

**NOTICE OF CLASS ACTION SETTLEMENT**

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

*Richard Terry v. Hoovestol, Inc.*

Case No. 3:16-cv-05183-JST

*A court authorized this notice. This is not a solicitation.  
This is not a lawsuit against you and you are not being sued.  
However, your legal rights are affected by whether you act or do not act.*

**YOU ARE ENTITLED TO MONEY UNDER THE PROPOSED SETTLEMENT. PLEASE READ THIS NOTICE CAREFULLY; IT INFORMS YOU ABOUT YOUR LEGAL RIGHTS.**

The United States District Court for the Northern District of California has granted preliminary approval of a proposed settlement (“Settlement”) of the above-captioned Class Action (“Lawsuit”). Because your rights may be affected by this Settlement, it is important that you read this Notice carefully. Most importantly, this Notice will advise you of how you can obtain your money under the Settlement or, if you desire, how you can decide to not take part in the Settlement and preserve your rights against Hoovestol, Inc. (“Hoovestol”).

The Settlement provides One Hundred Thousand Dollars (\$100,000) to resolve this Lawsuit over whether Hoovestol violated California law by failing to pay its California drivers for all time worked, failing to unlawful provide meal and rest periods, failing to provide accurate itemized wage statements, and failing to timely pay all wages owed upon separation from the company.

The Court has not determined that Hoovestol violated the law and Hoovestol disputes the claims being made in the Lawsuit. After fighting the matter in federal court over the course of the past couple of years, the parties have agreed to resolve it under this proposed Settlement that the Northern District of California granted preliminary approval of.

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### **1. *Why Have I Received this Notice?***

Records indicate that you were employed as a truck driver by Hoovestol sometime between July 20, 2012, and December 7, 2018 (the “Class Period”) and did not enter into an individual settlement with Hoovestol. This Notice is meant to provide you with basic information about the case and to advise you of your options to remain part of the Settlement, exclude yourself from it, or object to it.

### **2. *What is this Case About?***

The action entitled *Richard Terry on behalf of himself, all others similarly situated, and on behalf of the general public, Plaintiff, vs. Hoovestol, Inc., Defendant*, was commenced by Plaintiff Richard Terry on July 20, 2016. This Settlement resolves claims in this lawsuit which allege that Hoovestol did not provide timely or duty-free meal and rest periods, did not pay all wages owed, did not pay all overtime wages owed, did not properly itemize pay stubs, and did not pay all wages owed timely upon termination. The named plaintiff in the Lawsuit complained that the California truck drivers were not relieved of duty during meal and rest periods because he claimed they could not leave their trucks unattended during meal or rest breaks. He also complained that, because they could not leave the trucks unattended while on unpaid meal periods, the truck drivers in California should have been paid for that time. The named plaintiff also complained that, because truck drivers were working through unpaid meal periods, Hoovestol had to, but did not, itemize that time on their pay stubs. Finally, because these wages alleged to have been owed to the California truck drivers were not paid at or after termination from Hoovestol, California’s law with respect to the payment of wages due at termination was violated.

Hoovestol denies that it violated any provisions of California law. It contends it had policies that provided timely meal and rest periods to its California truck drivers and relieved them of all duty during such meal and rest periods. Hoovestol finally contends its wage statements (i.e., pay stubs) had all the information California law requires and that it paid all wages owed at the time of termination.

### **3. *How Does this Class Action Settlement Work?***

Plaintiff and the Attorneys for the Class believe the Settlement is fair and reasonable. The Court has preliminarily reviewed the terms of the Settlement and determined the Settlement is fair and reasonable. On December 7, 2018, in the United States District Court for the Northern District of California, the Court conditionally certified the Class for settlement purposes only and directed that you receive this Notice. The Court will hold a Final Fairness Hearing concerning the proposed settlement on May 9, 2019 at 2:00 p.m., before United States District Court, Honorable Jon S. Tigar, located at 450 Golden Gate Avenue, San Francisco, California 94102, Courtroom 9. The date of the final approval hearing may change without further notice to the class. Class Members are advised to check [www.ilymgroupclassaction.com](http://www.ilymgroupclassaction.com) or the Court’s PACER site (instructions on accessing this site are provided in Section 11 of this Notice) to confirm that the date has not been changed.

