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6 Attorneys for Individual and Representative
 7 Plaintiff RORY ARMSTRONG

8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA

10 RORY ARMSTRONG, on behalf of himself
 11 and all others similarly situated,

12 Plaintiff,

13 v.

14 BAUER'S INTELLIGENT
 TRANSPORTATION, INC.; and DOES 1-50,

15 Defendants.

Civil Case Number: 3:13-cv-02691-MMC

**~~PROPOSED~~ ORDER GRANTING
 (1) PLAINTIFF'S MOTION FOR FINAL
 APPROVAL OF CLASS SETTLEMENT
 AND (2) PLAINTIFF'S MOTION FOR
 AWARD OF ATTORNEYS' FEES,
 INCENTIVE AWARD, AND
 REIMBURSEMENT OF COSTS**

Hearing Date: September 18, 2015
 Time: 9:00 a.m.
 Place: 450 Golden Gate Avenue
 San Francisco, CA 94102
 Courtroom 7, 19th Floor

The Honorable Maxine M. Chesney

21 Plaintiff's unopposed Motion for Final Approval of Class Settlement and Motion for
 22 Award of Attorneys' Fees, Incentive Award, and Reimbursement of Costs came on regularly
 23 for hearing on September 18, 2015, at 9:00AM, in the United States District Court for the
 24 Northern District of California, the Honorable Maxine M. Chesney presiding. All parties
 25 were represented by counsel.

26 Having considered the memoranda and declarations, oral arguments of counsel, and
 27 the relevant statutory and case law, the Court GRANTS Plaintiff's motions and orders and
 28 finds as follows:

1 and 29 U.S.C. § 216(b), a settlement class defined as follows: All current and former employees
2 of Bauer’s Intelligent Transportation, Inc. who worked in the State of California and were
3 employed as a bus operator or in an equivalent position at any time within the Class Period, *i.e.*,
4 the time period from March 29, 2009 through the Date of Preliminary Approval.

5 5. Plaintiffs’ attorneys, Steven G. Tidrick, Esq. and Joel Young, Esq. of The Tidrick
6 Law Firm are appointed Class Counsel, and Plaintiff Rory Armstrong is appointed as the Class
7 Representative.

8 6. Gilardi & Co. LLC is appointed as the Settlement Administrator.

9 7. The *cy pres* recipient shall be Legal Aid Society – Employment Law Center,
10 180 Montgomery Street, San Francisco, California.

11 8. The Settlement Administrator shall distribute the awards to the class members ~~as~~
12 ~~specified in~~ ^{in accordance with} the Settlement Agreement.

13 9. No member of the Rule 23 class has objected to the Settlement Agreement.
14 Twelve putative class members, as listed in Exhibit B to the Declaration of Kathleen
15 Wyatt, have timely requested exclusion from the Settlement Class and are hereby
16 excluded.

17 10. Under Federal Rules of Civil Procedure 23(h)(1) and 54(d)(2), Plaintiff in this
18 class action has moved for an award of attorneys’ fees, incentive award, and reimbursement of
19 costs. Pursuant to Rule 23(h)(3), the Court must make findings of fact and state its conclusions of
20 law.

21 11. This class action settlement resolves a wage-and-hour dispute on a class-wide
22 basis.

23 12. The Court’s May 29, 2015 order granted preliminary approval of the class-wide
24 settlement agreement, an agreement which specified that Class Counsel could request
25 reimbursement from the settlement fund for up to \$37,500 in attorneys’ fees and costs, up to
26 \$12,000 in costs, and up to \$4,000 as an incentive award to the Class Representative.

