie D. Yee and Kimberly Y. Higgins of Squire Sanders LLP.

The case is Ricardo Corral et al. v. Lifecare Solutions Inc. et al., case number 2:12-cv-10074, in the U.S. District Court for the Central District of California.

--Editing by Elizabeth Bowen.