

1 **S. BRETT SUTTON 143107**
JARED HAGUE 251517
2 **JOSEPH V. MACIAS 273168**
SUTTON HAGUE LAW CORPORATION
3 6715 N. Palm Avenue, Suite 216
4 Fresno, California 93704
Telephone: (559) 325-0500

5 Attorneys for Plaintiff: STEVE TURK
6

7 **UNITED STATES DISTRICT COURT**
8 **EASTERN DISTRICT OF CALIFORNIA**

9 * * *

10 STEVE TURK, an individual,
11 Plaintiff,

12 vs.

13 GALE/TRIANGLE, INC. a New Jersey
14 corporation; and PERFORMANCE TEAM
15 FREIGHT SYSTEMS, INC., a California
16 corporation; and Does 1 through 50, inclusive,
17 Defendants.

Case No. 2:16-cv-00783-MCE-DB

**ORDER PRELIMINARILY
APPROVING SETTLEMENT AND
RELEASE AGREEMENT**

Date: September 29, 2016
Time: 2:00 p.m.
Courtroom: 7

Judge: Hon. Morrison C. England, Jr.

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

I. RECITALS

WHEREAS, this action is pending before this Court as a putative class action (the “Action”); and

WHEREAS, the Parties have jointly applied to this Court for an order preliminarily approving the settlement of the Action in accordance with a Class Settlement Agreement (the “Settlement”), which, together with the exhibits annexed thereto, sets forth the terms and conditions for a proposed settlement and entry of judgment upon the terms and conditions set forth therein; and

WHEREAS, the Court has read and considered the Parties’ Joint Motion for Preliminary Approval, Memorandum of Points and Authorities, declarations and Request for Judicial Notice in support thereof and the exhibits annexed thereto.

II. FINDINGS

After review and consideration of the Parties’ Settlement and the papers in support of the Preliminary Approval Motion, the Court finds as follows:

1. That certification of the Settlement Class solely for purposes of Settlement is appropriate in that: 1) the Class Members are so numerous that joinder of all Class Members is impracticable; 2) there are questions of law and fact common to the Class which predominate over any individual questions; 3) Plaintiff’s claims are typical of the claims of the Settlement Class; 4) Plaintiff and his counsel have fairly and adequately represented and protected the interests of the Class; and 5) a class action, and class-wide resolution of the action via class settlement procedures is superior to other available methods for the fair and efficient adjudication of the controversy.

2. That the Settlement, and the obligations of the Parties set forth therein, is fair, reasonable, and is an adequate settlement of this case and is in the best interests of the Settlement Class in light of the factual, legal, practical, and procedural considerations raised by this case.

3. That Plaintiff does not have any conflicts that would preclude him from serving as Class Representative, and that his appointment comports with the requirements of due process.

///

1 4. That Counsel for Plaintiff does not have any conflicts that would preclude them
2 from acting as Class Counsel, and that they meet the requirements of the Federal Rules of Civil
3 Procedure for appointment as Class Counsel and the requirements of due process.

4 5. That Plaintiff’s proposed plan for class notice and settlement administration is the
5 best notice practicable under the circumstances and is in full compliance with the Federal Rules
6 of Civil Procedure and the requirements of due process, and that the Notice of Class Action
7 Settlement complies with the Federal Rules of Civil Procedure and the requirements of due
8 process, and is appropriate as part of the proposed plan for notice to Class Members.

9 6. That the Settlement provides for an incentive award to Plaintiff of up to \$10,000,
10 whereas the Notice of Class Action Settlement (Sections 8 and 20) provides for an incentive
11 award of up to \$7,500.

12 7. That Section 11 of the Notice of Class Action Settlement mistakenly provides that
13 the final approval hearing will be in the Northern District of California, and Section 22
14 mistakenly provides that Judge Strauss will preside over that hearing.

15 **III. ORDER**

16 IT IS HEREBY ORDERED as follows:

17 1. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the proposed
18 Settlement of this action, as embodied in the terms of the Settlement attached to the Preliminary
19 Approval Motion, is hereby preliminarily approved as a fair, reasonable, and adequate settlement
20 of this case in the best interests of the Settlement Class, in light of the factual, legal, practical,
21 and procedural considerations raised by this case. The Settlement is incorporated by reference
22 into this Order and is hereby preliminarily adopted as an Order of this Court.

23 2. Solely for the purpose of the Settlement, the Court hereby preliminarily certifies
24 the stipulated Settlement Class as defined within the Settlement.

25 3. PLAINTIFF is hereby preliminarily appointed as Class Representative.

26 4. S. Brett Sutton and Jared Hague of Sutton Hague Law Corporation, P.C. are
27 preliminarily appointed as Class Counsel.

28 5. Simpluris, Inc. is appointed as the Claims Administrator.

1 6. Plaintiff’s proposed plan for class notice and settlement administration is
2 approved and adopted and the Notice of Class Action Settlement is approved and adopted.

3 7. No later than seven (7) days after entry of this Order, Defendants shall provide the
4 Claims Administrator with a list of Class Members containing names, social security numbers,
5 and last-known addresses.

6 8. No later than ten (10) days after entry of this Order, the Claims Administrator
7 shall send the initial mailing to the Class, including the Notice of Class Action Settlement
8 (“Initial Mailing”). The Initial Mailing will be mailed via first-class mail.

9 9. Within twenty-eight (28) days after the Initial Mailing, the Claims Administrator
10 shall determine whether any Class Notice is returned as Undeliverable. If so, the Claims
11 Administrator shall perform at least one of two methods of skip-tracing (a search of the NCOA
12 database and/or a search through Experian) to locate the most accurate address of the intended
13 recipient. If the Initial Mailing is not returned as Undeliverable within 28 days of the Initial
14 Mailing, it shall be presumed that the intended member of the Settlement Class has received the
15 Initial Mailing.

16 10. Any objections to the Settlement or requests for exclusion may be made in writing
17 and filed with the Court and served on Class Counsel and Defense Counsel no later than forty-
18 five (45) days from the date upon which the Claims Administrator issues the Initial Mailing.

19 11. Plaintiff shall file a Motion for Attorneys’ Fees and Costs on or before December
20 12, 2016, such that the Class Members will have at least twenty-one (21) days prior to the
21 deadline to respond to the Class Notice to evaluate Class Counsel’s attorney fee request.

22 12. Plaintiff shall file a Motion for Final Approval, including any information
23 intended to support his request for an incentive award, and cost of Settlement Administration, on
24 or before January 12, 2016.

25 13. The hearing for Plaintiff’s Motion for Final Approval of Settlement and Release
26 Agreement is hereby scheduled for February 23, 2016 at 2:00 p.m. in Courtroom 7.

27 ///

28 ///

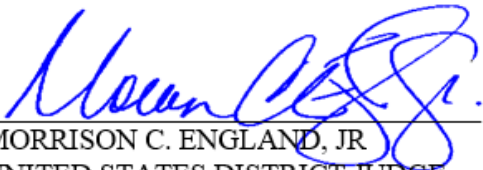
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

14. The Notice of Class Action Settlement shall be revised as follows prior to mailing:

- a. Sections 8 and 10 shall provide for an incentive award to Plaintiff of up to \$10,000.
- b. Section 11 shall provide that the final approval hearing will be in the Eastern District of California.
- c. Section 22 shall provide that the final approval hearing will be before Judge Morrison C. England.

IT IS SO ORDERED.

Dated: November 17, 2016


MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE