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21 IN THE UNITED STATES DISTRICT COURT
22 FOR THE CENTRAL DISTRICT OF CALIFORNIA
23 WESTERN DIVISION

24 **IN RE INDYMAC ERISA**
25 **LITIGATION**

Master File No.: 08-04579 DDP(VBKx)

STIPULATION AND AGREEMENT
OF SETTLEMENT OF CLASS
ACTION – ERISA

Judge: HON. DEAN D. PREGERSON

26
27 **STIP. AND AGREEMENT OF SETTLEMENT OF CLASS ACTION [MASTER FILE No.: 08-04579-DDP]**
28

1 Subject to the approval of the *Court* pursuant to Rule 23(e) of the Federal
2 Rules of Civil Procedure, Named Plaintiffs Sam Zhong Wang and Jeffrey
3 Washington (“*Named Plaintiffs*”), individually and on behalf of themselves and the
4 below-defined Class, enter into this Stipulation and Agreement (“*Stipulation*”) with
5 Jim Barbour, Louis E. Caldera, Kevin Cochrane, Hugh M. Grant, Ken Horner, A.
6 Scott Keys, Rayman Mathoda, Michael W. Perry, Jennifer Pikoos, and John F.
7 Seymour (“*Defendants*”) to settle this *Action* on, and subject to, the terms and
8 conditions below.

9 RECITALS

10 WHEREAS, *Named Plaintiffs* commenced independent actions against
11 *Defendants* and others¹, asserting various claims for relief under the Employee
12 Retirement Income Security Act of 1974, as amended (“ERISA”), all of which
13 claims are disputed by all those named;

14 WHEREAS, the *Court* consolidated the *Named Plaintiffs’* actions and all
15 other actions asserting claims for relief under ERISA into the above-captioned
16 *Action* on October 7, 2008;

17 WHEREAS, the *Named Plaintiffs* filed the Consolidated Complaint for
18 Breaches of Fiduciary Duty under the Employee Retirement Income Security Act
19 (the “*Complaint*”) in the *Action* on January 5, 2009;

20
21
22 ¹ Lyle E. Gramley, Patrick C. Haden, Terrance G. Hodel, Robert L. Hunt, Lydia H.
23 Kennard, and Bruce G. Willison were dismissed without prejudice with a tolling
24 agreement on March 13, 2009; Richard H. Wohl was dismissed without prejudice
25 on February 19, 2009 (“Dismissed Defendants”). In his initial complaint, Plaintiff
26 Washington named IndyMac Bank, F.S.B., which was closed by the Office of
27 Thrift Supervision on July 11, 2008, and IndyMac Bancorp, Inc., which filed for
28 bankruptcy protection under Chapter 7 of the United States Bankruptcy Code on
July 31, 2008, as defendants. Plaintiff Wang named IndyMac Bank, F.S.B. as a
defendant in his initial complaint.

1 WHEREAS, the *Named Plaintiffs* and *Defendants* (the “*Parties*”) and
2 *Underwriter*, at their own expense, have engaged in a mediation process before The
3 Honorable Daniel Weinstein (ret.) of JAMS, which efforts included a day-long, in-
4 person mediation on August 25, 2009, at the conclusion of which an agreement in
5 principle between the *Parties* was reached on certain settlement terms, and
6 *Defendants’* deadline to respond to *Named Plaintiffs’* Consolidated Complaint was
7 extended until June 2, 2010, by the *Court’s* order of May 24, 2010;

8 WHEREAS, the *Parties* have engaged in extensive, further arm’s-length
9 negotiation following the August 25, 2009 mediation;

10 WHEREAS, these discussions and negotiations resulted in the execution of a
11 Settlement Term Sheet in February 2010 (the “*Term Sheet*”), which set forth the
12 principal terms of the settlement of this *Action*;

13 WHEREAS, the *Parties* desire to promptly and fully resolve and settle with
14 finality all of the *Released Claims* asserted by *Named Plaintiffs* on behalf of
15 themselves and the *Class Members* against all of the *Released Parties*;

16 WHEREAS, the *Underwriter* has agreed to provide the funds for this
17 *Settlement* under the applicable fiduciary insurance policy;

18 NOW, THEREFORE, the *Parties*, in consideration of the promises,
19 covenants, and agreements herein described, and for other good and valuable
20 consideration, acknowledged by each of them to be satisfactory and adequate, and
21 intending to be legally bound, do hereby mutually agree as follows:

22 **1. DEFINITIONS**

23 1.1. As used in this *Settlement*, italicized and capitalized terms and phrases
24 not otherwise defined herein have the meanings provided below:

25 1.2. “*Action*” means Master File No. 08-4579-DDP-(VBKx) (C.D. Cal.),
26 including all actions consolidated therewith.

27 1.3. “*Bancorp*” means IndyMac Bancorp, Inc.

28 1.4. “*Bank*” means IndyMac Bank, F.S.B.

