

1 RICHARD D. McCUNE, State Bar No. 132124
rdm@mccunewright.com
2 DAVID C. WRIGHT, State Bar No. 177468
dcw@mccunewright.com
3 MCCUNE WRIGHT AREVALO LLP
3281 East Guasti Road, Suite 100
4 Ontario, California 91761
Telephone: (909) 557-1250
5 Facsimile: (909) 557-1275

6 Edward J. Chong, State Bar No. 201409
edlawla@gmail.com
7 Law Offices of Edward J. Chong and Associates
3325 Wilshire Blvd., Suite 1250
8 Los Angeles, California 90010
Telephone: (213) 386-1990
9 Facsimile: (213) 386-1800

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
15 CORPORATION, NGL
16 TRANSPORTATION, LLC, and on
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
28

Case No.: 2:11-cv-02952 DDP (PLAx)
Judge Assigned: Judge Dean D. Pregerson
Complaint Filed: April 7, 2011
Trial Date: None Set

**PLAINTIFF'S UNOPPOSED NOTICE OF
MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF CLASS
SETTLEMENT**

Hearing Date: Monday, December 17, 2018
Hearing Time: 10:00 a.m.
Courtroom: 9C

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on December 17, 2018, at 1o:00 p.m. or as soon as
3 the matter may be heard in the courtroom of the Honorable Dean D. Pregerson, United
4 States Courthouse, 350 W. 1st Street, Los Angeles, CA, Plaintiff NGL Transportation
5 LLC will and hereby does move pursuant to Rule 23 of the Federal Rules of Civil
6 Procedure for an order granting preliminary approval to the class action settlement in this
7 matter.

8 **STATEMENT OF THE ISSUES TO BE DECIDED**

9 By this motion, Plaintiffs move the Court for an Order:

- 10 1. preliminarily approving the settlement in this action;
- 11 2. preliminarily certifying a settlement class;
- 12 3. appointing Class counsel;
- 13 4. appointing NGL Transportation, LLC, as the settlement class representative; and
- 14 5. approving the proposed form of notice and notice program, and directing that
15 notice be disseminated pursuant to this program.

16 This Motion is based on the accompanying Memorandum of Points and
17 Authorities, Declaration of David Wright and all exhibits thereto, all papers and records
18 on file in this matter, and such other matter as the Court may allow.

19 Dated: November 19, 2018

Respectfully Submitted,
McCune Wright Arevalo, LLP

21 BY: /s/ David C. Wright
22 David C. Wright
23 Attorneys for Plaintiffs and the
24 Putative Class

TABLE OF CONTENTS

1			
2			<i>Page</i>
3	I	SUMMARY.....	6
4	II	PROCEDURAL BACKGROUND	7
5		A. Motion for Partial Summary Judgement	7
6		B. Renewed Motions for Class Certification & First Amended	
7		Complaint.....	7
8	III	FACTUAL BACKGROUND.....	8
9		A. Per Diem Fee Discovery	9
10	IV	SETTLEMENT NEGOTIATIONS.....	9
11		A. TERMS OF THE SETTLEMENT.....	10
12		1. Class Definition.....	10
13		2. Settlement Fund	10
14		3. Class Member Payment Distribution.....	10
15		4. Dismissal of Counterclaim.....	10
16		5. <i>Cy Pres</i> Distribution	10
17		6. Class Notice	11
18		7. Opt Out Procedure	11
19		8. Opportunity to Object	12
20		9. Attorneys’ Fees and Expenses	12
21		10. Release	12
22	V	ARGUMENT.....	12
23		A. The Settlement Should Be Preliminarily Approved	12
24		1. The Settlement Is Reasonable, Fair, and Adequate Given the Strength	
25		of the Case and Risks of Litigation.....	14
26		2. The Settlement Treats Class Members Equally.....	15
27			
28			

TABLE OF CONTENTS (cont.)

	<i>Page</i>
3.	The Recommendation of Experienced Counsel Supports Approval .. 15
4.	The Proposed Forms of Notice and Notice Programs Are Appropriate and Should be Approved..... 16
5.	The Class Representative Service Award..... 16
6.	The Proposed Settlement Class Should Be Certified 17
a.	The Requirement of Numerosity Is Satisfied 17
b.	The Requirement of Commonality Is Satisfied 18
c.	Plaintiff NGL’s Claims Are Typical 18
d.	The Requirement of Adequate Representation Is Satisfied..... 20
e.	The Proposed Settlement Meets the Requirements of Rule 23(b)(3) 21
i.	Common Questions of Law and Fact Predominate 21
ii.	The Class Action Is the Superior Method of Adjudication 22
B.	The Court Should Approve the Notice Plan 24
C.	A Final Approval Hearing Should be Scheduled..... 24
VI	CONCLUSION..... 25

TABLE OF AUTHORITIES

Page(s)

Cases

Amchem Prods. Inc. v. Windsor,
521 U.S. 591 (1997)..... 12, 15, 17

Armstrong v. Davis,
275 F.3d 849 (9th Cir. 2001) 14

Boyd v. Bechtel Corp.,
485 F. Supp. 610 (N.D. Cal. 1979)..... 11

Briggs v. United States,
No. C 07–05760 WHA, 2010 WL 1759457 (N.D. Cal. Apr. 30, 2010) 8

Bruno v. Quten Research Inst., LLC,
No. SACV 11–00173 DOC(Ex), 2013 WL 990495 (C.D. Cal. Mar. 13, 2013) 8

Churchill Village,
(9th Cir. 1999) 361 F.3d 11

Class Plaintiffs v. City of Seattle,
955 F.2d 1268 (9th Cir. 1992) 8

Crawford v. Honig,
37 F.3d 485 (9th Cir. 1995) 15

Davis v. Astrue,
250 F.R.D. 476 (N.D. Cal. 2008) 13

Ehrheart v. Verizon Wireless,
609 F.3d 590 (3d Cir. 2010) 20

Ellis v. Naval Air Rework Facility,
87 F.R.D. 15 (N.D. Cal. 1980) 11

General Tel. Co. of Southwest v. Falcon,
457 U.S. 147, 102 S. Ct. 2364 (1982) 14

Hanlon v. Chrysler Corp.,
150 F.3d 1011 (9th Cir. 1998) 8, 14

Harris v. Palm Springs Alpine Estates, Inc.,
329 F.2d 909 (9th Cir. 1964) 13

In re Drexel Burnham Lambert Group, Inc.,
130 B.R. 910 (S.D.N.Y. 1991) 11

In re LinkedIn User Privacy Litigation,
309 F.R.D. 573 (N.D. Cal. 2015) 19

TABLE OF AUTHORITIES (cont.)

Page(s)

1

2

3 *In re Mego Fin. Corp. Sec. Litig.*,
213 F.3d 454 (9th Cir. 2000) 8

4

5 *Kakani v. Oracle Corp.*, No. C,
06-06493 WHA, 2007 WL 1793774 (N.D. Cal. June 19, 2007) 9

6 *Keegan v. American Honda Motor Co., Inc.*,
284 F.R.D. 504, 2012 WL 2250040 (C.D. Cal. June 12, 2012)..... 18

7

8 *Keilholtz v. Lennox Hearth Products, Inc.*,
268 F.R.D. 330 (N.D. Cal. 2010) 18

9 *Marisol A. v. Giuliani*,
126 F.3d 372 (2d Cir. 1997) 14

10

11 *Mazza v. Am. Honda Motor Co.*,
666 F.3d 581 (9th Cir. 2012) 13

12 *Misra v. Decision One Mortgage Co.*,
No. SA CV 07-0994 DOC (RCx), 2009 WL 4581276 (C.D. Cal. Apr. 13, 2009) ... 9

13

14 *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*,
221 F.R.D. 523 (C.D. Cal. 2004)..... 11

15 *Parkinson v. Hyundai Motor America*,
258 F.R.D. 580 (C.D. Cal. 2008)..... 19

16

17 *Rodriguez v. West Publishing Corp.*,
563 F.3d 948 (9th Cir. 2009) 11

18 *Ruiz v. McKaskle*,
724 F.2d 1149 (5th Cir. 1984) 12

19

20 *Silber v. Mabon*,
18 F.3d 1449 (9th Cir.1994) 19

21 *Staton v. Boeing Co.*,
327 F.3d 938 (9th Cir. 2003) 8

22

23 *Torrissi v. Tucson Elec. Power Co.*,
8 F.3d 1370 (9th Cir. 1993) 11

24 *Wal-Mart Stores, Inc. v. Dukes*,
564 U.S. 338, 131 S. Ct. 2541 (2011) 13

25

26 *West v. Circle K Stores, Inc.*,
No. CIV. S-04-0438 WBS GGH, 2006 WL 1652598 (E.D. Cal. June 13, 2006)..... 9

27

28

TABLE OF AUTHORITIES (cont.)

Page(s)

Williams v. Vukovich,
720 F.2d 909 (6th Cir. 1983) 8

Zinser v. Accufix Research Inst., Inc.,
253 F.3d 1180 18

Statutes

California Business & Professions Code section 22928..... 1, 2, 3, 4

Rules

Fed. R. Civ. P. 23 *passim*

Other Authorities

H.B. Newberg, *Newberg on Class Actions* § 11:25 11

Manual for Complex Litigation (Fourth) § 21.632, (4th ed. 2004) 9, 16

Manual for Complex Litigation (Third) § 30.41 (3rd ed. 1995)..... 11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I SUMMARY**

3 This is a putative class action alleging that Defendant MOL (America), Inc.
4 (“MOL” or “Defendant”) unlawfully levied per diem, detention, or demurrage charges on
5 intermodal motor carriers on weekends and holidays, in violation of California Business
6 & Professions Code section 22928 (“Section 22928”). Plaintiff also allege that by
7 violating section 22928, Defendant breached its contractual obligations under the
8 Uniform Intermodal Interchange and Facilities Access Agreement (“UIIA”); specifically,
9 a provision that required Defendant to comply with all federal, state, and local laws,
10 rules, and regulations. MOL disputes Plaintiff’s contentions.

11 Following a settlement conference before this Court, the parties ultimately agreed
12 to a proposed settlement of this matter, subject to the Court’s review and approval. Under
13 the proposed Settlement Agreement MOL will pay \$700,000 into a Settlement Fund, with
14 no reversion of any residue, and will file a motion seeking dismissal of its counterclaim
15 against Elite. (*See* Declaration of David C. Wright (“Wright Decl.”), Ex. 1 (“Settlement
16 Agreement” [“SA”]).) The settlement payment will be used to provide restitution to class
17 members, pay the ligation costs, costs of notice and claims administration, attorney fees,
18 and a service award to the class representative – NGL Transportation, LLC, – for its work
19 on behalf of the class.

20 The manner of distribution of this proposed settlement is especially friendly to the
21 Class members, as it does not require any claims whatsoever to be made. Individual
22 payments will be paid to the Class members according to a formula which divides the net
23 settlement fund by the total improper per diem charges for the relevant period and
24 multiplies the resulting figure by an individual class member’s total improper per diem
25 charges. (SA ¶ 8(d)(iii).) Any money that remains after this distribution process will go to
26 Public Citizen, a 501(3)(c) corporation dedicated to protecting consumer rights; and the
27 California Treasury for Equal Access Fund and Judicial Maintenance Fund. (SA ¶ 11.) In
28 sum, Plaintiff’s counsel submits that the proposed Settlement Agreement is fair,

1 reasonable, and adequate. Moreover, the proposed agreement was born out of a
2 settlement conference before this Honorable Court, which provides further assurances
3 that it is indeed the product of the adversarial process.

4 **II PROCEDURAL BACKGROUND**

5 On April 7, 2011, Plaintiff Elite filed a class action complaint alleging that
6 Defendant MOL, and intermodal equipment provider, had breached the UIIA and Section
7 22928 by charging California trucking companies with per diem fees for the use of
8 equipment on weekends and holidays. (Dkt. No. 1.) On March 2, 2015, Defendant MOL
9 and Counterclaim Plaintiff Mitsui O.S.K. Lines, Ltd., filed a counterclaim against
10 Plaintiff Elite Logistics asserting that Elite had engaged in fraud by misrepresenting to
11 MOL the per diem rates that are acceptable to a cargo owner customer with whom MOL
12 has a direct relationship, including a service agreement which covers per diem rates.
13 (Dkt. No. 11.) The parties filed answers to the complaint and counterclaim denying all
14 allegations. (Answer to First Amended Complaint, Dkt. No. 110; Answer to
15 Counterclaim, Dkt. No. 117.)

16 **A. Motion for Partial Summary Judgement**

17 On November 1, 2012, Plaintiff Elite filed a Motion for Class Certification. (Dkt.
18 No. 35.) At the hearing on that motion, the Court did not rule, but suggested that Plaintiff
19 Elite file a Motion for Partial Summary Judgement to resolve whether Section 22928
20 prohibits intermodal equipment providers from charging per diem fees to motor carriers
21 for the use of their equipment on weekends and holidays in California.

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

26 **B. Renewed Motions for Class Certification & First Amended Complaint**

27 On February 24, 2015, Plaintiff Elite Logistics filed a First Amended Complaint,
28 which added Plaintiffs NGL Transportation as a named Plaintiff and class representative.

1 (Dkt No. 110, “First Amended Complaint” [“FAC”].) Thereafter, on April 17, 2015,
2 Plaintiffs filed a Renewed Motion for Class Certification. (Dkt. No. 119.) Thereafter, the
3 Court ultimately denied the motion on February 2, 2016, finding that Plaintiff Elite
4 Logistics was not an adequate class representative as a result of counterclaims filed by
5 Defendant MOL . (*Id.*) The Order was silent as to the adequacy of Plaintiff NGL as a
6 class representative. Therefore, on May 21, 2018, Plaintiff NGL filed a Renewed Motion
7 for Class Certification to enforce Section 22928 (Dkt. No. 184.) Subsequently, Defendant
8 MOL filed its Memorandum in Opposition (Dkt. No. 200.) and on July 30, 2018, the
9 Court took the matter under submission. (Dkt. No. 209.)

