

Elite Logistics Corp., *et al.*
v.
MOL (America), Inc., *et al.*

NOTICE OF PENDING CLASS ACTION AND PROPOSED SETTLEMENT

**READ THIS NOTICE FULLY AND CAREFULLY; THE PROPOSED SETTLEMENT
MAY AFFECT YOUR RIGHTS!**

**IF YOU ARE A CALIFORNIA INTERMODAL MOTOR CARRIER AND
YOU WERE CHARGED AND PAID A PER DIEM OR DETENTION
CHARGE(S) FOR WEEKEND AND/OR HOLIDAY TIME WHEN THE
TERMINAL WAS CLOSED TO MOL (AMERICA), INC. (“MOL”)
BETWEEN APRIL 7, 2007, TO THE PRESENT YOU MAY BE ENTITLED
TO A PAYMENT FROM A CLASS ACTION SETTLEMENT**

The United States District Court Central District of California has authorized this Notice;
it is not a solicitation from a lawyer.

SUMMARY OF YOUR OPTIONS AND THE LEGAL EFFECT OF EACH OPTION	
APPROVE THE SETTLEMENT AND RECEIVE A PAYMENT; YOU NEED NOT DO ANYTHING	Unless you exclude yourself from the settlement (see the next paragraph), then you will receive a check. The approximate amount of the payment you will receive and when you will receive it is described below.
EXCLUDE YOURSELF FROM THE SETTLEMENT; RECEIVE NO PAYMENT BUT RELEASE NO CLAIMS	You can choose to exclude yourself from the settlement or “opt out.” This means you choose not to participate in the settlement. You will keep your individual claims against MOL but you will not receive a payment. If you want to recover against MOL, then you will have to file a separate lawsuit or claim.
OBJECT TO THE SETTLEMENT	You can file an objection with the Court explaining why you believe the Court should reject the settlement. If your objection is overruled by the Court, then you <u>will</u> receive a payment and you <u>will not</u> be able to sue MOL for the claims asserted in this litigation. If the Court agrees with your objection, then the settlement may not be approved.

These rights and options – *and the deadlines to exercise them* – along with the material terms of the settlement are explained in this Notice.

BASIC INFORMATION

1. What is this lawsuit about?

The lawsuit that is being settled is entitled *Elite Logistics Corp., et al., v. MOL (America), Inc., et al.* The case is a “class action.” That means that the “Named Plaintiffs,” Elite Logistics Corp. (“Elite”) and NGL Transportation, LLC (“NGL”) are individual business entities acting on behalf of all persons (or entities) who were charged per diem or detention charges by MOL on weekends and/or holidays when the terminal was closed from April 7, 2007, to the present. This group is called the “Class Members.” The Named Plaintiffs are asserting claims for breach of contract, and violations of the California Unfair Competition Law. The Named Plaintiffs seek a refund of alleged improper per diem or detention fees charged to Class Members. MOL does not deny it charged per diem or detention fees but contends it did so properly and in accordance with the terms of its agreements and applicable law, and therefore denies that its practices give rise to claims for damages by Elite, NGL, or any Class Member.

2. Why did I receive this Notice of this lawsuit?
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You received this Notice because MOL’s records indicate that you were charged per diem or detention fee(s) on weekends and/or holidays when the terminal was closed between April 7, 2007, and the present. The Court directed that this Notice be sent to all Class Members because each Class Member has a right to know about the proposed settlement and the options available to him or her or it before the Court decides whether to approve the settlement.

3. Why did the parties settle?

In any lawsuit, there are risks and potential benefits that come with a trial versus settling at an earlier stage. It is the Named Plaintiffs’ lawyers’ job to identify when a proposed settlement offer is good enough that it justifies recommending settling the case instead of continuing to trial. In a class action, these lawyers, known as Class Counsel, make this recommendation to the Named Plaintiffs. The Named Plaintiffs have a duty to act in the best interests of the class as a whole and, in this case, it is Elite’s and NGL’s beliefs, as well as Class Counsel’s opinion, that this settlement is in the best interest of all Class Members for at least the following reasons:

There is legal uncertainty about whether a judge or a jury will find that MOL was contractually and otherwise legally obligated not to assess per diem and/or detention fees on weekends and holidays when the terminal was closed, and even if it was, there is uncertainty about whether the claims are subject to other defenses that might result in no or less recovery to Class Members. Even if the Named Plaintiffs were to win at trial, there is no assurance that the Class Members would be awarded more than the current settlement amount and it may take years of litigation before any payments would be made. By settling, the Class Members will avoid these and other risks and the delays associated with continued litigation.

WHO IS IN THE SETTLEMENT

4. How do I know if I am part of the Settlement?

If you received this notice, then MOL’s records indicate that you are a Class Member who is entitled to receive a payment.

