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10 Attorneys for Plaintiffs ELITE LOGISTICS CORPORATION and NGL
TRANSPORTATION, LLC and the Putative Class

11 UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
13

14 ELITE LOGISTICS CORPORATION, NGL
15 TRANSPORTATION, LLC, and on
16 behalf of all others similarly situated,

17 Plaintiff,

18 v.

19 MOL (AMERICA), INC., and DOES
20 1-10,

21 Defendant.

22 MOL (AMERICA) INC. and MITSUI
O.S.K. LINES, LTD.,

23 Counterclaim Plaintiffs,

24 v.

25 ELITE LOGISTICS CORPORATION, and ROES 1-10,

26 Counterclaim Defendant.
27
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Case No.: 2:11-cv-02952 DDP (PLAx)

Judge Assigned: Judge Dean D. Pregerson

Complaint Filed: April 7, 2011
Trial Date: None Set

**DECLARATION OF DAVID C. WRIGHT
IN SUPPORT OF PLAINTIFF'S MOTION
FOR FINAL APPROVAL OF CLASS
SETTLEMENT**

Hearing Date: Monday, April 26, 2021
Hearing Time: 10:00 a.m.
Courtroom: 9C

1 I, DAVID C. WRIGHT, declare and state as follows:

2 1. I am an attorney licensed to practice law before all of the courts of the State
3 of California and I am a partner with the law firm of McCune Wright Arevalo, LLP,
4 counsel of record for Plaintiff NGL Transportation, LLC, (“Plaintiff”). The following
5 facts are within my personal knowledge or based on records and files at my law firm,
6 and, if called upon as a witness, I could and would testify competently thereto.

7 2. I obtained my J.D. from Pepperdine University School of Law in 1994 and
8 was admitted to the California bar in 1994. Following law school, I clerked for the
9 Honorable Stephen S. Trott, United States Court of Appeals for the Ninth Circuit.
10 Following his clerkship, I became an associate at Morrison & Foerster, in Los Angeles,
11 California. I left private practice in 1997 to become a prosecutor in United States
12 Attorney’s Office for the Central District of California. In 2001, I joined the firm of
13 Welebir & McCune where I concentrated my practice in representing plaintiffs in product
14 liability and complex litigation. I became a name partner of McCuneWright, LLP, in July
15 2007. I and my partner, Richard D. McCune, filed the first class action in the United
16 States against Toyota Motor Corporation for the sudden unintended acceleration of its
17 vehicles. Following the transfer of this action to the multi district litigation case of In re:
18 Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products
19 Liability Litigation, Mr. McCune was subsequently appointed to the Plaintiffs Personal
20 Injury and Wrongful Death Committee and I have been assisting him in that litigation. I
21 was appointed as class counsel by the Honorable Madeline Cox Arleo, United States
22 District Judge for the District of New Jersey, in the class action lawsuit of Bang v. BMW,
23 Case No. 2:15-cv-6945 (MCA)(LDW), which received Final Approval of Class
24 Settlement on September 12, 2018. I was also involved in the class action lawsuit
25 Gutierrez v. Wells Fargo Bank, N.A., regarding the unfair assessment of overdraft fees,
26 which resulted in a \$203 million judgment.

27 3. Our firm has represented the Plaintiffs from the beginning of this case.
28 Before filing the case, I along with other members of my firm, and Edward J. Chong, of

1 the Law Offices of Edward J. Chong & Associates, actively investigated the facts and
2 legal theories of the case. That included speaking extensively with the client, researching
3 facts, and researching the law. Based on this investigation, this firm has filed similar
4 lawsuits against eight other major shipping companies, including APL, Ltd.; Cosco North
5 America, Inc.; Evergreen Shipping Agency (America) Corporation; Hyundai Merchant
6 Marine (America), Inc.; Mediterranean Shipping Co., S.A; Hanjin Shipping Co., Ltd.;
7 Wan Hai Lines, Ltd.; and Yang Ming Marine Transport.

8 4. Class Counsel first achieved a favorable ruling in opposing motions to
9 compel arbitration in this Court brought by Defendant MOL, (Dkt. No. 38), and also
10 brought by a defendant in the related case of *Elite Logistics Corp. v. Hanjin Shipping Co.*
11 and then successfully defended this ruling in the Ninth Circuit (*Elite Logistics Corp. v.*
12 *Hanjin Shipping Co.*, 2014 WL 4654383 (9th Cir. April 10, 2014)).

13 5. Class Counsel then filed the first, of what would be two motions for class
14 certification. At the hearing on that motion, the Court did not rule, but suggested that
15 Plaintiff Elite file a Motion for Partial Summary Judgement to resolve whether Section
16 22928 prohibits intermodal equipment providers from charging per diem fees to motor
17 carriers for the use of their equipment on weekends and holidays in California.