10 **III FACTUAL BACKGROUND**

11 Plaintiff’s Complaint, which was filed on April 7, 2011 by Elite, and amended to
12 add NGL as a plaintiff on February 24, 2015, alleges that MOL engaged in a practice of
13 assessing illegal per diem and demurrage charges in violation of section 22928. (*See, e.g.*,
14 Complaint (Dkt. 1) ¶¶ 1, 6-8; First Amended Complaint (“FAC”) (Dkt. 110) ¶¶ 1, 6-8.)
15 Plaintiffs brought the action on behalf of themselves and all intermodal motor carriers
16 who were charged and paid unlawful per diem and detention charges in California for
17 weekends and holidays when the ports were closed from April 7, 2007 (*i.e.*, four years
18 prior to the filing of the Complaint, pursuant to the applicable statute of limitations of
19 Plaintiffs’ claims), to the present. (FAC ¶ 27.) The FAC seeks relief under the
20 California’s Unfair Competition Law (“UCL”), with the violation of Senate Bill 45 and
21 section 22928 operating as predicates to the “unfair” and “unlawful” prongs of the UCL
22 claim. (FAC ¶¶ 36-41.) The FAC also seeks relief under a common law breach of
23 contract theory, pursuant to the Uniform Intermodal Interchange and Facilities
24 Agreement (“UIIA”) which governs the interchange and use of equipment in intermodal
25 interchange service throughout the industry, and provides for the following:

26 **G. General Terms**

27 11. Compliance of Law: The Parties shall obey all federal,
28 state and local laws, rules and regulations including those
pertaining to the transportation of hazardous material.

1 (FAC ¶¶ 42-47.) Based on these claims, Plaintiffs, on behalf of themselves and the
2 putative Class, seek damages and restitution for MOL's practice of levying per diem
3 charges for weekends and holidays when the ports were closed from April 7, 2007, to the
4 present, and for injunctive relief enjoining MOL from engaging in this unlawful practice
5 in the future. (FAC at Prayer for Relief. Defendant MOL denied these allegations.

6 **A. Per Diem Fee Discovery**

7 As part of discovery in this case, MOL produced an electronic spreadsheet with a
8 substantial number of entries for per diem charges assessed to trucking companies in
9 California from 2007 through early August 2012. (Wright Decl. ¶ 2.) This spreadsheet
10 includes the identity of the trucking companies charged per diem fees and the dates and
11 amount of charges. (*Id.*)

12 MOL uses an Oracle-based database to store information relating to per diem
13 invoices, and MOL produced as part of discovery an electronic version this database
14 which includes information on all per diem charges assessed to trucking companies in
15 California. The database records the per diem rate and number of free days for each
16 specific customer. The system also knows what days the terminals are closed and what
17 days are holidays. The database spreadsheets may be used to determine how much each
18 trucking company actually paid for per diem invoices for work in California (including
19 any adjustments), how much was paid for weekends, and the dates of the charges.

20 **IV SETTLEMENT NEGOTIATIONS**

21 The parties participated in three mediations/settlement conferences during course
22 of this litigation; the most recent occurred on September 20, 2018 before this Court with
23 Honorable Dean D. Pregerson. (Dkt. No. 215, Minutes of September 20, 2018,
24 Settlement Conference.) As a result of that settlement conference, the parties ultimately
25 agreed to resolve this litigation pursuant to the terms of the settlement agreement
26 summarized below. (*Id.*)
27
28

1 **A. TERMS OF THE SETTLEMENT**

2 **1. Class Definition**

3 The Class is defined as “all intermodal motor carriers who were charged and paid per
4 diem and demurrage detention charges in California for weekend days and holidays when
5 the ports were closed, from April 7, 2007, to the present. (SA ¶1 (c).) “Class Member”
6 does not include any entity in which Defendants have a controlling interest, and
7 Defendants’ officers or directors.

8 **2. Settlement Fund**

9 Pursuant to the terms of the settlement, Defendant will pay \$700,000 into a
10 settlement fund. (SA ¶ 1(p).) The settlement fund will be used to pay Class Member
11 claims, notice administration costs, the service award payment, and attorney’s fees and
12 litigation costs as approved by this Court. (SA ¶ 5.)

13 **3. Class Member Payment Distribution**

14 Individual payments will be paid by check to class members 40 days after the entry
15 of the Final Approval Order, provided no objections are made to the Settlement
16 Agreement. (SA ¶¶ 1(f) and 8(a).) Checks will be mailed to the address used to provide
17 notice, or to such other address designated by the class member. (SA ¶ 5(iv).) Class
18 members will have 180 days to negotiate the checks. (*Id.*) Any checks uncashed after 180
19 days will be distributed to the *Cy Pres.* (*Id.*)

20 **4. Dismissal of Counterclaim**

21 Defendant’s counsel has agreed to file a motion seeking dismissal of its
22 counterclaim against Plaintiff and Counterclaim Defendant Elite within two weeks
23 following the effective date of the settlement agreement. (SA ¶ 1(f).)

24 **5. Cy Pres Distribution**

25 Under no circumstances will any of the money from this settlement revert back to
26 MOL. (SA ¶ 11.) Rather, if there is any residue which remains in the net settlement fund
27 after all class members who made valid claims have been paid the amount to which they
28 are entitled, the settlement provides for the following *Cy Pres* distribution: 50 percent to

1 Public Citizen and 50 percent to California Treasury for Equal Access Fund and Judicial
2 Maintenance Fund (or some other non-profit, public benefit corporation nominated by
3 class counsel and approved by the Court). (*Id.*)

4 **6. Class Notice**

5 The Settlement Agreement provides that Class Counsel shall email the Notice to
6 each Class Member's last known email address and, for any emails that are returned
7 undeliverable, Class Counsel shall use the best available databases to obtain current email
8 address information for class members, update its database with these emails, and resend
9 the Notice. (SA ¶ 5(b).)

10 For those class members for whom Defendant does not have current contact
11 information and/or email addresses, the notice shall be mailed to these class members by
12 first class United States mail to the best mailing addresses. (SA ¶ 5(c).) The last known
13 physical and email addresses for class members shall be taken from the data previously
14 produced by MOL relating to the use of MOL's intermodal equipment. (*Id.*) Class
15 counsel will run the names and addresses through the national change of address registry
16 and update as appropriate. (*Id.*) If a mailed notice is returned with forwarding address
17 information, class counsel will re-mail the notice to the forwarding address. (*Id.*) For all
18 mailed notices that are returned as undeliverable, class counsel will use standard skip
19 tracing devices to obtain forwarding address information and, if the skip tracing yields a
20 different forwarding address, class counsel shall re-mail the notice to the address
21 identified in the skip trace, as soon as reasonably practicable after the receipt of the
22 returned mail. (*Id.*) Finally, the notice will be posted on a settlement website created by
23 class counsel. (SA ¶ 5 (d).)

24 **7. Opt Out Procedure**

25 Any Class member who wishes to opt out can do so by mailing an exclusion letter
26 to Class counsel within 15 days of Class counsel filing the Motion for Final Approval.
27 (SA ¶ 12.)
28

1 **8. Opportunity to Object**

2 Under the proposed schedule for approval of this settlement, class members will
3 have the opportunity to object from the time notice is mailed to them until fifteen days
4 after class counsel files the Motion for Final Approval, including for attorneys’ fees and
5 reimbursement of costs and expenses, both with this Honorable Court and also on the
6 website created by Class Counsel for this settlement. (SA ¶13.)

7 **9. Attorneys’ Fees and Expenses**

8 Attorneys’ fees and expenses are to be paid out of the Settlement Fund. (SA
9 ¶ 8(d)(i).) Class counsel will apply to this Court for attorney fees not to exceed
10 \$400,000.00. (*Id.*) Defense counsel has agreed not to oppose an application up to that
11 amount. (*Id.*) Class counsel will present a declaration detailing what work the time was
12 spent, and will also make available, should this Court wish to inspect them, timesheets
13 documenting this.

14 **10. Release**

15 In consideration for the settlement, class members are releasing all claims they
16 made or could have made which any way arise out of any allegations concerning alleged
17 wrongdoing during the class period (consistent with the class definition in the Action).
18 (SA ¶ 14.)

19 **V ARGUMENT**

20 **A. The Settlement Should Be Preliminarily Approved**

21 Federal Rules of Civil Procedure, Rule 23(e) requires judicial approval for any
22 settlement agreement that will bind absent class members. *See* Fed. R. Civ. P. 23(e); *see*
23 *also Briggs v. United States*, No. C 07–05760 WHA, 2010 WL 1759457, at *3 (N.D. Cal.
24 Apr. 30, 2010). The Court must take three steps in considering approval of the proposed
25 Settlement: (1) the Court must preliminarily approve the proposed Settlement;
26 (2) members of the class must be given notice of it; and (3) a final hearing must be held,
27 after which the Court must decide whether the tentative Settlement is fair, reasonable,
28 and adequate. *See* Manual for Complex Litigation (Fourth) § 21.632, at 320-21 (4th ed. 2004)

1 (“Manual (Fourth)”). The decision to approve a proposed class-action settlement is within
2 the sound discretion of the district court judge “because he is exposed to the litigants, and
3 their strategies, positions, and proof.” *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454,
4 458 (9th Cir. 2000). *See also Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th
5 Cir. 1992); *accord Bruno v. Quten Research Inst., LLC*, No. SACV 11–00173 DOC(Ex),
6 2013 WL 990495, at *1 (C.D. Cal. Mar. 13, 2013).

7 The sole inquiry at the preliminary-approval stage is “whether a proposed
8 settlement is fundamentally fair, adequate, and reasonable,” recognizing that “[i]t is the
9 settlement taken as a whole, rather than the individual component parts, that must be
10 examined for overall fairness.” *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003)
11 (*quoting Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)). But the
12 ultimate question of fairness, reasonableness, and adequacy is answered at the final-
13 approval stage, after notice of the settlement has been given to class members and they
14 have had an opportunity to comment on the settlement. *See* 5 JAMES WM. MOORE,
15 MOORE’S FEDERAL PRACTICE § 23.83(1), at 23-336.2 to 23-339 (3d ed. 2002).

16 Preliminary approval is merely the prerequisite to providing notice to the class so that all
17 class members are “afforded a full and fair opportunity to consider the proposed
18 [settlement] and develop a response.” *Williams v. Vukovich*, 720 F.2d 909, 921 (6th Cir.
19 1983). *See also Misra v. Decision One Mortgage Co.*, No. SA CV 07-0994 DOC (RCx),
20 2009 WL 4581276, at *3, 9 (C.D. Cal. Apr. 13, 2009) (“To determine whether
21 preliminary approval is appropriate, the settlement need only be *potentially* fair, as the
22 Court will make a final determination of its adequacy at the hearing on Final Approval,
23 after such time as any party has had a chance to object and/or opt out.” (Emphasis in
24 original; citation omitted).)

25 Courts have consistently noted that the standard for preliminary approval is *less*
26 *rigorous* than the analysis at final approval. Preliminary approval is appropriate as long
27 as the proposed settlement falls “within the range of possible judicial approval.” A.
28 CONTE & H.B. Newberg, *Newberg on Class Actions* § 11:25 (4th ed. 2002) (“Newberg”) (*citing*

1 Manual for Complex Litigation (Third) § 30.41 (3rd ed. 1995) (“Manual (ThirD)”); Manual
2 (Fourth) § 21.632, at 321. Courts employ a “threshold of plausibility” standard intended to
3 identify conspicuous defects. *Kakani v. Oracle Corp.*, No. C 06-06493 WHA, 2007 WL
4 1793774, at *6 (N.D. Cal. June 19, 2007). Unless the Court’s initial examination
5 “disclose[s] grounds to doubt its fairness or other obvious deficiencies,” the Court should
6 order that notice of a formal fairness hearing be given to settlement class members under
7 Rule 23(e). *West v. Circle K Stores, Inc.*, No. CIV. S-04-0438 WBS GGH, 2006 WL
8 1652598, at *11 (E.D. Cal. June 13, 2006) (citation omitted); Manual (Fourth) § 21.632, at
9 321-22.

10 In this case, the proposed settlement meets the standards for preliminary approval
11 because: (1) it is the product of serious informed non-collusive negotiations arrived at
12 after civil motion practice, including discovery, by counsel very experienced in this sort
13 of litigation; (2) it has no obvious deficiencies because it provides relief that is
14 appropriately tailored to the alleged harm and that is fair, reasonable and adequate given
15 the risks of litigation; (3) it treats all class members equally; (4) it provides direct
16 payments to Class Members without the need for a claims process; and, (5) it was
17 negotiated by and recommended by experienced counsel, in the course of a mediation
18 conducted before this Court.

19 **1. The Settlement Is Reasonable, Fair, and Adequate Given the**
20 **Strength of the Case and Risks of Litigation**

21 This litigation has already proceeded for a period of over seven years. Although
22 Plaintiff believes the liability in this case is strong, to continue with the case also would
23 nonetheless be very expensive for both sides. Plaintiff NGL, if successful in its pending
24 certification motion, would likely next face a motion regarding the availability of the
25 “pass-through” defense on the issue of damages. Following that there would be an
26 expensive trial, and regardless of which party prevailed, there likely would be appellate
27 practice, further delaying any possible actual receipt of money by the class members. The
28 cost of attorneys’ fees to both sides from all of this additional activity is already

1 substantial, and it is likely to increase by hundreds of thousands of dollars in additional
2 attorney time and costs if the matter went all the way to verdict.

