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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

THOMAS A. PAULSEN, et al., on behalf  
of themselves and all others similarly  
situated,

Plaintiffs,

v.

CNF, INC., et al.,

Defendants.

CASE NO. C 03-3960 (JW)

PLAINTIFFS' [Proposed] ORDER  
GRANTING FINAL SETTLEMENT  
APPROVAL, AWARDED ATTORNEYS'  
FEES, EXPENSES, AND CLASS  
REPRESENTATIVE SERVICE PAYMENTS,  
AND FINAL JUDGMENT

Date: October 24, 2011  
Time: 9:00 a.m.  
Courtroom: 5  
Judge: Hon. James Ware

1 THIS MATTER came before the Court on October 24, 2011 for final approval of the  
2 proposed Class Settlement (the "Settlement") and on a request by Plaintiffs for attorneys' fees,  
3 litigation expenses, and class representative service payments. The Court has considered all  
4 papers filed and proceedings in this matter and held a hearing on October 24, 2011, at which time  
5 the parties and all other interested persons were afforded the opportunity to be heard in support of  
6 and in opposition to the proposed settlement. Based on the papers filed with the Court and  
7 presentations made to the Court at the hearing, it is hereby ORDERED, ADJUDGED, AND  
8 DECREED as follows:

9 1. The definitions and provisions of the Settlement Agreement are hereby  
10 incorporated as though fully set forth herein. For purposes of this Order and Final Judgment, all  
11 capitalized terms used hereafter shall have the meaning ascribed to them in the Settlement  
12 Agreement, unless otherwise noted.

13 2. The Court has jurisdiction over the subject matter of the Settlement Agreement  
14 with respect to and over all Parties to the Settlement Agreement, including all Class Members.

15 3. To date, no Class Member has filed an objection to the terms of the Settlement  
16 (including the request for attorneys' fees, expenses, and class representative service payments),  
17 and no Class Member has requested exclusion from the Settlement. The Court finds that the  
18 absence of any objections or requests for exclusion indicates support for the Settlement among  
19 the Class, which was certified by this Court by Order of October 7, 2010 and defined as follows:  
20 "[a]ll participants in and beneficiaries of the CFC Plan whose pension benefits have been reduced  
21 or will be reduced due to the termination of the CFC Plan." See Doc. No. 255 at 16.

22 4. The Court hereby approves the Settlement and finds that the Settlement is, in all  
23 respects, fair, reasonable, and adequate to the Class Members, within the authority of the parties,  
24 and the result of extensive, arm's-length negotiations. Despite substantial risks facing the  
25 Plaintiffs in succeeding on the merits of their claims and proving damages caused by any alleged  
26 breach of duty owed to the Class by Defendant Towers Perrin, the Settlement provides an average  
27 settlement payment of over \$29,000 per Class Member. The Settlement avoids the risks that the  
28 Plaintiffs would not succeed in (1) defeating Towers Perrin's motion to exclude Plaintiffs' expert

1 witness testimony or motion for summary judgment; (2) persuading a jury that Towers' Perrin  
2 owed a duty to Class Members and breached that duty; (3) persuading a jury that the alleged  
3 breach by Towers Perrin caused damages to the Class; and (4) defeating any appeal that Towers  
4 Perrin might bring to address any adverse ruling in this Court. The Settlement also provides that  
5 Class Members will be paid shortly and thus avoids the additional delay of further motion  
6 practice, trial, and possible appeals. Given that a great majority of the Class Members are 62  
7 years old or older and have suffered reductions in their pensions that will be partially ameliorated  
8 by this Settlement, avoiding a further delay in payment is particularly beneficial here.

9         5. The Court hereby grants Class Counsel's request for an award of \$2,530,000 in  
10 attorneys' fees and \$419,258 in litigation expenses. The fee and expenses award is reasonable  
11 under both the lodestar method and the percentage-of-the-recovery method. As of July 22, 2011  
12 Plaintiffs' counsel's lodestar was \$2,796,596, which the Court finds to be reasonable given the  
13 more than eight years that Class Counsel have worked on this litigation and the additional work  
14 Class Counsel have devoted to the case since July 22. The Court finds further that Class  
15 Counsel's hourly rates are reasonable in light of their experience (as reflected in their  
16 declarations), and the rates charged are comparable to other attorneys in this field. Plaintiffs' fee  
17 request is reasonable under the lodestar method because Plaintiffs are seeking \$266,000 less than  
18 their lodestar as of July 22, 2011, and they therefore do not seek not a traditional multiplier but a  
19 *fractional* multiplier (or "divider") of 0.90.