27 13. Rule 23(h) provides that, “[i]n a certified class action, the court may award
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1 reasonable attorney's fees and nontaxable costs that are authorized by . . . the parties' agreement.”
2 The Rule further provides that “[a] claim for an award must be made by motion under Rule
3 54(d)(2),” notice of which must be “directed to class members in a reasonable manner” and that
4 the Court “must find the facts and state its legal conclusions under Rule 52(a).” Fed. R. Civ. P.
5 23(h)(1) & (3). In turn, Rule 54(d)(2) requires a claim for fees to be made by motion, and
6 specifies its timing and content, including, in relevant part, “the grounds entitling the movant to
7 the award” and “the amount sought.” Fed. R. Civ. P. 54(d)(2)(B). Notice of this fee-award
8 motion was provided in the class notice.

9 14. When “the settlement produces a common fund for the benefit of the entire class,
10 courts have discretion to employ either the lodestar method or the percentage-of-recovery
11 method” of calculating attorneys’ fees awards. *In Re Bluetooth Headset Prods. Liab. Litig.*, 654
12 F.3d 935, 942 (9th Cir. 2011).

13 15. Under the percentage-of-the-fund method, it is appropriate to base the percentage
14 calculation on the gross settlement amount. *See generally Boeing v. Gemert*, 444 U.S. 472, 479,
15 100 S. Ct. 745, 62 L. Ed. 2d 676 (1980); *Williams v. MGM-Pathe Commc'ns Co.*, 129 F.3d 1026,
16 1027 (9th Cir. 1997).

17 16. The Court adopts the percentage-of-the-fund approach here and finds that the fee-
18 and-expense amount is reasonable. The fee award of 25% of the fund is within the range of
19 reasonable percentage-fee awards in this Circuit. *See, e.g., Fischel v. Equitable Life Assur. Soc'y*
20 *of the U.S.*, 307 F.3d 997, 1006 (9th Cir. 2002) (“We have established a 25 percent benchmark in
21 percentage-of-the-fund cases that can be adjusted upward or downward to account for any
22 unusual circumstances involved in [the] case.” (internal quotation marks and citation omitted)); *In*
23 *re Pac. Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (“[t]wenty-five percent is the
24 'benchmark' that district courts should award in common fund cases” (citation omitted)).

25 17. In terms of a lodestar cross-check, the attorneys’ fees requested, 25% of the
26 common fund amount of \$150,000, equates to \$37,500, which is less than 30% of the lodestar
27 amount of \$128,226. The Court finds that Class Counsel’s hours and hourly rates are reasonable,
28 thus, the requested fee award results in a “negative multiplier” and supports a finding that the

1 requested percentage of the fund, 25%, is reasonable and fair.

2 18. "The prevailing view is that expenses are awarded in addition to the fee
3 percentage." *Jefferson v. H&M Hennes & Mauritz, L.P.*, 2013 U.S. Dist. LEXIS 2875 at *9
4 (C.D. Cal. filed Jan. 7, 2013) (quoting 1 ALBA CONTE, ATTORNEY FEE AWARDS § 2:08 at 50–51).
5 To date, Class Counsel have advanced all costs incurred in this case. The Tidrick Law Firm's
6 total incurred litigation expenses were \$6,592.52 as of June 22, 2015, and do not include modest,
7 but real, expenses subsequently incurred. These costs are reasonable.

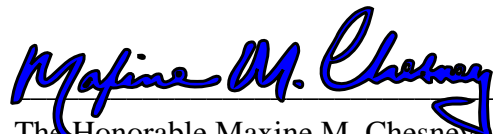
8 19. An "enhancement" payment to Plaintiff Rory Armstrong of \$4,000 is justified.

9 20. Therefore, the Court orders an award of \$37,500 in attorneys' fees and \$6,592.52
10 in incurred litigation costs to The Tidrick Law Firm, and an "enhancement" payment to Plaintiff
11 Rory Armstrong of \$4,000, from the common-fund settlement of \$150,000.

12 21. The above-titled action is hereby dismissed, and the claims of the Class
13 Members and the Class Representatives are released as provided in the Settlement
14 Agreement.

15 It is so ORDERED.

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17 DATE: September 21, 2015.


18 The Honorable Maxine M. Chesney
19 United States District Court
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