**4. Who Are the Attorneys Representing the Parties?**

Attorneys for Plaintiff and the Class	Attorneys for Hoovestol, Inc.
<p><b>THE TURLEY &amp; MARA LAW FIRM, APLC</b>                      William Turley                      David Mara                      Jill Vecchi                      Matthew Crawford                      7428 Trade Street                      San Diego, CA 92121                      Telephone: (619) 234-2833                      Facsimile: (619) 234-4048</p>	<p><b>BURNHAM BROWN</b>                      Cathy Arias                      Raymond Green                      1901 Harrison Street, 14th Floor                      Oakland, CA 94612                      Telephone: (510) 444-6800                      Facsimile: (510) 835-6666</p>

The Court has decided that The Turley & Mara Law Firm, APLC is qualified to represent you and all other Class members simultaneously in this Settlement.

You do not need to hire your own attorney because Class Counsel is working on your behalf. But, if you want your own attorney, you may hire one at your own cost.

**5. How do I Participate, Opt-out of, or Object to the Settlement?**

Your rights regarding each option, and the steps you must take to select each option, are summarized below and explained in more detail in this Notice.

***Important Note: Hoovestol will not retaliate against you in any way for either participating or not participating in this Settlement.***

**If you are a member of the Class, your options are as follows:**

<ul style="list-style-type: none"> <li>• <b>HOW TO GET YOUR MONEY IF YOU ARE A CLASS MEMBER:</b></li> </ul>	<p>If you do nothing, you <b><i>will</i></b> receive money and <b><i>will</i></b> be bound by the release of class action claims stated in this Notice and Settlement Agreement.</p>
<ul style="list-style-type: none"> <li>• <b>OPT OUT OF THE SETTLEMENT:</b></li> </ul>	<p>If you do not want to take part in the Class Action settlement, you must <b><i>sign</i></b> and mail a written request for exclusion to the Settlement Administrator, ILYM Group Inc. Requests for exclusion should be mailed to ILYM Group Inc., at P.O. Box 2031 Tustin, CA 92781. The written request for exclusion must (a) state your name, address, telephone number, and social security number; (b) state your</p>

	<p>intention to exclude yourself from or opt-out of the Settlement; (c) be addressed to the ILYM Group Inc.; (d) be signed by you or your lawful representative; and (e) be postmarked no later than February 25, 2019.</p> <p>The Court’s entry of the Final Judgment, following Approval of the settlement, will bind all Class Members who do not request exclusion from the Class Action settlement.</p> <p>If the Court grants final approval of the settlement, you will <b><i>not</i></b> receive a Settlement Payment and you will <b><i>not</i></b> give up the right to sue Hoovestol and the Released Parties for the Release of Claims by Participating Class Members as defined in Section No. 7 below.</p>
<ul style="list-style-type: none"> <li>• <b>OBJECT:</b></li> </ul>	<p>You may file a legal objection to any aspect of the proposed settlement.</p> <p>If you wish to object to the Class Action Settlement, you may do so by following the instructions in Section No. 6, entitled “How do I Object to the Settlement?”</p>

**6. *How Do I Object to the Settlement?***

You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

If you are a Class Member who does not opt out of the Class Action settlement, you may object to the proposed settlement in writing. You may also appear at the Final Fairness/Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number (Terry v. Hoovestol, Inc., Case Number 3:16-cv-05183-JST), (b) be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California 94102, and (c) be filed or postmarked before February 25, 2019.