3 Moreover, this is an exceedingly favorable result for class members. According to
4 Defendant MOL, after accounting for Saturdays, Sundays, and holidays when the
5 terminal was open, the total amount of unlawful per diem charges assessed by MOL
6 during the class period was \$356,319. Given that the settlement calls for approximately
7 \$300,000 to be distributed to class members, the settlement constitutes a recovery of 84%
8 of full damages, without having to account for per diem charges that were passed on to
9 the cargo owners and without delay that would be caused by trial and appeals in this
10 matter.

11 Finally, this settlement in substance and structure is more favorable than the vast
12 majority of class action settlements. The relief is in cash, not coupons. There will be no
13 claims necessary to be made by class members. And, none of the money will revert to the
14 Defendant.

15 **2. The Settlement Treats Class Members Equally**

16 Under the settlement, all class members are treated equally. All class members for
17 whom an improper per diem have been identified will receive their *pro rata* share based
18 on overdraft fees from the settlement fund.

19 **3. The Recommendation of Experienced Counsel Supports Approval**

20 The judgment of competent counsel regarding the Settlement should be given
21 significant weight. *See Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523,
22 528 (C.D. Cal. 2004) (“‘Great weight’ is accorded to the recommendation of counsel,
23 who are most closely acquainted with the facts of the underlying litigation.”); *Ellis v.*
24 *Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980); *Boyd v. Bechtel Corp.*,
25 485 F. Supp. 610, 622 (N.D. Cal. 1979) (“The recommendations of plaintiffs’ counsel
26 should be given a presumption of reasonableness.”).

27 Plaintiff’s counsel is experienced in litigating and settling consumer class actions
28 and other complex matters. (Wright Decl. ¶¶ 10-12.) They have investigated the factual

1 and legal issues raised in this action, and are in favor of the settlement. (Wright Decl.
2 ¶ 16.)

3 **4. The Proposed Forms of Notice and Notice Programs Are**
4 **Appropriate and Should be Approved**

5 The proposed form of notice and notice program here fully comply with due
6 process and Rule 23. Rule 23(e) of the Federal Rules of Civil Procedure, which pertains
7 to class action settlements, mandates that “notice of the proposed compromise shall be
8 given to all members of the class in such manner as the court directs.” Fed. R. Civ.
9 P. 23(e). The content of the notice to class members “is satisfactory if it ‘generally
10 describes the terms of the settlement in sufficient detail to alert those with adverse
11 viewpoints to investigate and to come forward and be heard.’” *Rodriguez v. West*
12 *Publishing Corp.*, 563 F.3d 948 (9th Cir. 2009). In the context of a class settlement, the
13 notice must also include a general description of the proposed settlement. *See Churchill*
14 *Village*, (9th Cir. 1999) 361 F.3d at 575; *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370,
15 1375 (9th Cir. 1993). The notice should “fairly, accurately, and neutrally” “apprise []
16 prospective [class] members of the terms of the Proposed Settlement, the identity of
17 persons entitled to participate in it and the options that are open to the [class] members in
18 connection with the proceedings.” *In re Drexel Burnham Lambert Group, Inc.*, 130 B.R.
19 910, 924 (S.D.N.Y. 1991), *aff’d*, 960 F.2d 285 (2d Cir. 1992). *See also Ruiz v. McKaskle*,
20 724 F.2d 1149, 1153 (5th Cir. 1984) (approving district court’s notice plan that “fairly
21 recited the [settlement] agreement’s terms and did not employ unnecessary legalisms.”).

22 The proposed notice more than meets this standard, as it fairly states the terms of
23 the settlement without resort to legalisms and provides the class members a clear avenue
24 to object to the settlement, absent themselves from it, or to participate in the settlement by
25 undertaking no action whatsoever. (SA, Ex. 1.)

26 **5. The Class Representative Service Award**

27 As a part of the Motion for Final Approval, the proposed class representative,
28 Plaintiff NGL Transportation, will apply to this Court for a service award for his service

1 in this case. It is, of course, uncontroversial for a class representative to receive a service
2 award, subject to Court approval. The class representative in this case was very helpful to
3 the case's success, including taking time to provide documents, and engage in numerous
4 discussions with counsel, as well as other services.

5 **6. The Proposed Settlement Class Should Be Certified**

6 In granting preliminary approval of a proposed settlement, the Court must
7 determine that the proposed settlement class is appropriate for certification. Manual for
8 Complex Litigation (Fourth) § 21.632 (4th ed. 2004); *Amchem Prods. Inc. v. Windsor*, 521
9 U.S. 591, 620 (1997). Class certification is proper if the proposed class, the proposed
10 class representative, and the proposed class counsel satisfy the numerosity, commonality,
11 typicality, and adequacy of representation requirements of Rule 23(a). Fed. R. Civ. P.
12 23(a)(1-4). In addition to meeting the requirements of Rule 23(a), a plaintiff seeking class
13 certification must also meet at least one of the three provisions of Rule 23(b). Fed. R.
14 Civ. P. 23(b). When a plaintiff seeks class certification under Rule 23(b)(3), the
15 representative must demonstrate that common questions of law or fact predominate over
16 individual issues and that a class action is superior to other methods of adjudicating the
17 claims. Fed. R. Civ. P. 23(b)(3); *Amchem*, 521 U.S. at 615-16. Because Plaintiff meets all
18 of the Rule 23(a) and 23(b)(3) prerequisites, certification of the proposed class is proper.

19 **a. The Requirement of Numerosity Is Satisfied**

20 The first prerequisite of class certification is numerosity, which requires “the class
21 [be] so numerous that joinder of all members is impractical.” Fed. R. Civ. P. 23(a)(1). As
22 a general rule, classes of 40 or more suffice. 5-23 Moore’s Federal Practice - Civil
23 § 23.22[1][b].

24 Here, the container use transactions involved in this case have occurred in the most
25 active state in the intermodal shipping industry (including as it relates to the Asian
26 market), where there are more than 300 trucking companies operating in the Los Angeles
27 area alone, and MOL is one of the largest container carriers in the world. Defendant
28 MOL asserts that 321 trucking companies have been charged per diem for weekends and

1 holidays when the terminal was closed during the class period. Therefore, numerosity is
2 easily satisfied.

3 **b. The Requirement of Commonality Is Satisfied**

4 The second requirement for certification requires that “questions of law or fact
5 common to the class” exist. Fed. R. Civ. P. 23(a)(2). Commonality is demonstrated when
6 the claims of all class members “depend upon a common contention . . . that is capable of
7 classwide resolution.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350, 131 S. Ct.
8 2541, 2551 (2011). This requires that the determination of the common question “will
9 resolve an issue that is central to the validity of each one of the claims in one stroke.” *Id.*
10 “Even a single common question will do.” *Id.* at 358. In other words, commonality exists
11 where a question of law linking class members is substantially related to resolution of the
12 litigation even where the individuals may not be identically situated. *Davis v. Astrue*, 250
13 F.R.D. 476, 486 (N.D. Cal. 2008) (“Rule 23(a)(2) does not mandate that each member of
14 the class be identically situated, only that there be substantial questions of law or fact
15 common to all.”) (citing *Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 915
16 (9th Cir. 1964)). The Ninth Circuit has found that commonality is a “limited burden” in
17 that only one common question is required. *Mazza v. Am. Honda Motor Co.*, 666 F.3d
18 581, 589 (9th Cir. 2012).

19 The primary legal question regarding the merits in this case was the interpretation
20 of Section 22928, but this has already been resolved by this Court when it ruled on
21 August 29, 2013, that this regulation indeed prohibits shipping companies such as MOL
22 from charging trucking companies per diem fees on weekends and holidays when the
23 terminals are closed. (Dkt. No. 84.) This interpretation applies uniformly to MOL’s per
24 diem practice in assessing fees to all class members.

25 **c. Plaintiff NGL’s Claims Are Typical**

26 Rule 23 next requires that the class representative’s claims be typical of those of
27 the class members. Fed. R. Civ. P. 23(a)(3). Like the commonality requirement, the
28 typicality requirement is “permissive” and requires only that the representative’s claims

1 be “reasonably co-extensive with those of absent class members; they need not be
2 substantially identical.” *Hanlon*, 150 F.3d at 1020. The typicality requirement looks to
3 whether “the claims of the class representative [are] typical of those of the class, and [is]
4 ‘satisfied when each class member’s claim arises from the same course of events, and
5 each class member makes similar legal arguments to prove the defendant’s liability.’”
6 *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001) (quoting *Marisol A. v. Giuliani*,
7 126 F.3d 372, 376 (2d Cir. 1997)). Commonality and typicality “tend to merge,” such that
8 the factors supporting a finding of commonality also support a finding of typicality. *See*
9 *General Tel. Co. of Southwest v. Falcon*, 457 U.S. 147, 157, 102 S. Ct. 2364 (1982); *In re*
10 *United Energy Corp. Solar Power Modules Tax Shelter Investments Sec. Litig.*, 2822
11 F.R.D. 251, 256 (C.D. Cal. 1988).

12 Plaintiff NGL has claims that are entirely typical of the claims of the putative Class
13 members because: 1) all were and continued to be assessed per diem charges by MOL in
14 California for weekends and holidays when the ports were closed until after the filing of
15 the instant lawsuit; 2) all are subject to the UIIA in dealings with shipping/container
16 carriers, including MOL; 3) all of the per diem transactions with MOL are subject to
17 California’s regulations, including SB 45 as enacted as section 22928; and 4) the claims
18 of Plaintiff NGL (as the proposed class representative) and the putative class are based on
19 the Court’s interpretation of the California regulation and MOL’s admission that it has
20 uniformly engaged in a practice that is a per se violation of California regulation.¹
21
22

23
24 ¹ This Court previously denied the prior motion for class certification on the grounds that
25 Plaintiff Elite did not meet the typicality because Elite may have issues regarding
26 reimbursement from a third party customer, which could render Elite too preoccupied
27 with the possibility that the pass-on defense may become relevant in this action to serve
28 as the class representative. (Dkt. No. 119.) This issue was rectified in the pending motion
for class certification, as it and the instant motion for preliminary approval of class
settlement only seeks to have Plaintiff NGL, whose claims are not affected by
reimbursement issues, certified as the class representative.

1 **d. The Requirement of Adequate Representation Is Satisfied**

2 The final Rule 23(a) prerequisite requires that the proposed class representative has
3 and will continue to “fairly and adequately protect the interests of the class.” Fed. R. Civ.
4 P. 23(a)(4). The Ninth Circuit has adopted a two-factor test to determine whether a
5 plaintiff and his counsel will adequately represent the interests of the class: “(1) do the
6 representative plaintiffs and their counsel have any conflicts of interest with other class
7 members, and (2) will the representative plaintiffs and their counsel prosecute the action
8 vigorously on behalf of the class?” *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir.
9 2003); *Crawford v. Honig*, 37 F.3d 485, 487 (9th Cir. 1995). As with the typicality
10 requirement, adequacy requires that the interests of the named plaintiffs are aligned with
11 the unnamed class members to ensure that the class representative has an incentive to
12 pursue and protect the claims of the absent class members. *See Amchem*, 521 U.S. at 626
13 n. 20, 117 S. Ct. 2231 (“The adequacy-of-representation requirement ‘tends to merge’
14 with the commonality and typicality criteria of Rule 23(a), which ‘serve as guideposts for
15 determining whether . . . maintenance of a class action is economical and whether the
16 named plaintiff’s claim and the class claims are so interrelated that the interests of the
17 class members will be fairly and adequately protected in their absence.’”).

18 The Settlement Agreement designates the following attorneys as Class Counsel:
19 David C. Wright of McCune Wright Arevalo, LLP, and Edward J. Chong of the Law
20 Offices of Edward J. Chong & Associates. Proposed class counsel have significant class
21 action, litigation, and trial experience. (Wright Decl. ¶ 6; Declaration of Edward J. Chong
22 (“Chong Decl.”) ¶ ____.) Moreover, McCune Wright Arevalo, the law firm representing the
23 putative class, has extensive experience in class actions (Wright Decl. ¶¶ 12-13.) With
24 respect to the adequacy of these lawyers, they have invested considerable time and
25 resources into the prosecution of this action. Class Counsel were able to negotiate an
26 outstanding settlement for the Class.

27 The interests of Plaintiff NGL Logistics are not antagonistic to those of the other
28 class members; but are wholly aligned because MOL uniformly charged per diem fees to

1 trucking companies in California for the use of their equipment on weekends and
2 holidays when the port gates were closed. Further, Plaintiff understands that it is pursuing
3 this case on behalf of all class members similarly situated and understands its duty to
4 protect the absent class members. (Wright Decl. ¶ 8., Ex. 6.) Plaintiff has actively
5 participated in the litigation by frequently conferring with class counsel about the case
6 and its status, assisting class counsel by gathering documents and other information, and
7 being prepared and willing to testify at trial on behalf of the class if necessary. (Wright
8 Decl. ¶ 8., Ex. 6.)

9 Based on the outstanding results achieved here the Court should appoint these
10 attorneys as Class Counsel for the Class, and determine that Rule 23(a)'s adequacy
11 requirement is satisfied.

12 **e. The Proposed Settlement Meets the Requirements of**
13 **Rule 23(b)(3)**

14 Once the prerequisites of Rule 23(a) have been met, a plaintiff must also
15 demonstrate that it satisfies the requirements of Rule 23(b), which requires that “the
16 questions of law or fact common to class member predominate over any questions
17 affecting only individual members, and that a class action is superior to other available
18 methods for fairly and efficiently adjudicating the controversy.” Both these requirements
19 are satisfied here.

