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8
9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11

12 ELITE LOGISTICS)
CORPORATION, NGL)
13 TRANSPORTATION, LLC, and on)
behalf of all others similarly situated,)

14 Plaintiff,

15 v.

16 MOL (AMERICA), INC., and DOES)
17 1-10,)

18 Defendant.

) Case No.: 2:11-cv-02952 DDP (PLAx)

) Judge Assigned: Judge Dean D. Pregerson

) Complaint Filed: April 7, 2011

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

) Hearing Date: Monday, April 26, 2021

) Hearing Time: 10:00 a.m.

) Courtroom: 9C

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

21 Counterclaim Plaintiffs,

22 v.

23 ELITE LOGISTICS)
CORPORATION, and ROES 1-10,)

24 Counterclaim Defendant.)

1 This Court granted preliminary approval of the Settlement Agreement and Release
2 (“Settlement”) and certified a provisional settlement class on October 2, 2020. (Dkt. No.
3 223). Due and adequate notice having been given to the Class Members, and the Court
4 having considered the Settlement, all papers filed and proceedings had herein and all oral
5 and written comments received regarding the Settlement, and having reviewed the record
6 in this litigation, and good cause appearing,

7
8 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:**

9 1. This Order incorporates by reference the definitions in the Settlement,
10 and all terms used in this Order shall have the same meanings as set forth in the
11 Settlement.

12 2. The Court has jurisdiction over the subject matter of this litigation and
13 over the Parties to this litigation, including all Class Members.

14 3. This Court finds that the Classes meet all of the requirements for
15 certification of a settlement class under the Federal Rules of Civil Procedure and
16 applicable case law. For settlement purposes, the Court now finally certifies the
17 Class which is defined as follows:

18
19 All intermodal motor carriers who were charged and
20 paid unlawful per diem charges to Defendants for weekend
21 and holidays when the terminal was closed, in violation of
22 California Business and Professions Code section 22928,
from April 7, 2007, to the present. “Class Member” does not
include any entity in which Defendants have a controlling
interest, and Defendants’ officers or directors.

23 4. The Court finds that the distribution of the notice of the Settlement has
24 been completed in conformity with the Court’s preliminary approval order. The
25 Court finds that the notice was the best practicable process under the circumstances
26 and provided due and adequate notice of the proceedings and the terms of the
27 Settlement. The Court finds that the notice fully satisfied the requirements of due
28 process. The Court also finds that Class Members were given a full and fair

1 opportunity to participate in the Final Approval Hearing, all Class Members wishing
2 to be heard have been heard, and Class Members have had a full and fair opportunity
3 to exclude themselves from the Class.

4 5. The Court finds that for purpose of the settlement, that the members of
5 the Settlement Class are so numerous that joinder of all members would be
6 impracticable, that the litigation and the settlement raise issues affecting only
7 individual members of the Settlement Class, that the claims of NGL Transportation
8 are typical of the claims of the Settlement Class, that in prosecuting this Action and
9 negotiating and entering into the Settlement Agreement, the Named Plaintiff and its
10 counsel have fairly and adequately protected the interests of the Settlement Class and
11 will adequately represent the Settlement Class in connection with the settlement, and
12 that a class action is superior to other methods available for adjudicating the
13 controversy.
14

15 6. The Court finds, as set forth in the Declaration of David Wright re Notice
16 to the Class that, as of April 14, 2021, no members of the Class requested exclusion
17 from the class and that there were no objections to the settlement.

18 7. The Court finds that the reaction of the Class to the Settlement was
19 overwhelmingly favorable to the settlement.

20 8. The Court hereby grants final approval of the terms set forth in the
21 Settlement and finds that the Settlement is, in all respects, fair, adequate, and
22 reasonable, and directs the parties to effectuate the Settlement according to its terms.
23 The Court finds that the Settlement has been reached as a result of informed and non-
24 collusive arms-length negotiations. The Court further finds that the parties have
25 conducted extensive investigation and research, and their attorneys were able to
26 reasonably evaluate their respective positions.

27 9. The Court finds that settlement will avoid additional and potentially
28 substantial litigation costs, as well as delay and risks. The amount offered in

1 settlement is reasonable in light of the expense, complexity, risk, and likely duration
2 of further litigation.

3 10. The Settlement is not an admission by Defendant, nor is this Order a
4 finding of the validity of any allegations or of any wrongdoing by Defendant. Neither
5 this Order, the Settlement, nor any document referred to herein, nor any action taken
6 to carry out the Settlement, may be construed as, or may be used as, an admission of
7 any fault, wrongdoing, omission, concession, or liability whatsoever by or against
8 Defendant.

9 11. The Court appoints Named Plaintiff NGL Transportation as the Class
10 Representative.

11 12. The Court finds that counsel for the Settlement Class, David Wright of
12 McCune Wright Arevalo, LLP and Edward Chong of Edward Chong & Associates are
13 qualified, experienced, and skilled attorneys capable of adequately representing the
14 class, and approves and appoints McCune Wright Arevalo LLP and Edward Chong &
15 Associates as Settlement Class Counsel.

16 13. The Court authorizes Settlement Class Counsel to perform all settlement
17 administration duties set out in the Settlement Agreement.

18 14. The Court finds the requested attorneys' fees of \$375,000 to be
19 reasonable under the lodestar method, and therefore awards fees in this amount to be
20 paid to Class Counsel from the Settlement Fund by the deadline specified in the
21 Settlement. The actual lodestar of counsel is \$470,518. The hourly rates of the
22 attorneys are reasonable and in line with prevailing market rates, and the hours
23 worked are also reasonable. Based on the contingent risk that counsel undertook in
24 prosecuting this action with no guarantee of payment as well as the novelty and
25 complexity of the action, the Court finds that the requested fees are reasonable.
26 Therefore, the requested fees amount is also separately and independently approved
27
28

1 under a lodestar analysis, and is to be paid to Class Counsel from the Settlement Fund
2 by the deadline specified in the Settlement Agreement.

3 15. The Court further finds that the fee-sharing arrangement among class
4 Counsel was disclosed to and approved by the Named Plaintiff.

5 16. The Court further finds that the request for reimbursement of litigation
6 costs in the amount of \$15,953.23 is reasonable based on the work necessary to
7 achieve this favorable class settlement, and is to be paid to Class Counsel from the
8 Settlement Fund by the deadline specified in the Settlement Agreement.

9 17. The Court finds that Named Plaintiff NGL Transportation assisted with
10 the prosecution and litigation of the case, including producing documents, responding
11 to written discovery, and having been willing to testify at trial. The Court therefore
12 awards a service award in the amount of \$5,000 to be paid to Named Plaintiff NGL
13 Transportation from the Settlement Fund by the deadline specified in the Settlement
14 Agreement.

15 18. The Court approves Public Citizen as the cy pres recipient of any residue
16 in the Settlement Fund.

17 19. Within 30 days of the date of this order, Defendant shall distribute the
18 Settlement Fund to the Settlement Class Counsel.

19 **IT IS SO ORDERED.**

20 DATED: _____
21
22

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26 _____
27 Hon. Dean D. Pregerson
28 United States District Judge