In addition, the objection must state: (a) your full name, address, and telephone number; (b) the words “Notice of Objection” or “Formal Objection;” (c) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (d) list identifying witness(es) you may call to testify at the Final Approval Hearing; and (e) provide true and correct copies of any exhibit(s) you intend to offer at the Final Approval Hearing.

Objectors who want to appear at the Final Fairness/Approval Hearing must state the intention to do so at the time of submitting the written objection(s).

Class Members who fail to file timely objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether an appeal or otherwise) to the Settlement,

unless otherwise ordered by the Court. The Court may excuse this requirement upon a showing of good cause. The Court will only require substantial compliance with the requirements for submitting an objection.

If the Court rejects the objection, the objector will receive a Class Action settlement payment and will be bound by the terms of the Class Action settlement and Participating California Class Members' Released Claims as defined in Section 7 of this Notice and in the Settlement Agreement.

**7. *How Does This Settlement Affect Participating Class Members' Rights?***

If the proposed Settlement is approved by the Court, a Final Judgment will be entered by the Court. All Class Members who do not opt out of the Settlement will be bound by the Court's Final Judgment and will release Hoovestol and the other Released Parties<sup>1</sup> from the Release of Claims by Participating Class Members. The claims released under this Settlement are:

Putative class members who do not opt out of the settlement will release all known and unknown state law claims that were alleged or that could have been alleged based on the facts of the complaints filed in the matter. The release will be as to the released parties, which shall include Defendant and its respective parent companies, subsidiaries, affiliates, shareholders, members, agents (including, without limitation, any investment bankers, accountants, insurers, reinsurers, attorneys and any past, present or future officers, directors and employees) predecessors, successors, and assigns.

**8. *How Much Can I Expect to Receive from this Settlement?***

The total maximum amount that Hoovestol could be required to pay under this Settlement is One Hundred Thousand Dollars (\$100,000) ("Gross Settlement Amount").

From the Gross Settlement Amount, the following shall be subtracted: (1) the Class Representative General Release Payment to Plaintiff Richard Terry in an amount up to \$2,500, for a general release of all claims; (2) the Settlement Administration Costs to the Settlement Administrator, ILYM Group Inc., not to exceed \$3,000; and (3) payment to Class Counsel in an amount not to exceed \$25,000 (25% of the Gross Settlement Amount) for attorneys' fees and an amount not to exceed \$20,000 for actual litigation costs. All of these payments are subject to court approval.

The Court will not approve any of these requests until the Final Approval/Fairness hearing. If the any of the amounts awarded are less than the amounts requested, the difference shall become part of the Net Settlement Amount and be available for distribution to Class Members. What remains of the Gross Settlement Amount after these Court approved deductions will be the Net Settlement Amount for making settlement payments to Participating Class Members, which is defined below and in the Settlement Agreement.

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<sup>1</sup> "Released Parties" means Hoovestol, Inc. and its past, present and/or future, direct and/or indirect, officers, directors, employees, representatives, administrators, attorneys, agents, parent companies, subsidiaries and affiliated corporations and entities, consultants, shareholders, joint ventures, predecessors, successors, and/or assigns.

**Individual Settlement Share.** Each Participating Class Member will receive a proportionate share of the Settlement Amount that is equal to (i) the number of workweeks he or she worked based on the Class Data provided by Defendant, divided by (ii) the total number of workweeks worked by all Participating Class Members based on the same Class Data, which is then multiplied by the Net Settlement Amount. Therefore, the results of the Class Member's settlement value ties directly to the amount of workweeks worked.

Although your exact share of the Net Settlement Amount cannot be precisely calculated until after the time during which individuals may object or seek exclusion from the Settlement concludes, based upon the calculation above, your approximate share of the Net Settlement Amount would be as follows: \$«Estimated\_Settlement\_Amount».