18 6. Pursuant to the Court's direction, on May 7, 2013, Defendant Elite Logistics
19 filed a Motion for Partial Summary Judgement seeking declaratory and injunctive relief,
20 (Dkt. No. 63). This Court held that Section 22829 does prohibit charges on Saturdays,
21 Sundays, and holidays when terminals are closed. (Order on Mot. for Summ. Judgment,
22 Dkt. No. 84).

23 7. On February 24, 2015, Plaintiff Elite Logistics filed a First Amended
24 Complaint, which added Plaintiffs NGL Transportation as a named Plaintiff and class
25 representative. (Dkt No. 110, "First Amended Complaint" ["FAC"].) Thereafter, on April
26 17, 2015, Plaintiffs filed a Renewed Motion for Class Certification. (Dkt. No. 119.) The
27 Court ultimately denied the motion on February 2, 2016, finding that Plaintiff Elite
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1 Logistics was not an adequate class representative as a result of counterclaims filed by
2 Defendant MOL. (*Id.*)

3 8. On May 21, 2018, Plaintiff NGL filed a Renewed Motion for Class
4 Certification to enforce Section 22928 (Dkt. No. 184.) Subsequently, Defendant MOL
5 filed its Memorandum in Opposition (Dkt. No. 200.) and on July 30, 2018, the Court took
6 the matter under submission. (Dkt. No. 209.)

7 9. While this motion practice was ongoing, Class Counsel Class Counsel
8 engaged in extensive contested motion practice over the course of this litigation,
9 propounding and responding to written discovery, taking the deposition of Defendant's
10 Person Most Knowledgeable on overdraft issues, and defending Plaintiff's deposition.
11 As part of discovery in this case, MOL produced an electronic spreadsheet with a
12 substantial number of entries for per diem charges assessed to trucking companies in
13 California from 2007 through early August 2012. This spreadsheet includes the identity
14 of the trucking companies charged per diem fees and the dates and amount of charges.

15 10. MOL uses an Oracle-based database to store information relating to per
16 diem invoices, and MOL produced as part of discovery an electronic version of this
17 database which includes information on all per diem charges assessed to trucking
18 companies in California. The database records document the per diem rate and number of
19 free days for each specific customer. The database spreadsheets were used to determine
20 how much each trucking company actually paid for per diem invoices for work in
21 California (including any adjustments), how much was paid for weekends, and the dates
22 of the charges. Per diem charges issued for Saturdays, Sundays, and holidays during the
23 relevant period were calculated by Plaintiffs' database expert, Arthur Olsen, based on the
24 per diem charge database produced by Defendant MOL.

25 11. Analysis of this data shows that the total amount of amount of per diem
26 charges assessed by MOL was \$417,429.34 on Saturdays, \$388,679.58 on Sundays, and
27 \$70,806.00 on holidays. According to information provided by Defendant, the terminals
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1 utilized by MOL were open on Saturdays. Therefore, the unlawful per diem charges were
2 those incurred on Sundays and holidays is \$459,485.58.

3 12. The settlement agreed upon of a settlement fund of \$700,000 constitutes a
4 recovery of 152% of full damages from Defendants—with class members actually
5 receiving 66% of their maximum damages after payment of requested attorney’s fees,
6 litigation costs, and administration costs—without having to account for per diem charges
7 that were passed on to the cargo owners or for which the motor carriers have been
8 reimbursed and without experiencing delay that would be caused by trial and appeals in
9 this matter.

10 13. Plaintiff NGL Transportations is typical of the settlement class members. It
11 was charged per diem fees on Sundays when the terminal was closed. NGL
12 Transportation has participated in this case actively. Its president, Sean Roh, investigated
13 the claims, gathered documents and other information, made himself available to provide
14 the attorneys further information when requested, and also was prepared and willing to
15 testify at trial on behalf of the class if necessary. He also demonstrated an understanding
16 of the case, and his duties as a class representative to protect the absent class members.

17 14. Only two law firms—McCune Wright Arevalo LLP and Edward Chong &
18 Associates—will share in the attorney fee award with two-thirds going to McCune
19 Wright Arevalo and one-third going to Edward Chong and Associates. Class
20 representative NGL Transportation has been aware of this since the start of the case, and
21 has approved this in writing.

22 15. In addition to my work, the attorneys from McCune Wright Arevalo, LLP
23 who worked on this matter are Richard D. McCune (senior managing partner), Jae K.
24 Kim (partner, but no longer with the firm), and Emily Kirk (associate).

25 16. I have worked 196.13 hours on the case, and my work in this case was billed
26 at my former rate of \$750 per hour.