20 **i. Common Questions of Law and Fact**
21 **Predominate**

22 The predominance requirement questions whether the proposed class is
23 “sufficiently cohesive to warrant adjudication by representation.” *Amchem*, 521 U.S. at
24 623. “If common questions ‘present a significant aspect of the case and they can be
25 resolved for all members of the class in a single adjudication,’ then ‘there is clear
26 justification for handling the dispute on a representative rather than on an individual
27 basis,’ and the predominance test is satisfied.” *Keegan v. Am. Honda Motor Co.*

28 As the Supreme Court most recently confirmed:

1 When one or more of the central issues in the action are
2 common to the class and can be said to predominate, the action
3 may be considered proper under Rule 23(b)(3) even though
4 other important matters will have to be tried separately, such as
5 damages or some affirmative defenses peculiar to some
6 individual class members.

7 The primary legal question regarding the merits in this case was the interpretation
8 of Section 22928, but this has already been resolved by this Court when it ruled on
9 August 29, 2013 that this regulation indeed prohibits shipping companies such as MOL
10 from charging trucking companies per diem fees on weekends and holidays when the
11 terminals are closed. (Dkt. No. 84.) This interpretation applies uniformly to MOL's per
12 diem practice in assessing fees to all class members. Furthermore, the primary factual
13 issue in this case has also already been determined, as MOL has admitted that it assessed
14 per diem charges in violation of Section 22928 to intermodal trucking companies in
15 California. Thus, all putative class members have been damaged in the past in the same
16 way by having paid illegally assessed fees.

17 **ii. The Class Action Is the Superior Method of**
18 **Adjudication**

19 Rule 23(b)(3) also requires a court to consider whether a class action is superior to
20 alternate methods of adjudication. Factors relevant to the inquiry include the interest of
21 members of the class in individually controlling the prosecution or defense of separate
22 actions; the extent and nature of any litigation concerning the controversy already
23 commenced by or against members of the class; the desirability or undesirability of
24 concentrating the litigation of the claims in the particular forum; and the difficulties
25 likely to be encountered in the management of a class action. *See Fed. R. Civ. P.*
26 *23(b)(3)*. “A consideration of these factors requires the court to focus on the efficiency
27 and economy elements of the class action so that cases allowed under subdivision (b)(3)
28 are those that can be adjudicated most profitably on a representative basis.” *Zinser v.*
Accufix Research Inst., Inc., 253 F.3d 1180, 1190, amended on other grounds on denial of
reh’g, 273 F.3d 1266 (9th Cir. 2001).

1 Here, there is no manageability issue relating to litigating claims of members from
2 different states. Likewise, there is no indication that class members are interested in
3 controlling the prosecution of separate actions and Plaintiff is not aware of any other
4 actions concerning this controversy as against MOL. Concentration in this forum is
5 desirable, not only because it allows efficient adjudication of the claims of all class
6 members, but also because 100 percent of the transactions at issue in this case occurred in
7 California, and likely most of the U.S. west coast business of MOL, a Japanese
8 corporation, occurs in California, which has the most active ports for Asian imports. As
9 Plaintiff's causes of action based on California law appropriately apply to all claims
10 arising from transactions that only occurred in California, there are no conflicts of law
11 issues in this case. *See Keegan v. American Honda Motor Co., Inc.*, 284 F.R.D. 504, 2012
12 WL 2250040 (C.D. Cal. June 12, 2012) (finding defendant's substantial business in
13 California sufficient to satisfy due process in applying California law to the claims of
14 non-California class members); *Keilholtz v. Lennox Hearth Products, Inc.*, 268 F.R.D.
15 330, 340 (N.D. Cal. 2010) (“[o]verall, this class action involves a sufficient degree of
16 contact between Defendants’ alleged conduct, the claims asserted and California to
17 satisfy due process concerns,” in a case where nineteen percent of defendants’ sales were
18 made in California, and seventy-six percent of defendants’ goods were partly
19 manufactured, assembled, or packaged at plants in California as well as partly in at least
20 one other state); *Parkinson v. Hyundai Motor America*, 258 F.R.D. 580, 598 (C.D. Cal.
21 2008) (“Plaintiffs make a sufficient state contacts showing under Shutts to establish that
22 application of California law comports with due process. . . . [P]laintiffs allege that
23 defendant conducts substantial business in the state through its fifty California
24 dealerships. Finally, given the volume of California automobile sales and the number of
25 in-state dealerships, plaintiffs claim it is likely that more class members reside in
26 California than any other state.”).

1 **B. The Court Should Approve the Notice Plan**

2 Under Federal Rule of Civil Procedure 23(e), class members who would be bound
3 by a settlement are entitled to reasonable notice before the settlement is approved. *See*
4 Fed. Jud. Ctr., Manual for Complex Litig. Fourth, § 30.212 (2004). And because
5 Plaintiffs here seek certification of the Settlement Class under Rule 23(b)(3), the Court
6 must direct to class members “the best notice practicable under the circumstances,
7 including individual notice to all members who can be identified through reasonable
8 efforts.” *See In re LinkedIn User Privacy Litigation*, 309 F.R.D. 573, 585 (N.D. Cal.
9 2015) (citing Rule 23(c)(2)(B)). While Rule 23 requires that reasonable efforts be made
10 to reach all class members, it does not require that each individual actually receive notice.
11 *Silber v. Mabon*, 18 F.3d 1449, 1454 (9th Cir.1994).

12 The notice plan described above and set forth in Section 5 of the Settlement
13 Agreement provides the best notice practicable under the circumstances. Through records
14 of Defendant MOL and the California Secretary of State, the addresses – and where
15 possible, the email addresses – of class members will be compiled and used to provide
16 these Settlement Class Members with direct email or mail notification. Notice of the
17 settlement will also be available on a dedicated webpage of Class Counsel law firm’s
18 website and on the Intermodal Association of North America website.

19 Finally, the content and substance of the proposed notice – which is attached as
20 Exhibit 1 to the Settlement Agreement – will include all necessary legal requirements and
21 provide a comprehensive explanation of the settlement in simple, non-legalistic terms.
22 *See Fed. R. Civ. P. 23(c)(2)(B)*. Accordingly, the Parties respectfully request that the
23 Court approve the notice plan.

24 **C. A Final Approval Hearing Should be Scheduled**

25 Finally, the Court should schedule a final approval hearing to decide whether to
26 grant final approval to the settlement, address Class Counsel’s request for attorneys’ fees,
27 expenses, and an incentive award for the Representative Plaintiffs, consider any
28 objections and exclusions, and determine whether to dismiss this action with prejudice.

1 See Fed. Jud. Ctr., Manual for Complex Litig. Fourth, § 30.44 (2004); *Ehrheart v.*
2 *Verizon Wireless*, 609 F.3d 590, 600 (3d Cir. 2010). Plaintiffs respectfully request that
3 the final approval hearing be scheduled for approximately four months from the date the
4 preliminary approval order is entered.

5 **VI CONCLUSION**

6 Based on the foregoing, Plaintiff respectfully requests that the Court issue an order:
7 (1) conditionally certifying this case as a class action pursuant to Federal Rules of Civil
8 Procedure, Rules 23(a) and 23(b)(3) for the purpose of effectuating a class action
9 settlement; (2) preliminarily approving the settlement; (3) directing notice to Settlement
10 Class Members consistent with the notice plan; (4) appointing of David C. Wright of
11 McCune Wright Arevalo, LLP, and Edward J. Chong of the Law Offices of Edward J.
12 Chong & Associates as Settlement Class Counsel; (5) setting dates for submissions of
13 objections and opt-outs; and (6) scheduling a final approval hearing. A proposed order
14 granting this relief is submitted with this memorandum.

15 DATED: November 19, 2018

Respectfully submitted,

MCCUNE WRIGHT AREVALO, LLP

18 BY: /s/ David C. Wright

David C. Wright

Attorneys for Plaintiffs and the Putative
Class

CERTIFICATE OF SERVICE

I certify that on November 19, 2018, 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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 RICHARD D. McCUNE, State Bar No. 132124
rdm@mccunewright.com
2 DAVID C. WRIGHT, State Bar No. 177468
dcw@mccunewright.com
3 MCCUNE WRIGHT AREVALO LLP
3281 East Guasti Road, Suite 100
4 Ontario, California 91761
Telephone: (909) 557-1250
5 Facsimile: (909) 557-1275

6 Edward J. Chong, State Bar No. 201409
edlawla@gmail.com
7 Law Offices of Edward J. Chong and Associates
3325 Wilshire Blvd., Suite 1250
8 Los Angeles, California 90010
Telephone: (213) 386-1990
9 Facsimile: (213) 386-1800

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
28

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 PRELIMINARY APPROVAL OF
CLASS SETTLEMENT**

Hearing Date: Monday, December 17, 2018
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. Attached as Exhibit 1 is a true and correct copy of Settlement Agreement,
8 which was signed and executed by all parties as of November 19, 2018.

9 3. Attached as Exhibit 2 is a true and correct copy of the proposed Class
10 Notice.

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

1 *Gutierrez v. Wells Fargo Bank, N.A.*, regarding the unfair assessment of overdraft fees,
2 which resulted in a \$203 million judgment.

3 5. Our firm has represented the Plaintiffs from the beginning of this case.
4 Before filing the case, I along with other members of my firm, and Edward J. Chong, of
5 the Law Offices of Edward J. Chong & Associates, actively investigated the facts and
6 legal theories of the case. That included speaking extensively with the client, researching
7 facts, and researching the law. Based on this investigation, this firm has filed similar
8 lawsuits against eight other major shipping companies, including APL, Ltd.; Cosco North
9 America, Inc.; Evergreen Shipping Agency (America) Corporation; Hyundai Merchant
10 Marine (America), Inc.; Mediterranean Shipping Co., S.A; Hanjin Shipping Co., Ltd.;
11 Wan Hai Lines, Ltd.; and Yang Ming Marine Transport. These cases are currently
12 pending in both state and federal court. Our firm achieved a favorable ruling in opposing
13 Hanjin's motion to compel arbitration in this Court (Dkt. No. 38), and then successfully
14 defended this ruling in the Ninth Circuit (*Elite Logistics Corp. v. Hanjin Shipping Co.*,
15 2014 WL 4654383 (9th Cir. April 10, 2014)). Once we filed the case, I have continued to
16 be involved in all aspects of the case. I have been actively involved in identifying and
17 investigating the potential claims in this action from the inception of my firm's
18 involvement.

19 6. Our firm is committed and able to provide the resources necessary to
20 provide the best result possible for the class. That includes both financial resources and
21 human resources. Attached hereto as Exhibit 3 is a true and correct copy of the firm
22 resume of McCune Wright Arevalo, LLP.

23 7. I am a supporter of Public Citizen, but I am not on the Board of Directors or
24 involved in the governance of the organization.

25 8. Settlement negotiations were at all times arm's-length and adversarial, and
26 by experienced counsel on both sides. I have been personally involved in all aspects of
27 the investigation, pleadings, law and motion, discovery and settlement negotiations in this
28 case, and it is my belief that this settlement is in the best interest of the class taking into

1 account both the risks and benefits of proceeding to trial and verdict in this case and the
2 settlement is one which I believe is fair, adequate, and reasonable, and in the best interest
3 of the class members.

4 I declare under penalty of perjury under the laws of the United States of America
5 and the State of California that the foregoing is true and correct based on personal and
6 firsthand knowledge of the facts and, if called upon as a witness, I could and would
7 competently testify thereto.

8 Executed on the 19th day of November 2018, at Ontario, California.

9
10 /s/ David C. Wright
11 DAVID C. WRIGHT
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I certify that on November 19, 2018, 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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit 1

SETTLEMENT AGREEMENT AND RELEASE

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

United States District Court of California,

Case No. CV11-02952 DDP (PLAx)

PREAMBLE

This Settlement Agreement and Release (the “Agreement”) is entered into by and among Plaintiff NGL Transportation, LLC and Plaintiff and Counter-Defendant Elite Logistics Corp. (“Plaintiffs” or “Elite” and “NGL”), by and through their counsel, on the one hand, and Defendant and Counter-Complainant MOL (America), Inc., and Third Party Plaintiff Mitsui O.S.K. Lines, Ltd. (“Defendants”), on the other hand, as of the date executed below. All references in this Agreement to a “party” or the “parties” shall refer to a party or the parties to this Agreement.

RECITALS

A. On April 7, 2011, Elite filed a putative class action complaint entitled *Elite Logistics Corp., et al., v. MOL (America), Inc.*, in the United States District Court for the Central District of California, Case No. CV11-02952 DDP (PLAx), alleging causes of action for Breach of Contract and Unlawful Business Practices (Cal. Bus. & Prof. Code §§ 17200 *et seq.*).

B. On November 1, 2012, Plaintiff Elite filed a Motion for Class Certification. At the hearing on the Motion, the Court did not rule, but suggested that Elite file a Motion for Partial Summary Judgment to resolve whether Bus. & Prof. Code § 22928 prohibits intermodal equipment providers from charging per diem fees to motor carriers for the use of equipment providers’ equipment on weekends and holidays in California.

C. On May 7, 2013, Elite filed a Motion for Partial Summary Judgement, seeking declaratory relief to resolve the legal issues of the interpretation of section 22928.

D. On August 29, 2013, the Court ruled that section 22928 prohibits the charging per diem fees on weekends and holidays when the terminal is closed.

E. On February 24, 2015, Plaintiffs filed a First Amended Complaint which added NGL as Plaintiff and putative class representative.