**Tax Consequences of Settlement Shares.** Sixty percent (60%) of each Individual Settlement Share is intended to settle each Class Member's claims for unpaid wages (the "Wage Portion"). The Wage Portion will be reduced by applicable payroll tax withholdings and deductions; the employer's share of legally required payroll taxes for the Wage Portion will be paid by Defendant through the Settlement Administrator; the Settlement Administrator will issue an IRS Form W-2 with respect to the Wage Portion withheld from each Class Member who does not submit a valid request for exclusion under this Agreement. All taxes shall come out of the Gross Settlement Amount.

Forty percent (40%) of the Individual Settlement Share is intended to settle each Class Member's claims for interest and penalties. This portion will not be reduced by payroll tax withholding and deductions. The Settlement Administrator will issue each Class Member who does not submit a request for exclusion an IRS Form 1099 with respect to this portion of his/her Individual Settlement Share. The settlement share for interest and penalties is allocated 20% penalties & 20% interest.

**Uncashed checks.** Class Members must cash or deposit their Individual Settlement Share checks within one hundred and eighty (180) calendar days after the checks are mailed to them. If any checks are not redeemed or deposited within ninety (90) days after mailing, the Settlement Administrator will send a reminder postcard indicating that unless the check is redeemed or deposited in the next ninety (90) days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced. If any checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the reminder notice they shall be deemed void and of no further force and effect. The funds corresponding to voided checks shall be distributed to a *cy pres* recipient. The *cy pres* recipient shall be The United Way, a non-profit organization that supports projects that benefit employees and applicants throughout the State of California.

**9. When Can I Expect to Receive Money from the Settlement?**

Once the Court grants final approval of the Settlement, and provided that there are no objections or appeals to the Court's Final Approval Order and Judgment, ILYM Group Inc., will disburse the Settlement monies under the schedule set forth in the Settlement Agreement within seven (7) business days of the Court's entry of judgment granting final approval of the settlement.

**10. How Will the Attorneys for the Class and the Class Representative Be Paid?**

The Attorneys for Plaintiff and the Class will be paid from the Gross Settlement Amount, subject to Court approval, in an amount not to exceed 25% of the Gross Settlement Amount (\$25,000) in fees and an amount not to exceed \$20,000 in actual litigation costs. Hoovestol has paid all of its own attorneys' fees and costs. The

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Questions? Call the Settlement Administrator, ILYM Group Inc. at 1 (888) 250-6810 or visit [www.ilymgroupclassaction.com](http://www.ilymgroupclassaction.com) for more information and/or to view documents filed in this case.

ILYM ID: «Ilym\_Id»

Plaintiff will also be paid, subject to Court approval, an amount not to exceed \$2,500, as a payment for a general release of all claims.

**11. What do I do if I Need More Information or Have Questions?**

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the settlement agreement available at [www.ilymgroupclassaction.com](http://www.ilymgroupclassaction.com), by contacting class counsel at (619) 234-2833, by accessing the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California 94102, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays. You may also ask class counsel for a copy of any of the case documents to be mailed to you free of charge. Please refer to the *Terry v. Hoovestol, Inc.* Class Action Settlement when calling the settlement administrator or class counsel.

Alternatively, to view the case documents on PACER, access the website <http://www.pacer.gov>. Once at this website, click on the "Login" tab in the upper right-hand corner of the webpage. Then click on the link which reads "Log in to PACER now." Then, click on the link "Need an Account?" and create an account. Once you have created an account, log into PACER and click the link "PACER Case Locator" under the heading "FIND A CASE" on the left-hand side of the webpage. Then, click on the button "Search the PACER Case Locator Now." On the next page, type the case number "16-cv-05183" into the box next to the words "Case Number." Then, click the "Search" button. You will be directed to a screen with case names. Find the case name "Terry v. Hoovestol, Inc." filed on 9/08/2016 and click on the case number associated with this case (3:2016cv05183). Then, click on the link for "Docket Report." On the next page, click "Run Report." This will take you to the case information. If you scroll down on this page you will be able to access all of the documents filed in the case while it was pending in the Northern District of California for a small fee.

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.**