27 17. Richard D. McCune obtained his J.D. from the University of Southern
28 California in June of 1987 and became a member of the California Bar in December of

1 1987. Mr. McCune has more than thirty-two years of litigation and trial experience and
2 is AV-rated. Over the last decade, Mr. McCune has focused his practice on representing
3 consumers in class action litigation. Prior to that, Mr. McCune represented plaintiffs in a
4 variety of complex litigation matters, with particular emphasis in product liability actions.
5 Mr. McCune worked 51.9 hours on this case and his usual hourly fee for lodestar
6 contingency class action cases at the time he worked on this case was \$825 per hour.

7 18. Jae K. Kim obtained his B.A. from University of California, Berkeley in
8 2001 before attending and graduating from Cornell Law School in 2004. Since 2005, Mr.
9 Kim worked at McCune Wright Arevalo (or its predecessor firm Welebir & McCune).
10 His practice was exclusively representing plaintiffs in complex litigation matters, with
11 primary emphasis in consumer class action cases. Mr. Kim had extensive experience in
12 all aspects of financial consumer class cases ranging from drafting pleadings to trial work
13 to appellate work. Mr. Kim worked 247.4 hours on this case, and his usual hourly fee for
14 lodestar contingency class action cases at the time he left the firm was \$650 per hour.

15 19. Emily Kirk. Ms. Kirk received her B.S. degree from Southeast Missouri
16 State University, graduating summa cum laude, and her law degree from Washington
17 University School of Law in 2001. Ms. Kirk began her legal career serving as Counsel to
18 a U.S. Senate Subcommittee in Washington, D.C., after which she joined
19 SimmonsCooper LLC (now Simmons Hanly Conroy, LLC) in Alton, IL, where she
20 represented plaintiffs in complex business litigation and class action matters. Ms. Kirk
21 also worked in the business litigation department of Thompson Coburn, LLP in St. Louis,
22 MO before joining McCuneWright, LLP (now McCune Wright Arevalo, LLP) in 2016.
23 She has over 15 years of experience leading complex litigation and class actions on
24 behalf of plaintiffs and has been involved in a large number of consumer class actions
25 against financial institutions regarding their overdraft fee assessment programs. Ms. Kirk
26 worked 247.4 hours on this case, and her usual hourly fee for lodestar contingency class
27 action cases is \$550 per hour.

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1 20. These rates have been approved by courts throughout the United States,
2 including in the United States District Court, Southern District of Illinois (Towner v. 1st
3 MidAmerica Credit Union, Case No. 3:15-cv-1162 - \$825); United States District Court,
4 Northern District of California (Ramirez v. Baxter Credit Union, Cas No. 3:16-cv-03765
5 - \$825); United States District Court, Middle District of Louisiana (Lane v. Campus
6 Federal Credit Union, Case No. 3:16-cv-00037 - \$825); United States District Court for
7 the Western District of Wisconsin (Behrens v. Landmark Credit Union, Case No. 17-cv-
8 101 - \$850); United States District Court, Western District of Missouri (Bowens v.
9 Mazuma Credit Union, Case No. 4:15-cv-00758 - \$850); United States District Court,
10 Middle District of Florida, Tampa Division (Fry v. MidFlorida Credit Union, Case No.
11 8:15-cv-2743 - \$825); United States District Court, District of Maryland (Ketner v. State
12 Employees Credit Union of Maryland, 1:15-cv-03594 - \$825); United States District
13 Court, District of Nevada (Gunter v. United Federal Credit Union, Case No. 3:15-cv-
14 00483 - \$850); Superior Court of the State of Washington, County of Pierce (Wodja v.
15 Washington State Employees Credit Union, Case No. 16-2-12148-4 - \$850); United
16 States District Court for the Western District of Michigan (Pingston-Poling v. Advia
17 Credit Union, Case No.: 1:15-CV-1208 - \$850); and the United States District Court for
18 the District of Massachusetts (Salls v. Digital Federal Credit Union, Case No. 18-cv-
19 11262-TSH - \$850).

20 21. The time that McCune Wright Arevalo, and other Class Counsel, have spent
21 on this litigation has been completely contingent on the outcome. McCune Wright
22 Arevalo and Class Counsel have not been paid for any of the time spent on this litigation.
23 No payment of attorneys' fees would occur in this case but for a fee award in an
24 individual or class settlement.

25 22. In connection with this litigation, the attorneys at McCune Wright Arevalo
26 have spent 723.4 hours on the case to date. This figure was generated after reducing
27 hours based on reasonable billing judgment. This information is derived directly from
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1 McCune Wright Arevalo's time records, which are prepared contemporaneously and
2 maintained by McCune Wright Arevalo in the ordinary course of business.

