SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Spring Street Courthouse, Department 10

20STCV19610 July 23, 2025
THOMAS HARDWICK vs HOOVESTOL, INC. 1:30 PM

Judge: Honorable William F. Highberger CSR: None
Judicial Assistant: E. Munoz ERM: None
Courtroom Assistant: S. Soto Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): Mitchell John Murray , via LACC

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Hearing on Motion - Other Regarding Scope of Escalator Clause in Class Action and Paga Settlement

The matter is called for hearing.

The Court's tentative ruling is electronically served on Case Anywhere for the parties review.

The Court notes that an email was received on 07/22/2025 at 3:33 p.m. from the Legal Assistant to Thomas M. Downey, Raymond A. Greene, III and Gregory H. McCormick notifying the court and counsel that Defendants Hoovestol, Inc. and 10 Roads Express, LLC ("Defendants") hereby contest the Tentative Ruling and would be appearing at todays hearing.

There are no appearances made by or on behalf of Defendants this date.

The above-captioned motion is heard at 1:45 p.m.

Having considered all documents pertaining to the motion and hearing from Plaintiff's counsel, the Court adopts its tentative ruling without the appearance of Defendants, as follows:

The Notice of Motion and Motion as to Defendants Hoovestol, Inc. and 10 Roads Express, LLC's Position Regaring Scope of Escalator Clause in Class Action and PAGA Settlement filed by Hoovestol, Inc., 10 Roads Express, LLC on 06/13/2025 is Denied.

Defendant Hoovestol, Inc. and Plaintiff Hardwick heavily litigated this case after it had been removed to federal court. While in federal court, a class was certified (not for settlement) which excluded for a portion of the exposure period class members who had been the beneficiaries of a class settlement in a separate case, *Terry v. Hoovestol, Inc.*, which was filed in the federal court for the Northern District of California. The federal court in this case refused to certify a class for the employee business expense claim, finding individualized issues predominated. The *Terry*

settlement had 76 class members and a cutoff date of December 7, 2018. While the *Terry* suit was pending, defendant employer had reached individual settlements with an additional 338 putative class members releasing claims that otherwise would have remained part of the *Terry* class action and its eventual settlement; the dates of such releases are not clear, but it appears that they all preceded May 22, 2017. The certified class per the federal court was for certain drivers "employed by Defendants . . . at any time from May 22, 2017 through the present [September 28, 2022], who are not members of the *Terry* class **or** who performed work after December 7, 2018." Greene Decl. Ex. A at 19 (bold emphasis added).

The Court interprets the above language, particularly the bolded "or", to mean that persons employed after December 7, 2018, would be included in the newly certified class even if they got the benefit of the *Terry* settlement and by doing so had released claims for any employment up to December 7, 2018. The other persons in the newly certified class who would otherwise be included in tandem with such persons would be persons not covered by the *Terry* class who had unreleased claims for work for Defendants at any time from May 22, 2017 to September 28, 2022. This is Plaintiffs' interpretation of the federal court's order.

After the class certification ruling, Defendant Hoovestol moved for summary judgment in federal court and obtained a favorable oral tentative ruling (or a favorable written tentative ruling that they could not keep). At this point, the parties settled, but the resulting agreement now gives rise to the current dispute.

The settlement was broader than the federal court certification as (a) it included two additional PAGA cases not in federal court, (b) it included a new settling co-defendant, 10 Roads Express, LLC, and (c) it included the not-certified employee business expense claim in the release. There was no employee business expense claim in the *Terry* class settlement, so it did not work a bar of such claims, even for class members who otherwise fully participated in the *Terry* class settlement.

When this settlement was struck, the parties by written contract set an escalator trigger of 20,000 work weeks (which was 7.1% higher than Defendants' then-stated estimate that the settled work weeks would be 18,669 such work weeks). It now appears that this trigger will be activated if *Terry* class members who remained in Defendant's employment after December 7, 2018, are included in the settlement class. There is no rational reason that Judge Gee would have intended to exclude non-exempt drivers from inclusion in the certified class just because claims up to December 7, 2018, had been released if they were otherwise subject to the same alleged continuing wage-and-hour violations as the other persons included in a class which extended forward for an additional 46 months (December 8, 2018 to September 28, 2022). There is also

no reason to believe that a diligent class representative (or class counsel) would leave such persons outside a settlement covering otherwise identically situated co-workers for this 46-month exposure period.

That many persons (*Terry* class members and persons not included in the *Terry* settlement) are also in a different exposure period for the employee business expense claim only (reaching back as it does to May 22, 2016) does not change the analysis. The disputed work weeks do not relate to the period of May 22, 2016 to December 8, 2018.

Plaintiffs have much the better of the position, for which reason Defendants' motion is denied.

Hearing on Motion for Final Approval of Settlement is scheduled for 11/10/2025 at 03:00 PM in Department 10 at Spring Street Courthouse.

Counsel for Plaintiff is to give notice.