20         6. In addition, the fee request amounts to 27.5% of the total Settlement Amount.  
21 Although this percentage is 2.5% more than the 25% "benchmark" that courts in the Ninth Circuit  
22 often use in determining attorneys' fees in class action cases, this slight increase over the  
23 benchmark is warranted under the circumstances of this case—given the amount of work that  
24 Class Counsel have devoted to the litigation over the past eight years, the fact that the case settled  
25 just weeks before trial and after fact and expert discovery had been completed and summary  
26 judgment motions had been fully briefed, and the outstanding result that Class Counsel achieved  
27 in spite of the substantial risks facing Plaintiffs throughout this action. Moreover, none of the  
28 Class Members has filed any objection to Plaintiffs' fee and expenses request, which was

1 disclosed in the settlement notice sent to all Class Members. Plaintiffs' motion for attorneys' fees  
2 was also made available to Class Members for review on Class Counsel's website at the  
3 beginning of the opt-out and objection period. The Settlement Notice—which was distributed  
4 concurrently with the filing of the fee brief—informed Class Members that this motion is  
5 available for review on Class Counsel's website. *See In re Mercury Interactive Corp. Sec. Litig.*,  
6 618 F.3d 988, 994-95 (9th Cir. 2010).

7 7. The Court finds further that the request for \$419,258 in litigation expenses is  
8 reasonable. Plaintiffs' Counsel have submitted declarations indicating the expenses that were  
9 required to be incurred during the eight years of this litigation—including more than 20  
10 depositions, substantial expert witness fees, and mediation fees for two days of mediation. The  
11 Court finds these expenses to be reasonable and necessary for the litigation of this case. As noted  
12 above, no Class Member filed any objection to Plaintiffs' litigation expenses request.

13 8. The class representative service payments to Plaintiffs Thomas A. Paulsen, Robert  
14 M. Bowden, Chester Madison, Robert Newell, and Lloyd Michael O'Connell III (collectively,  
15 "Class Plaintiffs") are hereby approved in the amount of \$7,500 each, to be paid in accordance  
16 with the Settlement Agreement. No Class Member filed an objection to Plaintiffs' request for  
17 Class Plaintiff service payments. The Court finds such service awards to be fair and reasonable in  
18 light of the time and effort devoted by Plaintiffs to the prosecution of this litigation on behalf of  
19 the Class over the past eight years.

20 9. The Court finds that the Notice Plan set forth in the Agreement and preliminarily  
21 approved by the Court was the best practicable notice under the circumstances. The Settlement  
22 Administrator sent out the Notice in accordance with the Notice Plan. The Notice provided due  
23 and adequate notice of these proceedings and of the matters set forth therein, including the  
24 Settlement Agreement, to all parties entitled to such notice and satisfied the requirements of  
25 constitutional due process. The Court specifically finds that the Notice is constitutionally sound,  
26 and the notice plan, as executed here, was the best notice practicable under the circumstances.

27 10. Pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, upon  
28 the date this Judgment becomes final, Plaintiffs and Settlement Class Members shall release

1 Defendant Towers Perrin from all “Released Claims,” as that term is defined in Exhibit C to the  
2 Settlement Agreement—that is, “any and all actual or potential claims, counterclaims, actions,  
3 causes of action, liabilities, damages (whether actual, nominal, punitive, exemplary, statutory, or  
4 otherwise), injunctive relief, costs, fees, attorneys' fees, or penalties of any kind alleged in the  
5 Action or that reasonably arise out of the facts alleged in the Action, whether known or unknown,  
6 suspected or unsuspected, discovered or undiscovered, and which arise in whole or in part from  
7 actuarial services Towers Perrin provided at any time relating to the Consolidated Freightways  
8 Inc. Pension Plan and/or the Consolidated Freightways Corporation Pension Plan.”

9 11. Without affecting the finality of this Settlement Order and Final Judgment, the  
10 Court retains continuing jurisdiction over: (a) implementation of the Settlement Agreement and  
11 distribution of the settlement relief contemplated by the Settlement Agreement, until all acts  
12 agreed to be performed pursuant to the Settlement Agreement have been performed; and (b) all  
13 parties to this action and Settlement Class Members for the purpose of enforcing and  
14 administering the Settlement Agreement.

15 12. Neither this Order and Final Judgment nor the Settlement Agreement constitutes  
16 an admission or concession by any of the released parties of any fault, omission, liability or  
17 wrongdoing. This Order and Final Judgment is not a finding of the validity or invalidity of any  
18 claims in this action or a determination of any wrongdoing by the Defendant. The final approval  
19 of the Settlement Agreement does not constitute any opinion, position or determination of this  
20 Court, one way or the other, as to the merits of the claims and defenses of Plaintiffs, Towers  
21 Perrin, or the Settlement Class Members.

22 IT IS SO ORDERED. The Clerk shall close this file.

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24 Dated: October 24, 2011

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28 HON. JAMES WARE  
CHIEF JUDGE, U.S. DISTRICT COURT