3 23. McCune Wright Arevalo sets its hourly rates according to prevailing market
4 rates and has consistently been awarded fees according to those rates. McCune Wright
5 Arevalo exclusively represents clients on a contingent fee basis, both in class and
6 individual cases. However, those rates are the minimum we would charge to accept
7 employment on an hourly basis.

8 24. The following is the summary listing of each employee of McCune Wright
9 Arevalo who worked on this matter, the hours each individual worked on the case, and
10 the lodestar based on the timekeepers' historical hourly rate:

Name	Role	Rate	Hours	Billing
David Wright	Attorney Partner Practice Group Leader	\$750	196.1	\$147,075
Richard McCune	Attorney Senior/Managing Partner	\$825	51.9	\$42,818
Emily Kirk	Associate Attorney	\$550	247.4	\$136,070
Jae K. Kim	Partner/Attorney	\$650	212.4	\$138,060
Ann Smith	Paralegal	\$250	4.7	\$1,175
Cynthia Soria	Paralegal	\$200	8.1	\$1,620
Rosalinda Rosas	Paralegal	\$250	2.8	\$700
Total			723.4	\$467,518

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17 25. I estimate that McCune Wright Arevalo will incur an additional \$3,000 in
18 fees to finalize the settlement in the case, including distributing the settlement proceeds to
19 class members and working with class members and defense counsel to implement and
20 conclude the settlement. Considering these future estimated fees, McCune Wright
21 Arevalo's total anticipated lodestar is \$470,518.

22 26. Consistent with the terms of the Settlement Agreement, Class Counsel is
23 requesting an award of attorney's fees of \$375,000. This constitutes a negative multiplier
24 of 0.8 applied to Class Counsel's actual lodestar.

25 27. Based upon my experience with other class actions and complex matters, I
26 believe that time expended by McCune Wright Arevalo in connection with this litigation
27 was reasonable in amount and contributed to the ultimate result achieved for the class.
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1 28. McCune Wright Arevalo, LLP, has incurred \$15,453.23 in litigation and
2 notice costs. The cost records were maintained in the ordinary course of business. These
3 costs are prepared from invoices, receipts, expense vouchers, check records and other
4 records, and are an accurate record of the expenses incurred in this case.

5 29. I estimate that McCune Wright Arevalo will incur an additional \$500 in
6 mailing costs to distribute the settlement proceeds to class members. Considering these
7 future estimated fees, McCune Wright Arevalo's total anticipated costs are \$15,953.23.

8 30. The above expense numbers do not include significant internal and other
9 costs that McCune Wright Arevalo has incurred, but for which McCune Wright Arevalo
10 does not seek reimbursement, including costs for in-house copying, scanning, telephone,
11 and online legal research.

12 31. It is my estimate that, should this case have proceeded to trial, and the
13 Plaintiff Class both established liability and defeated the pass-through defense, the
14 maximum award would have been a recovery of \$459,485.58, not including any potential
15 fee-shifting award, and would have been significantly less if Defendant were allowed to
16 present a pass-through defense to mitigate its damages. I believe it is likely the side
17 which lost the trial would have then appealed, contributing further to these additional
18 attorneys' fees, as well as delay to class members. This is another reason why I consider
19 this settlement to be advantageous to the class members—because it avoids all of these
20 additional costs and fees and delay which would have arisen if Plaintiff had gone all the
21 way through trial. In sum, this was an arm's-length, adversarial settlement by
22 experienced counsel on both sides, one which I believe is fair, adequate, and reasonable,
23 and in the best interest of the class members, and which I recommend.

24 32. Class Counsel will also respectfully request the Court award a service fee to
25 the class representative NGL Transportation of \$5,000 for its work in this case, a case
26 which but for its efforts might not have resulted for the class members in the beneficial
27 way it did.

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1 33. I am a supporter of Public Citizen, but I am not on the Board of Directors or
2 involved in the governance of the organization.

3 34. Settlement negotiations were at all times arm’s-length and adversarial, and
4 by experienced counsel on both sides. I have been personally involved in all aspects of
5 the investigation, pleadings, law and motion, discovery and settlement negotiations in this
6 case, and it is my belief that this settlement is in the best interest of the class taking into
7 account both the risks and benefits of proceeding to trial and verdict in this case and the
8 settlement is one which I believe is fair, adequate, and reasonable, and in the best interest
9 of the class members.

10 I so declare the above is true and correct under penalty of perjury under the laws of
11 the United States.

12 Executed this 14th day of April 2021, at Rancho Cucamonga, California.

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 /s/ David C. Wright
David C. Wright

CERTIFICATE OF SERVICE

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I certify that on April 14, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send a notice of electronic filing to all CM/ECF participants in the above-referenced matter.

By: /s/ David C. Wright
David C. Wright