YOUR OPTIONS

5. What options do I have with respect to the Settlement?

You have three options: (1) do nothing and automatically participate in the settlement; (2) exclude yourself from the settlement (“opt out” of it); or (3) participate in the settlement but object to it. Each of these options is described in a separate section below.

6. What are the critical deadlines?

To participate in the settlement, you need not do anything; so long as you do not opt out or exclude yourself (described in Questions 15 through 20, below), a payment will be made to you by mailing a check to you at the last address on file with MOL (or any other address you provide).

The deadline for sending a letter to exclude yourself from or opt out of the settlement is March 26, 2021.

The deadline to file an objection with the Court is also March 26, 2021.

7. How do I decide which option to choose?

If you do not like the settlement and you believe that you could receive more money by pursuing your claims on your own (with or without an attorney that you could hire) and you are comfortable with the risk that you might lose your case or get less than you would in this settlement, then you may want to consider opting out.

If you believe the settlement is unreasonable, unfair, or inadequate and the Court should reject the settlement, then you can object to the settlement terms. The Court will decide if your objection is valid. If the Court agrees, then the settlement will not be approved and no payments will be made to you or any other Class Member. If your objection (and any other objection) is overruled, and the settlement is approved, then you will still get a payment.

8. What has to happen for the Settlement to be approved?

The Court has to decide that the settlement is fair, reasonable, and adequate before it will approve it. The Court already has decided to provide preliminary approval of the settlement, which is why you received this Notice. The Court will make a final decision regarding the settlement at a “Fairness Hearing” or “Final Approval Hearing”, which is currently scheduled for April 26, 2021, at 10:00 a.m.

THE SETTLEMENT PAYMENT

9. How much is the Settlement?

MOL has agreed to create a Settlement Fund of \$700,000. As discussed separately below, Attorneys’ fees, litigation costs, and a Service Award to the Named Plaintiff will be paid out of the Settlement Fund. The balance of the Settlement Fund will be divided among all Class Members based on the amount of eligible per diem or detention fees they paid.

10. How much of the settlement fund will be used to pay for attorney fees and costs?

Class Counsel has requested that the Court award up to \$400,000 as attorneys' fees. Approximately \$50,000 of the \$400,000 will be used to cover litigation costs incurred in prosecuting the case, and administering claims. The Court will decide the amount of the attorneys' fees and costs based on a number of factors, including the risk associated with bringing the case on a contingency basis, the amount of time spent on the case, the amount of costs incurred to prosecute the case and administer claims, the quality of the work, and the outcome of the case.

11. How much of the settlement fund will be used to pay the Named Plaintiff a Service Award

Class Counsel on behalf of Named Plaintiff NGL Transportation, LLC has requested that the Court award it \$5,000 for its role in acting as the Named Plaintiff and securing this settlement on behalf of the class. The Court will decide if a Service Award is appropriate and if so, the amount of the award.

12. How much will my payment be?

After payment of attorneys' fees and costs of litigation, and the Service Award payment to Named Plaintiff NGL Transportation, LLC, there will be approximately \$295,000 in the Net Settlement Fund. The amount you receive will be determined by the following formula:

$$(\text{Net Settlement Fund} / \text{Total Improper Per Diem/Detention Charges}) \times \text{Total Improper Charges Charge per Class Member} = \text{Individual Payment}$$

13. Do I have to do anything if I want to participate in the Settlement?

No. As long as you do not opt out, a check will be mailed to you at the last known address MOL has for you. If your address has changed, you should provide your current address to Class Counsel at the address set forth in Question 18, below.

14. When will I receive my payment?

The Court will hold a Fairness Hearing (explained below in Questions 21-23) on April 26, 2021, at 10:00 a.m. to consider whether the settlement should be approved. If the Court approves the settlement, then payments should be made should be issued within about 10 days. However, if someone objects to the settlement, and the objection is sustained, then there is no settlement. Even if all objections are overruled and the Court approves the settlement, an objector could appeal and it might take months or even years to have the appeal resolved, which would delay any payment.

EXCLUDING YOURSELF FROM THE SETTLEMENT

15. How do I exclude myself from the settlement?

If you do not want to receive a payment, or if you want to keep any right you may have to sue MOL for the claims alleged in this lawsuit, then you must exclude yourself or "opt out."

To opt out, you must send a letter to Class Counsel that you want to be excluded. Your letter can simply say “I hereby elect to be excluded from the settlement in the *Elite Logistics Corp. v. MOL (America), Inc.* class action.” Be sure to include your name, address, telephone number, and email address. Your exclusion or opt out request must be postmarked by March 26, 2021, and sent to:

CLASS COUNSEL
Elite Logistics Corp. v. MOL (America), Inc. David C. Wright McCune Wright Arevalo, LLP 3281 East Guasti Road, Suite 100 Ontario, CA 91761

16. What happens if I opt out of the settlement?

If you opt out of the settlement, you will preserve and not give up any of your rights to sue MOL for the claims alleged in this case. However, you will not be entitled to receive a payment from this settlement.