1 1.5. “*Bankruptcy Court*” means the bankruptcy court presiding over
2 *Bancorp*’s bankruptcy proceedings.

3 1.6. “*Class*” means, for the purposes of this *Settlement* only, a non-opt-out
4 class of all persons, other than *Defendants* and *Defendants*’ spouses, parents, or
5 children, who were participants in or beneficiaries of the IndyMac Bank, F.S.B.
6 401(k) Plan at any time between July 1, 2006, and the date of execution of the
7 *Stipulation* and whose accounts included investments in the IndyMac Stock Fund.

8 1.7. “*Class Counsel*” means Co-Lead Counsel, Keller Rohrback, LLP and
9 Lewis, Feinberg, Lee, Renaker & Jackson, P.C., and Liaison Counsel, The Braun
10 Law Group, P.C.

11 1.8. “*Class Member(s)*” means the member(s) of the *Class*, individually or
12 collectively.

13 1.9. “*Class Notice*” means the forms of notice appended as Exhibits 1 and
14 2 to the *Order for Notice and Hearing*, attached hereto as Exhibit A.

15 1.10. “*Court*” means the United States District Court for the Central District
16 of California.

17 1.11. “*Custodian*” means a federally-insured financial institution proposed
18 by *Class Counsel* and acceptable to *Defendants*.

19 1.12. “*Daniels Action*” means *John Folsom v. Indymac Bancorp, Inc. et al.*,
20 2:08-cv-03812-GW-VBK (C.D. Cal.), a Securities Exchange Act of 1934 case
21 pending against Ernst and Young, LLP., A. Scott Keys, and Michael W. Perry, and
22 cases consolidated therein.

23 1.13. “*Defendants*” means Jim Barbour, Louis E. Caldera, Kevin Cochrane,
24 Hugh M. Grant, Ken Horner, A. Scott Keys, Rayman Mathoda, Michael W. Perry,
25 Jennifer Pikoos, and John F. Seymour.

26 1.14. “*Defendants’ Counsel*” means (i) Munger, Tolles & Olson, LLP for
27 Defendants Louis E. Caldera, Hugh M. Grant, and John F. Seymour; (ii)
28 Covington & Burling, LLP for Defendant Michael W. Perry; (iii) Willkie Farr &

1 Gallagher LLP for Defendant A. Scott Keys; and (iv) Corbin, Fitzgerald & Athey
2 LLP for Defendants Jim Barbour, Kevin Cochrane, Ken Horner, Rayman
3 Mathoda, and Jennifer Pikoos.

4 1.15. “*Effective Date*” means the date on which all the conditions set out in
5 Paragraph 8.1 of this *Settlement* have been satisfied.

6 1.16. “*ERISA*” means the Employee Retirement Income Security Act of
7 1974, as amended, 29 U.S.C. §§ 1001 *et seq.*

8 1.17. “*Gross Settlement Fund*” shall have the meaning set forth in
9 Paragraph 3.3.

10 1.18. “*Final Approval and Fairness Hearing*” and “*Fairness Hearing*”
11 have the meaning that is set forth in Paragraph 9.2.

12 1.19. “*Final Order and Judgment*” and “*Judgment*” have the meaning that
13 is set forth in Paragraph 9.2 and refer to the document attached hereto as Exhibit
14 B.

15 1.20. “*Independent Fiduciary*” means a *Person* who may, at the election of
16 *Defendants*, be appointed to consider whether to approve and authorize in writing
17 the *Stipulation*. The *Independent Fiduciary* shall have all of the rights and
18 responsibilities contemplated by Prohibited Transaction Class Exemption 2003-39,
19 including any amendments or successors thereto.

20 1.21. “*Net Settlement Fund*” is defined by Paragraph 3.4.

21 1.22. “*Named Plaintiffs*” means Sam Zhong Wang and Jeffrey Washington.

22 1.23. “*Notice*” means the “Notice of Proposed Settlement With Defendants,
23 Motions for Attorneys’ Fees and Reimbursement of Expenses with Fairness
24 Hearing,” which is to be sent to members of the *Class* substantially in the form
25 attached hereto as Exhibit 1 to Exhibit A.

26 1.24. “*Order for Notice and Hearing*” means the order granting preliminary
27 approval of the *Settlement* and directing notice thereof to the *Class* substantially in
28 the form attached hereto as Exhibit A.

1 1.25. “*Party*” or “*Parties*” means *Named Plaintiffs* and *Defendants*,
2 individually and collectively.

3 1.26. “*Person*” means an individual, partnership, corporation, government
4 entity or any other form of entity or organization.

5 1.27. “*Plaintiffs’ Counsel*” means *Class Counsel* and any other counsel
6 representing any *Class Member* in any action consolidated into this *Action*.

7 1.28. “*Plan of Allocation*” means a plan of allocation of the *Net Settlement*
8 *Fund* as proposed by *Class Counsel* and approved by the *Court*.