F. On March 2, 2015 MOL (America) Inc. filed a counterclaim against Elite and Third Party Plaintiff Mitsui O.S.K. Lines Ltd. joined as a Third Party Plaintiff.

G. On April 17, 2015, Plaintiffs filed a renewed Motion for Class Certification to enforce section 22928. The Court denied the motion on February 2, 2016, on the basis that Plaintiff Elite’s claims and defenses were not typical of those of the Class Members.

H. On May 21, 2018, Plaintiff NGL filed a renewed Motion for Class Certification. Defendants opposed the motion and Plaintiff filed a reply. On July 30, 2018, the Court took the matter under submission.

I. The parties have entered into this Agreement to resolve any and all controversies and disputes arising out of or relating to the allegations made in the First Amended Complaint and the Counter and Third Party-Complaint, and to avoid the burden, risk and expense of further litigation. Defendants do not in any way acknowledge, admit to, or concede any of the allegations made in the First Amended Complaint, and expressly disclaim and deny any fault or liability, or any charges of wrongdoing that have been or could have been asserted in the First Amended

Complaint. Likewise, Counter Defendant does not in any way acknowledge, admit to, or concede any of the allegations made in the Counterclaim, and expressly disclaims and denies any fault or liability, or any charges of wrongdoing that have been or could have been asserted in the Counterclaim. Nothing contained in this Agreement shall be used or construed as an admission of liability and this Agreement shall not be offered or received in evidence in any action or proceeding in any court or other forum as an admission or concession of liability or wrongdoing of any nature or for any other purpose other than to enforce the terms of this Agreement.

J. Plaintiffs have entered into this Agreement to liquidate and recover on the claims asserted in the First Amended Complaint, and to avoid the risk, delay, and uncertainty of continued litigation. Plaintiffs do not in any way concede the claims alleged in the First Amended Complaint lack merit or are subject to any defenses.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated into and are an integral part of this Agreement, and in consideration of the mutual promises below, the parties agree as follows:

1. DEFINITIONS. In addition to the definitions contained elsewhere in this Agreement, the following definitions shall apply:

(a) “Bar Date for Objections or Opt-Outs” (or “Bar Date” or “Objection Deadline”) will be the deadline for Class Members to file an Objection or to Opt-Out of the Settlement, and shall be fifteen (15) days or more before the filing of the Motion for Final Approval.

(b) “Class Counsel” shall mean David C. Wright of McCune Wright Arevalo, LLP, and Edward J. Chong of the Law Offices of Edward J. Chong and Associates.

(c) “Class Member” (or “Settlement Class Member”) shall mean all intermodal motor carriers who were charged and paid unlawful per diem charges to Defendants for weekend and holidays when the terminal was closed, in violation of 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.

(d) “Court” shall mean the United States District Court for the Central District of California, located at 350 West 1st Street, Los Angeles, California 90012.

(e) “Defendants’ Counsel” shall mean Erich P. Wise of Flynn, Delich & Wise, LLP.

(f) “Effective Date” shall be thirty (30) days after the entry of the Final Approval Order (defined below) provided no objections are made to this Agreement. If there are objections to the Agreement, then the Effective Date shall be the later of: (1) thirty (30) days after entry of the Final Approval Order, if no appeals are taken from the Final Approval Order; or (2) if appeals are taken from the Final Approval Order, then thirty (30) days after an Appellate Court ruling affirming the Final Approval Order; or (3) Thirty (30) days after entry of a dismissal of the appeal.

(g) “Exclusion Letter” shall mean a letter by a Class Member who elects to opt out of this Agreement.

(h) “Final Approval Hearing Date” shall be the date set by the Court for the hearing on any and all motions for final approval of this Agreement.

(i) “Final Approval Order” shall mean the Order and Judgment approving this Agreement issued by the Court at or after the Final Approval Hearing Date.

(j) “Final Report” shall mean the report prepared by Class Counsel of all receipts and disbursements from the Settlement Fund, as described in Section 8, below.

(k) “Motion for Final Approval” shall mean the motion or motions filed by Class Counsel, as referenced in Section 6 below.

(l) “Named Plaintiffs” means Elite Logistics Corporation and NGL Transportation, LLC.

(m) “Net Settlement Fund” shall mean the net amount of the Settlement Fund after payment of any Court approved service award.

(n) “Notice” (or “Settlement Class Notice”) shall mean the notice to Class Members of the settlement provided for under the terms of this Agreement, as ordered by the Court in its Preliminary Approval/Notice Order (defined below), and shall refer to the form of Notice attached hereto as Exhibit 1.

(o) “Preliminary Approval/Notice Order” shall mean the Order issued by the Court preliminarily approving this Agreement and authorizing the sending of the Notice to Class Members, as provided in Sections 4 and 5 below.

(p) “Settlement Fund” shall mean the seven hundred thousand dollars (\$700,000) to be paid by Defendants under the terms of this Agreement.

(q) “Unlawful Per Diem Charges” (or “Detention Charges”) shall mean charges imposed by Defendants for weekend and holidays when the terminal was closed, in violation of California Business and Professions Code section 22928, from April 7, 2007 to the present.

2. CLASS ACTION SETTLEMENT

The Named Plaintiffs will propose and recommend to the Court that a settlement class be certified, which class shall be comprised of the Class Members. Defendants agree solely for purposes of the settlement provided for in this Agreement, and the implementation of such settlement, that this case shall proceed as a class action under Rule 23 of the Federal Rules of Civil Procedure; provided, however, that if a Final Approval Order is not issued, then Defendants shall retain all rights to object to maintaining this case as a class action. The Named Plaintiff and Class Counsel shall not reference this Agreement in support of any subsequent motion relating to certification of a liability class.

3. DISMISSAL OF COUNTERCLAIM WITH PREJUDICE

Within two weeks of the Effective Date of this Settlement, Defendants' Counsel shall use reasonable efforts to file a motion seeking the dismissal of its counterclaim against Elite with prejudice pursuant to the Federal Rule of Civil Procedure 41(a).

4. PRELIMINARY SETTLEMENT APPROVAL.

Class Counsel shall file a motion seeking a Preliminary Approval/Notice Order pursuant to the Court's Scheduling Order. The Preliminary Approval/Notice Order shall provide for: preliminary approval of this Agreement, provisional certification of a class for settlement purposes, appointment of Class Counsel as counsel to the provisionally certified class, and the requirement that the Notice be given to the Class Members as provided in Section 5, below (or as otherwise determined by the Court).

5. NOTICE TO THE CLASS.

(a) Class Counsel shall send the Notice to all Class Members as specified by the Court in the Preliminary Approval/Notice Order.

(b) Class Counsel shall email the Notice to each Class Member's last known email address in a manner that is calculated to avoid being caught and excluded by spam filters or other devices intended to block mass email. For any emails that are returned undeliverable, Class Counsel shall use the best available databases to obtain current email address information for class members, update its database with these emails, and resend the Notice.

(c) For those Class Members for whom Defendants do not have contact information and/or email addresses, the Notice shall be mailed to these Class Members by first class United States mail to the best available mailing addresses. The addresses for such Class Members shall be taken from the data previously provided by Defendants regarding the use of MOL's intermodal equipment. For those addresses that are not current, Class Counsel will seek such addresses from the Intermodal Association of North America and run the names and addresses through the National Change of Address Registry and update as appropriate. If a mailed Notice is returned with forwarding address information, Class Counsel shall re-mail the Notice to the forwarding address. For all mailed Notices that are returned as undeliverable, Class Counsel shall use standard skip tracing devices to obtain forwarding address information and, if the skip tracing yields a different forwarding address, Class Counsel shall re-mail the Notice to the address identified in the skip trace, as soon as reasonably practicable after the receipt of the returned mail.

(d) The Notice shall also be posted on a settlement website created by Class Counsel and provided to the Intermodal Association of North America for posting on its website.

(e) Class Counsel shall maintain a database showing mail and email addresses to which each Notice was sent and any Notices that were not delivered by mail and/or email. A summary report of the Notice shall be provided to the parties at least five (5) days prior to the deadline to file the Motion for Final Approval. The database maintained by Class Counsel regarding the Notice shall be available to the parties and the Court upon request. It shall otherwise be confidential and shall not be disclosed to any third party.

(f) The Notice shall be in a form approved by the Court and, substantially similar to the notice form attached hereto as Exhibit 1. The parties may by mutual written consent make non-substantive changes to the Notice without Court approval.

(g) All costs associated with publishing, mailing and administering the Notice as provided for in this Section, and all costs of administration, shall be paid out of the Settlement Fund.

6. MOTION FOR FINAL APPROVAL

Within a reasonable time after the Bar Date, and provided the conditions in Section 15.(a)(i), below are satisfied, Class Counsel shall file a Motion for Final Approval of this Agreement so that same can be heard on the Final Approval Hearing Date.

7. ENTRY OF JUDGMENT

The Final Approval Order shall constitute the Court's final judgment in this action. The Court shall retain jurisdiction to enforce the terms of the Final Approval Order.

8. THE SETTLEMENT FUND AND DISTRIBUTION

(a) Payments to Class Members. Within 15 business days after the entry of the Final Approval Order, Defendants shall transfer the Settlement Fund to the designated bank account(s) provided by Class Counsel. The Settlement Fund shall be the total amount Defendants are obligated to pay under the terms of this Agreement and includes (a) Class Counsels' fees and costs, which includes costs associated with administering the Notice in accordance with Section 5, above, and (b) any Service Award (defined below) paid to the Named Plaintiffs. Defendants shall not make any additional or further contributions to the Settlement Fund, even if the total amount of all alleged Unlawful Per Diem and/or Detention Charges exceeds the value of the Net Settlement Fund. In the event a Final Approval Order is not issued, or this Agreement is terminated by either party for any reason, including pursuant to Section 15, below, the portion of the Settlement Fund paid to Class Counsel (including accrued interest, if any) shall be refunded to Defendants within two (2) business days.

(b) All funds held by Class Counsel pursuant to the administration of claims shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until distributed pursuant to this Agreement.

(c) All funds held by Class Counsel for the administration of claims at any time shall be deemed to be a Qualified Settlement Fund as described in Treasury Regulation §1.468B-1, 26 C.F.R. §1.468B-1.

(d) Payments shall be made from the Settlement Fund as follows:

(i) Plaintiffs' Fees and Costs. Plaintiffs' reasonable attorneys' fees and costs, as determined and approved by the Court, shall be paid from the Settlement Fund 15 business days after entry of the Final Approval Order. Class Counsel shall apply for an award of attorneys' fees and costs not to exceed four hundred thousand dollars (\$400,000)

to be approved by the Court, and Defendants agree not to oppose an application up to that amount. This amount shall further include the costs associated with the notice and administration of the claims in this case.

(ii) Service Award. NGL may apply to the Court for a “Service Award” of up to five thousand dollars (\$5,000) for its services as a Named Plaintiff. Subject to the Court’s approval, the Service Award shall be paid from the Settlement Fund ten (10) days after the Effective Date.

(iii) Payments to Class Members. The amount paid to each Class Member shall be calculated as follows:

(Net Settlement Fund/ Total Improper Per Diem Charges) x Total Improper Charges
Charge per Class Member = Individual Payment

(iv) Individual Payments shall be paid to Class Members ten (10) days after the Effective Date, by sending Class Members a check at the address used to provide the Notice, or at such other address as designated by the Class Member. The Class Member shall have one-hundred eighty (180) days to negotiate the check. Any checks uncashed after one-hundred eighty (180) days shall be distributed pursuant to Section 10.

(e) In no event shall any portion of the Settlement Fund revert to Defendants.

9. FINAL REPORT TO THE COURT

Within two hundred (200) days after the Effective Date, Class Counsel shall submit a Final Report to the Court, setting forth: (a) the amounts paid to Class Members by Class Counsel; (b) any checks not cashed or returned; (c) the efforts undertaken to follow up on uncashed and/or returned checks; and (d) the total amount of money unpaid to Class Members.

10. CLAIMS ADMINISTRATION

(a) Class Counsel shall take responsibility for the administration of claims in this case.

(b) Class Counsel shall keep all information regarding Class Members confidential except as otherwise provided herein. All data created and/or obtained and maintained by Class Counsel pursuant to this Agreement shall be destroyed twelve (12) months after the Final Report is submitted to the Court, provided that Defendants’ Counsel, at its own cost, shall receive a complete digital copy of the claims administration records, together with a declaration establishing completeness and authenticity, which they may maintain consistent with their own document retention policies.

(c) Class Counsel also shall be responsible for timely and properly filing all tax returns necessary or advisable, if any, with respect to the Settlement Fund. Except as provided herein, Class Members shall be responsible for their own tax reporting of payments received under the terms of this Agreement.

(d) Class Counsel shall provide the data in its claims administration database to Defendants' Counsel in response to any written request, including an email request.

(e) Within one hundred-ninety (190) days after the Effective Date, Class Counsel shall prepare a declaration setting forth the total payments issued to Class Members, the total amount of any checks uncashed and/or returned, and the total amount of money being held by Class Counsel.

11. CY PRES PAYMENT

Thirty (30) days after the Final Report, the total amount of uncashed checks, and amounts held by Class Counsel at the time of the Final Report, shall be paid by Class Counsel according to the following: 50% to Public Citizen and 50% to the California Treasury for Equal Access Fund and Judicial Maintenance Fund (or some other non-profit, public benefit corporation nominated by Class Counsel and approved by the Court).