17. If I exclude myself, can I obtain a payment?

No. If you exclude yourself, you will not be entitled to a payment.

OBJECTING TO THE SETTLEMENT

18. How do I notify the Court that I do not like the settlement?

You can object to the settlement or any part of it that you do not like **IF** you do not exclude yourself or opt out from the settlement. (Class Members who exclude themselves from the settlement have no right to object to how other Class Members are treated.) To object, you must send a written document to Class Counsel at the address below. Your objection should say that you are a Class Member, that you object to the settlement, and the factual and legal reasons why you object, and whether you intend to appear at the hearing. In your objection, you must include your name, address, telephone number, email address (if applicable) and your signature.

All objections must be post-marked no later than March 26, 2021, and must be mailed to Class Counsel as follows:

CLASS COUNSEL
Elite Logistics Corp. v. MOL (America), Inc. David C. Wright McCune Wright Arevalo, LLP 3281 East Guasti Road, Suite 100 Ontario, CA 91761

19. What is the difference between objecting and requesting exclusion from the settlement?

Objecting is telling the Court that you do not believe the settlement is fair, reasonable, and adequate for the class, and asking the Court to reject it. You can object only if you do not opt out of the settlement. If you object to the settlement and do not opt out, then you are entitled to a payment if the settlement is approved, but you will release claims you might have against MOL. Excluding yourself or opting out is telling the Court that you do not want to be part of the settlement, and do not want to receive a payment or release claims you might have against MOL for the claims alleged in this lawsuit.

20. What happens if I object to the settlement?

If the Court sustains your objection, or the objection of any other Class Member, then there is no settlement. If you object, but the Court overrules your objection and any other objection(s), then you will be part of the settlement.

THE COURT’S FAIRNESS HEARING

21. When and where will the Court decide whether to approve the settlement?

The Court will hold a Final Approval or Fairness Hearing on Monday, April 26, 2021, at 10:00 a.m., in Courtroom 9C of the United States District Court for the Central District of California, located at 350 West 1st Street, Los Angeles, California 90012. At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. The Court may also decide how much to award Class Counsel for attorneys’ fees and expenses and how much the Named Plaintiff should get as a Service Award for acting as the class representative.

22. Do I have to come to the hearing?

No. Class Counsel will answer any questions the Court may have. You may attend if you desire to do so. If you have submitted an objection, then you may want to attend.

23. May I speak at the hearing?

If you have objected, you may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must include with your objection, described in Question 18, above, the statement, “I hereby give notice that I intend to appear at the Final Approval Hearing.”

IF YOU DO NOTHING

24. What happens if I do nothing at all?

If you do nothing at all, and if the settlement is approved, then you will receive a payment that represents your share of the Settlement Fund net of attorneys’ fees and the Named Plaintiff’s Service Award. You will be considered a part of the class, and you will give up claims against MOL for the conduct alleged in this lawsuit. You will not give up any other claims you might have against MOL that are not part of this lawsuit.

THE LAWYERS REPRESENTING YOU

25. Do I have a lawyer in this case?

The Court ordered that the lawyers and their law firms referred to in this notice as “Class Counsel” will represent you and the other Class Members.

26. Do I have to pay the lawyer for accomplishing this result?

No. Class Counsel will be paid directly from the Settlement Fund.

27. Who determines what the attorneys’ fees will be?

The Court will be asked to approve the amount of attorneys’ fees at the Fairness Hearing. Class Counsel will file an application for fees and costs and will specify the amount being sought as discussed above. You may review the fee application at <https://mccunewright.com/mol-america-intermodal-container-per-diem-class-settlement/> or view a physical copy at the Office of the Clerk of the United States District Court for the Central District of California, which is located at 350 West 1st Street, Los Angeles 90012.

GETTING MORE INFORMATION

This Notice only summarizes the proposed settlement. More details are contained in the settlement agreement, which can be viewed/obtained online at <https://mccunewright.com/mol-america-intermodal-container-per-diem-class-settlement/> or at the Office of the United States District Court Central District of California by asking for the Court file containing the Motion for Preliminary Approval of Class Settlement (the settlement agreement is attached to the motion).

For additional information about the settlement and/or to obtain copies of the settlement agreement, or to change your address for purposes of receiving a payment, you should contact Class Counsel as follows:

Elite Logistics Corp. v. MOL (America) Inc. Class Counsel:

David C. Wright
McCune Wright Arevalo, LLP
3281 E. Guasti Road, Ste. 100
Ontario, CA 91761
Telephone: (909) 557-1250
dcw@mccunewright.com

PLEASE DO NOT CONTACT THE COURT OR ANY REPRESENTATIVE OF MOL CONCERNING THIS NOTICE OR THE SETTLEMENT