12. OPT-OUTS

(a) A Class Member who wishes to exclude himself or herself or itself from this Agreement, and from the release of claims and defenses provided for under the terms of this Agreement, shall submit an Exclusion Letter by mail to Class Counsel. For an Exclusion Letter to be valid, it must be postmarked on or before the Bar Date. Any Exclusion Letter shall identify the Class Member, state that the Class Member wishes to exclude himself or herself or itself from the Agreement, and shall be signed and dated.

(b) Class Counsel shall maintain a list of persons or entities who have excluded themselves and shall provide such list to Defendants' Counsel at least five (5) days prior to the date Class Counsel is required to file the Motion for Final Approval. Class Counsel shall retain the originals of all Exclusion Letters (including the envelopes with the postmarks).

13. OBJECTIONS

(a) Any Class Member, other than a Class Member who timely submits an Exclusion Letter, who wishes to object to the fairness, adequacy, or reasonableness of this Settlement Agreement or the Settlement, or to the requested award of Attorneys' Fees and Expenses, must file a written notice of objection by the Objection Deadline, as well as a notice of intention to appear at the Final Approval Hearing ("Notice of Intention to Appear") if he/she wishes to appear and be heard at the Final Approval Hearing. To state a valid objection to the Settlement, an objecting Settlement Class Member must provide the following information in the Settlement Class Member's written objection: (1) his/her full name, current address, and current telephone number; (2) provide documentation that the objecting Settlement Class Member has been charged and paid Unlawful Per Diem and/or Detention Charges; (3) a statement of the position(s) the objecting Settlement Class Member wishes to assert, including the factual and legal grounds for the position; and (4) any other documents that the objecting Settlement Class Member wishes to submit in support of its position.

(b) To be valid, an objection also must include a detailed statement of each objection asserted, including the grounds for objection. In addition, any Settlement Class Member objecting

to the Settlement must provide a detailed statement of any objections to any other class action settlements submitted in any court, whether state, federal, or otherwise, in the United States in the previous five (5) years. If the Settlement Class Member has not objected to any other class action settlement in any court in the United States in the previous five (5) years, he/she must affirmatively so state in the written materials provided in connection with the objection to this Settlement. Upon the filing of an objection, of their own choosing, Class Counsel and/or Defendants' Counsel may take the deposition of the objecting Settlement Class Member pursuant to the California Code of Civil Procedure at an agreed-upon time and location, and to obtain any evidence relevant to the objection. Failure by an objecting Settlement Class Member to make himself of herself available for deposition or comply with expedited discovery may result in the Court striking the objection. The Court may tax the costs of any such discovery to the objecting Settlement Class Member or the objector's counsel if the Court determines that the objection is frivolous or is made for an improper purpose.

(c) Finally, subject to approval of the Court, any objecting Settlement Class Member may appear, in person or by counsel, at the Final Approval Hearing held by the Court, to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable, or object to any petitions for attorneys' fees and reimbursement of reasonable litigation costs and expenses. The objecting Settlement Class Member must file with the Clerk of the Court and serve upon all counsel designated in the Settlement Class Notice a Notice of Intention to Appear by the Objection Deadline or on such other date that may be set forth in the Settlement Class Notice. The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the objecting Settlement Class Member (or his/her counsel) will present to the Court in connection with the Final Approval Hearing. Any Settlement Class Member who does not provide a Notice of Intention to Appear in complete accordance with the deadlines and other specifications set forth in the Settlement Class Notice, and who has not filed an objection in complete accordance with the deadlines and other specifications set forth in this Settlement and the Settlement Class Notice, will be deemed to have waived any objections to the Settlement and will be barred from speaking or otherwise presenting any views at the Final Approval Hearing.

(d) The agreed-upon procedures and requirements for filing objections in connection with the Final Approval Hearing are intended to ensure the efficient administration of justice and the orderly presentation of any Settlement Class Member's objection to the Settlement, in accordance with such Class Member's due-process rights. The Preliminary Approval Order and Settlement Class Notice will require all Settlement Class Members who have any objections to file such notice of objection or request to be heard with the Court, and serve by mail or hand delivery such notice of objection or request to be heard upon Settlement Class Counsel and Defendants' Counsel at the addresses set forth in the Settlement Class Notice, by no later than the Objection Deadline. The Preliminary Approval Order will further provide that objecting Settlement Class Members who fail properly or timely to file their objections with the Court, along with the required information and documentation set forth above, or to serve them as provided above, will not be heard during the Final Approval Hearing, and their objections will be waived and will not be considered by the Court. Settlement Class Counsel will be responsible for addressing all objections.

(e) Any Settlement Class Member who objects to the Settlement will be entitled to all of the benefits of the Settlement if this Settlement Agreement and the terms contained herein are

approved, as long as the objecting Settlement Class Member complies with all the requirements of this Settlement Agreement applicable to Settlement Class Members.

(f) Class Counsel shall file any objections and responsive pleadings at least seven (7) days prior to the Final Approval Hearing Date.

14. RELEASE

Except as to the rights and obligations provided for under the terms of this Agreement, Named Plaintiffs, on behalf of themselves and all of its respective past, present, and future predecessors, successors, assigns, devisees, relatives, heirs, legatees, and agents, and each of the Class Members, including their respective past, present and future predecessors, successors, assigns, devisees, relatives, heirs, legatees, insurers and agents, hereby release and forever discharge Defendants, and all of its past, present and future predecessors, successors, subsidiaries, divisions, employees, affiliates, assigns, officers, directors, shareholders, representatives, attorneys and agents (collectively, the “Defendants Releasees”), from any and all charges, complaints, claims, debts, liabilities, demands, obligations, costs, expenses, actions, and causes of action of every nature, character, and description, whether known or unknown, asserted or unasserted, suspected or unsuspected, fixed or contingent, which Named Plaintiffs and Class Members who do not opt out now have, own or hold against any of the Defendants Releasees that arise out of and/or relate to the facts and claims alleged in the First Amended Complaint.

15. CONDITIONS TO SETTLEMENT.

(a) This Agreement shall be subject to and is expressly conditioned on the occurrence of all of the following events:

(i) The Court has entered the Preliminary Approval/Notice Order, as required by Section 3 above;

(ii) The Court has entered the Final Approval Order as required by Sections 5 and 6 above, and all objections, if any, to such Order are overruled, and all appeals taken from such Order are resolved in favor of approval; and

(iii) The Effective Date has occurred.

(b) If all of the conditions specified in Section 15(a) are not met, then this Agreement shall be cancelled and terminated.

(c) Defendants shall have the option to terminate this Agreement if ten (10%) percent or more of the Class Members opt out. Defendants shall notify Class Counsel and the Court of its intent to terminate this Agreement pursuant to this Section 15 within fifteen (15) business days after the Bar Date, or the option to terminate shall be considered waived.

(d) In the event this Agreement is terminated, pursuant to Section 15(c) immediately above, or fails to become effective in accordance with Sections 15(a) and/or (b) immediately above, then the parties shall be restored to their respective positions in this case as they existed as of the date of the execution of this Agreement. In such event, the terms and

provisions of this Agreement shall have no further force and effect with respect to the parties and shall not be used in this case or in any other action or proceeding for any other purpose, and any order entered by this Court in accordance with the terms of this Agreement shall be treated as vacated, *nunc pro tunc*.

16. REPRESENTATIONS.

(a) The parties to this Agreement represent that they have each read this Agreement and are fully aware of and understand all of its terms and the legal consequences thereof. The parties represent that they have consulted or have had the opportunity to consult with and have received or have had the opportunity to receive advice from legal counsel in connection with their review and execution of this Agreement.

(b) The parties have not relied on any representations, promises or agreements other than those expressly set forth in this Agreement.

(c) The Named Plaintiffs, on behalf of the Class Members, represents that they have made such inquiry into the terms and conditions of this Agreement as they deem appropriate, and that by executing this Agreement, they believe the Agreement and all the terms and conditions set forth herein, are fair and reasonable to all Class Members.

(d) The Named Plaintiffs represent that they have no conflicts or other personal interests that would in any way impact their representation of the class in connection with the execution of this Agreement.

(e) Defendants represent and warrant that they have obtained all corporate authority necessary to execute this Agreement.

17. FURTHER ASSURANCES. Each of the parties hereto agrees to execute and deliver all such further documents consistent with this Agreement, and to take all such further actions consistent with this Agreement, as may be required in order to carry the provisions of this Agreement into effect, subject to Class Counsel's obligation to protect the interests of the Class Members.

18. APPLICABLE LAW. This Agreement shall be governed by and interpreted, construed, and enforced pursuant to the laws of the State of California.

19. NO ORAL WAIVER OR MODIFICATION. No waiver or modification of any provision of this Agreement or of any breach thereof shall constitute a waiver or modification of any other provision or breach, whether or not similar. Nor shall any actual waiver or modification constitute a continuing waiver. No waiver or modification shall be binding unless executed in writing by the party making the waiver or modification.

20. ENTIRE AGREEMENT. This Agreement, including the exhibit attached hereto, constitutes the entire agreement made by and between the parties pertaining to the subject matter hereof, and fully supersedes any and all prior or contemporaneous understandings, representations, warranties, and agreements made by the parties hereto or their representatives pertaining to the

subject matter hereof. No extrinsic evidence whatsoever may be introduced in any judicial proceeding involving the construction or interpretation of this Agreement.

21. BINDING ON SUCCESSORS. This Agreement shall inure to the benefit of, and shall bind, each of the parties hereto and their successors.

22. SEVERABILITY. In the event any one or more of the provisions of this Agreement is determined to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained in this Agreement will not in any way be affected or impaired thereby.

23. COUNTERPARTS AND FACSIMILE SIGNATURES. This Agreement may be executed and delivered in separate counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts together shall constitute but one and the same instrument and agreement. Facsimile and pdf signature pages shall have the same force and effect as original signatures.

24. NOTIFICATION. Any notice to be given to Class Counsel and/or the Named Plaintiffs shall be sent by mail or email as follows:

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

Any notice to be given to Defendants under the terms of this Agreement shall be sent by mail or email as follows:

Erich P. Wise
Flynn, Delich & Wise, LLP
One World Trade Center Ste. 1800
Long Beach, CA 90831
Phone: (562) 435-2626
erichw@fdw-law.com

IN WITNESS WHEREOF, the parties have entered this Agreement as of the dates set forth below.

Dated: November __, 2018

Elite Logistics Corp.,

By: _____
Moon Chul Kang, President

Dated: November __, 2018

NGL Transportation, LLC, a corporation on behalf of itself and those it represents

By: _____
Sean Roh, President

Dated: November __, 2018

MOL (America), Inc.,

By: _____

Dated: November __, 2018

Mitsui O.S.K. Lines, Ltd.

By: _____

APPROVED AS TO FORM:

Dated: November __, 2018

Flynn, Delich & Wise, LLP
Erich Wise

By: _____
Erich Wise
Attorneys for Defendant MOL (America), Inc. and
Counterclaim Plaintiff Mitsui O.S.K. Lines, Ltd.

Dated: November __, 2018

McCUNE WRIGHT AREVALO, LLP
David C. Wright

EDWARD D. CHONG AND ASSOCIATES
Edward D. Chong

By: _____

David C. Wright
Attorneys for Plaintiffs ELITE LOGISTICS
CORPORATION, NGL TRANSPORTATION,
LLC, and the putative class

Exhibit 1

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?

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 [REDACTED].

The deadline to file an objection with the Court is also [REDACTED].

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 [REDACTED].

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 \$_____ 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:

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

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 _____ 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 [REDACTED], and sent to:

Elite Logistics Corp. v. MOL (America), Inc. Class Counsel
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 [REDACTED], and must be mailed to Class Counsel as follows:

<p>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</p>
--

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 at [REDACTED] on [REDACTED] at 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 [WEBSITE] 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 [WEBSITE] 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

Exhibit 2

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?

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 [REDACTED].

The deadline to file an objection with the Court is also [REDACTED].

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 [REDACTED].

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 \$ [redacted] 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:

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

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 [redacted] 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 [REDACTED], and sent to:

Elite Logistics Corp. v. MOL (America), Inc. Class Counsel
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 [REDACTED], and must be mailed to Class Counsel as follows:

<p>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</p>
--

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 at [REDACTED] on [REDACTED] at 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 [WEBSITE] 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 [WEBSITE] 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

Exhibit 3

McCune Wright Arevalo LLP

ATTORNEYS AT LAW

West Coast Office

Phone: 909.557.1250
Fax: 909.557.1275
3281 East Guasti Road, Suite 100
Ontario, CA 91761

Midwest Office

Phone: 618.307.6116
Fax: 618.307.6161
100 North Main Street, Suite 11
Edwardsville, IL 62025

Attorneys

Richard D. McCune
David C. Wright
Kristy M. Arevalo
Michele M. Vercoski
Derek Y. Brandt
Elaine S. Kusel
Cory R. Weck
Emily J. Kirk
Tuan Q. Nguyen
Simi Peterson
Mark I. Richards

Practice Areas

Automobile Defects and False Advertising
Consumer Fraud Class Actions
Contingency Commercial Litigation
Employee Rights Class Action
General Complex Litigation
Personal Injury & Wrongful Death

Successes

Richard D. McCune, Partner

Richard McCune is a partner of McCuneWright. He has 22 years of experience in representing Inland Empire and Southern California Plaintiffs in product liability, class action, serious personal injury, and business fraud cases.



His trial and settlement success have resulted in his achieving the highest rating possible (AV) from Martindale-Hubbell. He is also a member of the Multi-Million Dollar Advocates Forum reserved for attorneys achieving multi-million-dollar trial or settlement results for their clients. He was one of the select finalists for 2011 California Consumer Attorney of the Year. He frequently lectures at attorney conferences, where he has made presentations on banking class actions, foreclosure class actions, and automobile product liability cases. He was appointed by Judge Selna to the executive committee for the personal injury/wrongful death cases in the high-profile Toyota sudden unintended acceleration litigation. As part of representing his clients, he has been featured on numerous news shows, including The Today Show and CNN, as well as quoted and interviewed for wide ranging newspapers and magazines including LA Times, Forbes, Sacramento Bee, San Bernardino Sun and The Economist.

Richard McCune's successful results for his clients include a \$203 million class action verdict in 2010 on behalf of the 1.14 million California Wells Fargo Bank customers for unfair bank overdraft fees. He has been involved in numerous settlements and verdicts that have generated over one million dollars for individual clients.

David C. Wright, Partner

David Wright is a partner of McCuneWright. Prior to 2001, David was one of the elite attorneys prosecuting major crimes for the United States Attorney's Office. Since leaving the U.S. Attorney's Office in 2001, David has taken that experience as a prosecutor and successfully prosecuted numerous defective product cases against some of the nation's largest corporations. Prior to working at the U.S Attorney's Office, Mr. Wright clerked for the Honorable Stephen S. Trott, United States Court of Appeals for the Ninth Circuit.



His training, experience, and trial skills in this specialized field enable him to identify, understand, and present to a jury the difficult and complicated issues of how an accident and injury occurred and how the tragic results could have been avoided by use of a safer design.

As a partner at McCuneWright, Mr. Wright is the only Inland Empire attorney that focuses his practice on the representation of clients who have suffered catastrophic injury or the death of a loved one because of a dangerous product.

Kristy M. Arevalo, Partner

As a partner at McCuneWright, Kristy Arevalo has established herself as one of the Inland Empire's top plaintiff's attorneys in the legal fields of personal injury and wrongful death, consumer fraud class actions and product liability.

Ms. Arevalo is dedicated to obtaining just redress for her clients while holding individuals, corporations and entities responsible for defective and dangerous actions, products and pharmaceuticals. Ms. Arevalo has litigated and settled multiple cases involving the recalled DePuy ASR hips and is active in many multidistrict and coordinated litigations around the country involving defective drugs and medical devices, such as the DePuy Pinnacle hips, Wright Medical hips, Inferior Vena Cava (IVC) filters and Essure birth control. In addition to her mass torts practice, Ms. Arevalo handles catastrophic injury and wrongful death cases and manages the personal injury division of McCuneWright.



Ms. Arevalo grew up in Southern California and graduated with honors from the University of California, Irvine. Immediately after graduating from Loyola Law School in Los Angeles, California, Ms. Arevalo joined McCuneWright. For over 14 years she has worked diligently to help those who have been injured or wronged. In addition to her busy litigation practice, Ms. Arevalo is actively involved in the Consumer Attorneys of California (CAOC) and is a graduate of CAOC's 2015 Leadership Academy. She is also involved in the Inland Empire Chapter of CAOC and the CAOC Women's Caucus. She was selected as a Super Lawyers Rising Star in 2016, an honor bestowed on less than 2% of California attorneys aged 40 and younger. Ms. Arevalo is also a regular speaker for the Association of Certified Fraud Examiners given her experience in commercial litigation. Ms. Arevalo has argued in front of the California Court of Appeals and has tried multiple cases to verdict. She is currently the managing partner at McCuneWright. Ms. Arevalo will be speaking at HarrisMartin's MDL Conference on pharmaceutical and environmental mass tort litigation in Santa Barbara on March 30, 2016. She will be discussing the ongoing litigation against Essure, a potentially harmful birth control method.

Michele M. Vercoski, Partner

Michele M. Vercoski first joined McCuneWright in 2007. She is a partner of McCuneWright.

She received her Bachelor of Science degree from Rutgers College of Nursing in 2001, where she was a Dean's List honoree. Michele then attended Tulane University Law School earning her J.D. degree in 2004, graduating Order of the Coif and magna cum laude. While at Tulane, Michele was the recipient of the CALL Excellence for the Future Award signifying the highest grade in each of the following courses: Secured Transactions, Administrative Law and Health Law Practice Seminar.



Prior to beginning her plaintiff's practice, Ms. Vercoski clerked for Judge, Steven L. Lefelt, New Jersey Superior Court, Appellate Division.

Derek Y. Brandt, Partner

Derek Y. Brandt has deep experience litigating both individual and representative matters, including class actions and derivative suits. He has represented clients large and small, ranging from “name brand” Fortune 100 and Fortune 150 multi-national companies to smaller publicly-traded market innovators, privately held businesses, municipalities, and innumerable individual consumers and investors.



Examples of Mr. Brandt’s individual client engagements include his prosecution of an antitrust “tying” claim on behalf of an innovative ophthalmological surgical device manufacturer against its dominant global competitor, resulting in an eight-figure pre-trial settlement. Mr. Brandt currently acts as lead or co-lead counsel for major corporate plaintiffs in the ongoing *In re Aluminum Warehousing Antitrust Litigation* action, pending in the U.S. District Court for the Southern District of New York and the U.S. Court of Appeals for the Second Circuit.

Mr. Brandt’s class action engagements have included a wide variety of subject matters and disputes. He has represented motorists challenging the constitutionality of the City of Chicago’s red-light camera program before the Illinois Supreme Court. He currently represents an investor pursuing a “double derivative” action in the Delaware Court of Chancery relating to the launch of commercial satellites in Russian-controlled geostationary orbital locations. The latter engagement has resulted in a favorable ruling of first impression by the Delaware Supreme Court, sitting en banc, see *Reid v. Alenia Spazio, Alcatel Alenia Space Italia S.p.A. and Finmeccanica S.p.A.*, 970 A.2d 176 (Del. 2009). In 2014, he was appointed by the U.S. District Court for the Northern District of Illinois to serve as Interim Co-Lead Class Counsel in *In re AIG Workers Compensation Insurance Policyholder Litigation* (MDL No. 2519). He has also represented plaintiffs in False Claims Act “whistleblower” actions and in various litigations relating to consumer, commercial, and investment transactions.

Mr. Brandt has been named an Illinois “SuperLawyer” each year from 2012-2018, an honor reserved by Thomson Reuters for the top 5% of practitioners, based on peer nominations and its independent research.

Mr. Brandt is a 1992 graduate of DePauw University (B.A.), and a 1995 graduate of the Indiana University Maurer School of Law. He primarily practices from the firm’s Midwest office and is admitted to practice in all Illinois state and federal courts, as well as in the U.S. Courts of Appeals for the Second, Third, Seventh, and Ninth Circuits. He regularly represents clients in federal trial courts around the country.

Elaine S. Kusel, Partner

Elaine S. Kusel first joined McCuneWright in 2008. She is a partner of McCuneWright. As a nationally renowned class action attorney, she performs a significant role in the McCuneWright Consumer Fraud Class Action division. Elaine is a member of the New York Bar Association.



After college, Ms. Kusel spent eight years working in the U.S. House of Representatives, where she eventually served as Legislative Director and Counsel to a Member of Congress serving on the House Commerce Committee.

After graduating from law school, her practice has included fraud litigation, mass torts, and international human rights law. Among the notable cases she's prosecuted are in re Lucent Technologies Securities Litigation; Abdullahi v. Pfizer, a case in which she represented Nigerian children enrolled in a clinical trial by Pfizer without their families' informed consent and Gutierrez v. Wells Fargo Bank, N.A., a case in which her work helped secure a \$203 million dollar class action verdict.

Cory R. Weck, Partner

Cory R. Weck has been a leading trial lawyer in the Inland Empire since 2002. He has represented hundreds of clients in all matters arising out of personal injury litigation. He has been peer selected as one of the top 5percent of attorneys by "SuperLawyer" since 2012. He is rated as BV Distinguished by Martindale-Hubbell and is the past president of the Inland Empire chapter of the Consumer Attorneys of California.



Mr. Weck has also served as a Marine Corps officer for over 20 years. He was commissioned as a second Lieutenant in 1994 and then served as a defense counsel representing Marines accused of violating the Uniform Code of Military Justice. Prior to leaving active duty he represented military commanders as a prosecutor for the busiest trial shop in the Department of Defense. As a result of his trial results and dedication to justice he was selected as the "Top Young Lawyer of the Year for the U.S. Marine Corps" by the American Bar Association in 1999. Since 2001, Mr. Weck has continued to serve as an active Reserve officer for the Marines. As a reservist, he continues to provide legal guidance to most of the major commands within the Marine Corps.

Mr. Weck received his Bachelor of Science degree in Economics from Cornell University and his Juris Doctorate from the University of San Diego School of Law.

Emily J. Kirk, Associate

Emily has nearly 10 years of experience leading complex litigation and class actions on behalf of plaintiffs in product liability, personal injury, environmental, and business fraud cases. In one of Emily's most notable cases, she represented a small publicly-traded company against its dominant competitor in a lawsuit involving antitrust allegations. The matter resulted in a business deal and settlement under which the client received tens of millions of dollars.



Emily previously served as counsel to the U.S. Senate's Committee on Governmental Affairs, Oversight of Government Management Subcommittee. She advised the subcommittee on regulatory oversight issues and reform in the areas of federal personal, homeland security, and food safety. She also helped the subcommittee negotiate and advocate for the passage of key legislative provisions. After leaving the Senate, Emily returned to her home in Southern IL where she worked for as an associate attorney for one of the region's largest plaintiff-focused firms. Emily also worked as an associate attorney in the business litigation department at Thompson Coburn LLP in downtown St. Louis, MO.

In 2009, U.S. Senator Dick Durbin appointed Emily to a bipartisan screen committee that selected Stephen Wigginton as the U.S. Attorney for the Southern District of Illinois.

Emily graduated from Washington University School of Law in St. Louis, MO. In addition to her litigation practice, Emily is involved in the American Bar Association Section of Litigation where she serves as an editor for the Solo and Small Firm Committee. She is also the former Chair of the Board of Directors for the Illinois YMCA Youth and Government Program, an organization she continues to volunteer with on an annual basis.

Tuan Q. Nguyen, Associate

Tuan Q. Nguyen joined McCune Wright Arevalo, LLP in 2017 as an associate attorney. Mr. Nguyen represents plaintiffs in class action, product liability, mass tort, business fraud, and consumer protection litigation.

Mr. Nguyen earned his J.D. from the University of San Diego School of Law in 2016. During law school, he was the lead editor for the San Diego Law Review. Mr. Nguyen received his B.A. in Political Science from the University of California, San Diego, with a minor in International Relations. Mr. Nguyen is admitted to practice law in California.



Prior to joining the firm, Mr. Nguyen served as judicial extern to the Honorable Ronald Prager of the California Court of Appeal for the 4th District, the Honorable Michael Anello of the U.S. District Court for the Southern District of California, and the Honorable Michael Nash of the Los Angeles Superior Court.

Simi Peterson, Associate

Since joining McCune Wright Arevalo, LLP, Simi Peterson has played a key role in the Consumer Fraud Class Action division.

Prior to law school, Simi worked as an Executive Asset Manager for a national real estate company. She was principally engaged in the acquisition, development, and management of U.S. commercial & residential real estate. Previously, she worked as an Asset Manager for various non-profit organizations.



During Law School, Simi clerked for Honorable John Leventhal, New York Supreme Court, Appellate Division 2nd Department (Brooklyn/ Queens /Long Island). She authored various memoranda regarding New York State eminent domain disputes; construction, employment and zoning law issues; and the then-potential retroactive application of *Padilla v. Kentucky*, 559 U.S. 356 (2010) (ruling requiring non-citizen clients be advised of deportation risk as consequence of guilty plea).

While at Brooklyn Law School, Simi was a key member of the Veterans Rights' Committee, Labor and Employment Law Association, and well as Brooklyn Law School's Public Interest Group. During school and thereafter, she worked at the New York City Social Services Department, Los Angeles City Attorney's Office (Labor Division) and the Orange County Public Defender's Office.

Automobile Defects and False Advertising

Automotive defects are often undiscoverable at the time of purchase. Instead, a poor design or bad manufacturing process by the manufacturer results in premature part failure and expense to the consumer down the road. When the defect presents itself, the vehicle may not even be drivable or simply presents such a safety issue to passengers and others on the road that it should not be driven. The attorneys at McCuneWright offer a free consultation to help you understand your legal rights.

Consumer Fraud Class Actions

Consumer fraud class actions are cases where a group of consumers have been harmed in a similar way by large corporate defendants who have engaged in fraud in manufacturing, marketing, or selling their product or service. While the individual damages to each client may be small, the importance of holding large corporations accountable for unfair, deceptive, and illegal business practices is extremely important. Cumulative losses by a group of consumers can often reach tens or hundreds of millions of dollars. The \$203 million verdict against Wells Fargo for illegal overdraft fees on behalf of the more than one million Wells Fargo California customers is an example of McCuneWright's experience and success in Consumer Fraud Class Action cases.

Consumers and small business owners are often the victims of fraud in the form of unfair business practices and unreasonable breach of contract by large corporations that put profits before people.

When the harm involves a small loss by a very large number of consumers, such as undisclosed fee by banks or credit card companies, a consumer fraud class action may be appropriate. These are cases where thousands of consumers, via a class representative serving as the named plaintiff, bring a single lawsuit to recover damages for all harmed consumers.

In the past several years the attorneys at McCuneWright have been representing millions of consumers against many nationally known corporations for deceptive and unfair business practices.

Contingency Commercial Litigation

McCuneWright's contingency commercial litigation practice area is a natural extension of the consumer fraud class action area. In commercial litigation, McCuneWright, represents small to mid-size companies who have been severely harmed by the unlawful, unfair, and illegal conduct of larger, more powerful businesses and corporations.

McCuneWright, LLP serves as counsel on a contingency basis, with no legal fees until we are successful on certain matters impacting business owners. Small to medium-sized businesses may have a serious legal problem that must be addressed with a high level of professional skill. Our legal team is highly competent and provides contingency commercial litigation services for a range of legal cases, including business torts, cases of fraud, corporate interference, slander, libel, contract disputes, cases involving intellectual property, or real estate legal matters, as well as many other business law issues. Get in touch for immediate assistance.

Employee Rights Class Action

McCuneWright has a longstanding history of protecting the rights of everyday people including their rights in the workplace. Employees are afforded protections under state and federal law. When an employees' rights are violated by their employers, McCuneWright may be able to help individuals and groups (also called classes) seek recourse by holding employers accountable for their actions. Holding employers accountable for failing to act lawfully benefits all workers across industries.

At McCuneWright, LLP, we represent employees in class action cases. Our litigation team takes on cases involving discrimination for race, color, country of origin, religion, gender, sexual orientation and similar issues. We also serve as counsel in class action cases regarding wage and hour violations, vacation time or more complex matters such as misuse of employee retirement funds. Whether you are a potential whistleblower, or your case is associated with any technical or creative legal matter, we are prepared to discuss your case with you and advise you about how to move forward against your employer. Our breadth of knowledge allows us to work with confidence on cases across a wide spectrum of industries, from the highly technical, to the creative, and countless others. We invite you to reach out to us for legal help you can trust.

General Complex Litigation

McCuneWright's practice is concentrated in the representation of plaintiffs in complex litigation. Its four main practice areas are consumer fraud class actions, catastrophic personal injury and wrongful death cases, contingency commercial litigation, and general complex litigation. While there are significant differences in the financial, physical, and emotional trauma clients in these varying practice areas experience, there is one critical common thread: justice must be restored. Every type of business eventually runs into a more complex legal problem that must be resolved, and with the least financial damage possible. At McCuneWright, LLP, our litigation team has impressive legal skills to bring to the table in a range of matters. Whether your legal issue is related to regulatory matters, procedural matters, or other problem, our breadth of knowledge and experience in the most complex cases can benefit you and your business. Whether your case goes to trial, is handled in mediation, or resolved through other legal means, we work intelligently, strategically, and prepare every case as if for trial, which typically leads to a more favorable outcome.

Personal Injury and Wrongful Death Cases

Catastrophic personal injury and wrongful death cases arise in a number of different ways where the negligence of a person or company causes harm to others. McCuneWright's recent \$4.282 verdict for a ski boat manufacturing defect, and the \$850,000 trial verdict for trucking accident injuries, are examples of McCuneWright's experience and success in Personal Injury cases.

At McCuneWright, LLP, we take on cases of serious or catastrophic injury. Our objective is to seek full justice for those we represent. Our team of trial lawyers is exceptionally talented, dedicated, and fully committed to protecting the rights and interests of injured victims. Whether your case is associated with a pharmaceutical product, faulty medical device, vehicle, tool, or other consumer product, our firm can help you seek fair compensation. Our track record speaks for itself; we are unrelenting when pursuing justice and full compensatory damages for people who have suffered life-changing injuries, and for families who have lost a loved one through an act of negligence or wrongdoing.

Highlighted Successes

For those whose lives have been physically, emotionally, or financially altered through the fault of others, the selection of a law firm may be the most critical decision they will make for their future. McCuneWright has an outstanding group of experienced attorneys who are responsible for hundreds of millions of dollars in verdicts and settlements in complex litigation cases.

□ Member of the leadership team that settled the Toyota Sudden Unintended Acceleration class action for an estimated **\$1.6 billion**

□ **\$203** million trial verdict in a class action for unfair bank overdraft fees

□ **\$35** million national class action settlement for unfair overdraft fees

□ **\$2.5** million settlement for paralysis injuries in auto accident

□ **\$11** million settlement for injuries from auto accident

□ **\$2.25** million for injuries from SUV rollover accident

□ **\$975,000** for injuries from seat belt malfunction in auto accident

□ **\$2.675** million for injuries in pickup fire accident

□ **\$4.282** million ski boat manufacturing defect verdict

□ **\$650,000** for injuries from seat belt malfunction in auto accident

□ **\$5.5** million for injuries in van rollover product failure accident

□ **\$850,000** settlement for boat carbon monoxide poisoning death

□ **\$1.5** million settlement for injuries from defective pharmaceutical drug

□ **\$1.5** million class action settlement in consumer fraud case

- **\$850,000** trial verdict for injuries from trucking accident
- **\$1.7** million for paralysis injuries from SUV rollover accident
- **\$2.7** million settlement for defective medical device

1 Richard D. McCune, State Bar No. 132124
rdm@mccunewright.com
2 David C. Wright, State Bar No. 177468
dcw@mccunewright.com
3 MCCUNE WRIGHT AREVALO LLP
3281 East Guasti Road, Suite 100
4 Ontario, California 92374
Telephone: (909) 557-1250
5 Facsimile: (909) 557-1275

6 Edward J. Chong, State Bar No. 201409
edlawla@gmail.com
7 Law Offices of Edward J. Chong and Associates
3325 Wilshire Blvd., Suite 1250
8 Los Angeles, California 90010
Telephone: (213) 386-1990
9 Facsimile: (213) 386-1800

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

11
12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14

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

18 Plaintiff,

19 v.

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

21 Defendant.

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

24 Counterclaim Plaintiffs,

25 v.

26 ELITE LOGISTICS CORPORATION, and ROES 1-10,

27 Counterclaim Defendant.
28

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

) Judge Assigned: Judge Dean D. Pregerson

) Complaint Filed: April 7, 2011

) **[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL FO CLASS
SETTLEMENT**

) Hearing Date: Monday, December 17, 2018

) Hearing Time: 10:00 a.m.

) Courtroom: 9C

1 WHEREAS, pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil
2 Procedure, the parties seek entry of an order preliminarily approving the settlement of
3 this action pursuant to the settlement agreement fully executed on November 9, 2018
4 (the “Settlement Agreement” or “Settlement”), which, together with its attached
5 exhibits, sets forth the terms and conditions for a proposed settlement of the Action
6 and dismissal of the Action with prejudice; and

7 WHEREAS, the Court has read and considered the Settlement and its exhibits,
8 and Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Settlement;

9 NOW, THEREFORE, IT IS ORDERED THAT:

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

13 2. The Court preliminarily approves the Settlement as being within the
14 realm of reasonableness to the Settlement Class, subject to further consideration at
15 the Final Approval Hearing described below.

16 3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court
17 certifies, solely for purposes of effectuating the Settlement, the Settlement Class as
18 follows:
19

20 All intermodal motor carriers who were charged and
21 paid unlawful per diem charges to Defendants for weekend
22 and holidays when the terminal was closed, in violation of
23 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.

24 4. The Court appoints David C. Wright of McCune Wright Arevalo, LLP,
25 and Edward J. Chong of the Law Offices of Edward J. Chong & Associates as
26 Settlement Class Counsel for the Settlement Class. Any Settlement Class Member
27 may enter an appearance in the action, at their own expense, either individually or
28

1 through counsel. However, if they do not enter an appearance, they will be
2 represented by Settlement Class Counsel.

3 5. The Court appoints Plaintiff NGL Transportation, LLC, as Settlement
4 Class Representative.

5 6. The Court preliminarily finds, solely for purposes of the Settlement, that:

- 6 a. the Settlement Class is so numerous that joinder of all Settlement
7 Class Members in the Action is impracticable;
- 8 b. there are questions of law and fact common to the Settlement Class
9 that predominate over any individual questions;
- 10 c. the claims of the Settlement Class Representative are typical of the
11 claims of the Settlement Class;
- 12 d. the Settlement Class Representatives and Settlement Class Counsel
13 have and will continue to fairly and adequately represent and
14 protect the interests of the Settlement Class; and
- 15 e. a class action is superior to all other available methods for the fair
16 and efficient adjudication of the controversy.

17 7. The Court also preliminarily finds that certification of the Settlement
18 Class is appropriate when balanced against the risks of continued litigation. It further
19 appears that extensive and costly investigation, research, and discovery has been
20 conducted such that counsel for the parties are reasonably able to evaluate the
21 benefits of settlement, which will avoid substantial additional costs to the parties and
22 reduce delay and risks associated with this action. It further appears that the
23 Settlement has been reached as a result of intensive, arm's-length negotiations using
24 an experienced third-party neutral and the Court

25 8. The Court approves the form and content of the Settlement Class Notice
26 (Exhibit 1 to the Settlement Agreement). The Court finds that the e-mailing and/or
27 mailing of the Settlement Class Notice in the manner set forth in the Settlement, as
28 well as the establishment of a settlement website, satisfies due process. The foregoing

1 is the best notice practicable under the circumstances and shall constitute due and
2 sufficient notice to all Settlement Class Members entitled to Settlement Class Notice.
3 The Court authorizes the Parties to make non-material modifications to the Settlement
4 Class Notice prior to publication if they jointly agree that any such changes are
5 appropriate. Accordingly, the Court directs the following notice procedures to be
6 effectuated on or before _____, 2019 (sixty (60) days after the
7 date of this Order):

- 8 a. Individual direct email notice regarding the Settlement will be sent to all
9 intermodal motor carriers who were charged and paid unlawful per diem
10 charges to Defendants for weekend and holidays when the terminal was
11 closed, in violation of California Business and Professions Code section
12 22928, from April 7, 2007, to the present, using MOL's per diem
13 database and information from the Secretary of State of the various states
14 in which Class Members are located; and
15 b. Publication on a website to be established and maintained by Class
16 Counsel, as well as on a website maintained by the Intermodal
17 Association of North America; and

18 9. The Court authorizes and directs Class Counsel to perform all settlement
19 administration duties set out in the Settlement Agreement, including establishing,
20 maintaining, and administering a website dedicated to the Settlement which will
21 provide information about the Settlement including all relevant documents. At least
22 ten days before the Final Approval Hearing, Class Counsel will provide an affidavit
23 to the Court attesting that Settlement Class Notice was disseminated in a manner
24 consistent with the terms of the Settlement.

25 10. If Settlement Class Members do not wish to participate in the Settlement
26 Class, they may exclude themselves. All requests to be excluded from the Settlement
27 Class must be in writing, sent to Class Counsel, and postmarked on or before the Opt-
28 Out Deadline, which is _____, 2019 (one hundred and five (105)

1 days after the date of this Order). Any request for exclusion must: (1) state the Class
2 Member's full name and current address; and (2) specifically and clearly state his/her
3 desire to be excluded from the Settlement and from the Settlement Class. No Request
4 for Exclusion will be valid unless all of the information described above is included.
5 All Settlement Class Members who exclude themselves from the Settlement Class
6 will not be eligible to receive any monetary benefits under the settlement, will not be
7 bound by any further orders or judgments entered for or against the Settlement Class,
8 and will preserve their ability to independently pursue any claims they may have
9 against Defendant MOL and other Released Persons.

10 10. Any Settlement Class Member who has not previously submitted a Request
11 for Exclusion may object to the Settlement and appear at the Final Approval Hearing
12 to support or oppose the approval of the Settlement Agreement. All objections and
13 requests to appear at the Final Approval Hearing must be in writing and postmarked
14 on or before _____, 2019 (one hundred and five (105) days after the
15 date of this Order).

16 a. The following information must be provided in the Settlement Class
17 Member's written objection: (1) his/her/its full name, current address, and current
18 telephone number; (2) provide documentation that the objecting Settlement Class
19 Member has been charged and paid Unlawful Per Diem and/or Detention Charges; (3) a
20 statement of the position(s) the objector wishes to assert, including the factual and
21 legal grounds for the position; and (5) any other documents that the objector wishes
22 to submit in support of his/her position. To be valid, an objection also must include a
23 detailed statement of each objection asserted, including the grounds for objection. In
24 addition, any Settlement Class Member objecting to the Settlement must provide a
25 detailed statement of any objections to any other class action settlements submitted in
26 any court, whether state, federal, or otherwise, in the United States in the previous
27 five (5) years. If the Settlement Class Member has not objected to any other class
28 action settlement in any court in the United States in the previous five (5) years,

1 he/she must affirmatively so state in the written materials provided in connection with
2 the objection to this Settlement.

3 b. All objections and requests to appear at the Final Approval Hearing must be
4 sent to the Court as well as to: David C. Wright, McCune Wright Arevalo, LLP, 3281
5 East Guasti Road, Suite 100, Ontario, California 91761; and Erich P. Wise, Flynn,
6 Delich & Wise, LLP, One World Trade Center, Suite 1800 Long Beach, California
7 90831.

8 11. Any Settlement Class Member who does not object in the manner
9 provided in this Order shall be deemed to have waived such objections and shall
10 forever be foreclosed from objecting to the fairness, reasonableness, or adequacy of
11 the proposed settlement and any judgment approving the settlement.

12 12. The Court hereby schedules the Final Approval Hearing for
13 _____, 2019 at 10:00 a.m. (not less than one hundred and twenty
14 (120) days after the date of this Order). The Final Approval Hearing will take place in
15 Courtroom 9C of the United States District Court for the Central District of
16 California, Western Division, United States Courthouse, 350 W 1st Street, Los
17 Angeles, CA 90012-4565, to determine whether the proposed Settlement should be
18 approved as fair, reasonable, and adequate, whether a judgment should be entered
19 approving the Settlement, and whether Settlement Class Counsel's application for
20 attorneys' fees and for incentive award to the Settlement Class Representative should
21 be approved. The Court may adjourn the Final Approval Hearing without further
22 notice to Settlement Class Members.

23 **IT IS SO ORDERED.**

24
25 DATED: _____

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