9 1.29. “*Plan of Allocation Implementation Expenses*” means all reasonable
10 expenses incurred in implementing the *Plan of Allocation*, including the costs of
11 gathering required data and performing required calculations.

12 1.30. “*Plan*” means the IndyMac Bank, F.S.B. 401(k) Plan.

13 1.31. “*Released Claims*” means any and all claims whether known or
14 unknown, (1) that were asserted in the *Action* or that could have been asserted in
15 this *Action*; (2) that would have been barred by res judicata had the *Action* been
16 fully litigated to a final judgment; or (3) that relate to any investment in *Bancorp*
17 stock or the IndyMac Stock Fund by the *Plan* or any such investment by any *Plan*
18 participant through the *Plan*. *Released Claims* shall extend to all *Released*
19 *Parties*. Provided, however, that *Released Claims* shall not extend to any claims
20 asserted by or on behalf of the plaintiffs in (1) the *Tripp Action* or (2) the *Daniels*
21 *Action*. Further, *Released Claims* shall not extend to claims (1) related to
22 enforcement of the *Settlement Stipulation*; (2) for individual or vested benefits
23 separate and distinct from the claims asserted in the *Action*; or (3) against the
24 *Independent Fiduciary*.

25 1.32. “*Released Parties*” means any and all of the *Defendants*, *Bancorp*, the
26 *Bank*, the *Plan*, and every *Person* who was a director, officer, governor,
27 management committee member, in-house counsel, employee, or agent of
28 *Bancorp* or the *Bank*, or a trustee or fiduciary (including de facto fiduciaries) for

1 the *Plan*, together with, for each of the foregoing, any present or former
2 representatives, insurers, reinsurers, attorneys, consultants, administrators,
3 employee benefit plans, investment advisors, investment underwriters, spouses,
4 and successors, including without limitation, the *Bancorp* bankruptcy estate and
5 Trustee Alfred H. Siegel.

6 1.33. “*Settlement*” means the settlement of the *Action* contemplated by this
7 *Stipulation*.

8 1.34. “*Settlement Fund*” means the interest-bearing escrow account
9 established to hold the funds contributed by the *Underwriter* pursuant to Paragraph
10 3.1 of the *Settlement Stipulation*.

11 1.35. “*Settlement Stipulation*” and “*Stipulation*” refer to this Stipulation and
12 Agreement and Settlement of the *Action*.

13 1.36. “*Settlement Administrator*” means the person or firm hired, at *Class*
14 *Counsel*’s discretion, to administer the provision of *Class Notice* provided for in
15 Paragraph 4.2.

16 1.37. “*Settlement Amount*” means the \$7,000,000.00 to be paid by the
17 *Underwriter* on behalf of *Defendants* in consideration for the release and discharge
18 provided for in Paragraphs 2.2 and 2.4.

19 1.38. “*Summary Notice*” means the summary notice of proposed *Settlement*
20 and hearing for publication substantially in the form attached as Exhibit 2 to
21 Exhibit A.

22 1.39. “*Taxes*” means (i) any and all applicable taxes, duties, and similar
23 charges imposed by a government authority (including any estimated taxes,
24 interest or penalties) arising in any jurisdiction, (A) with respect to the income or
25 gains earned by or in respect of the *Gross Settlement Fund*, including, without
26 limitation any taxes that may be imposed upon *Defendants* or their counsel with
27 respect to any income or gains earned by or in respect of the *Gross Settlement*
28 *Fund* for any period during which it does not qualify as a qualified settlement fund

1 for federal or state income tax purposes; or (B) by way of withholding as required
2 by applicable law on any distribution by the *Custodian* of any portion of the *Gross*
3 *Settlement Fund* to any persons entitled thereto pursuant to this *Stipulation*; and
4 (ii) any and all expenses, liabilities, and costs incurred in connection with the
5 taxation of the *Gross Settlement Fund* (including without limitation, expenses of
6 tax attorneys and accountants). For the purposes of clause (i)(A) of this paragraph,
7 taxes imposed on *Defendants* shall include amounts equivalent to taxes that would
8 be payable by *Defendants* but for the existence of relief from taxes by virtue of
9 loss carryforwards or other tax attributes, determined by *Defendants*, acting
10 reasonably, and accepted by the *Custodian*, acting reasonably.

11 1.40. “*Tripp Action*” means *Claude A. Reese v. Indymac Financial Inc et*
12 *al.*, 2:07-cv-01635-GW-VBK (C.D. Cal.), a Securities Exchange Act of 1934 case
13 pending against Michael W. Perry, and cases consolidated therein.

14 1.41. “*Underwriter*” means the insurer that provided a primary fiduciary
15 policy for *Bancorp* for the claims at issue in this *Action* for the period 2007-2008.

16 **2. SCOPE AND EFFECT OF SETTLEMENT**

17 2.1. The obligations incurred pursuant to this *Settlement* shall be in full and
18 final disposition of the *Action* and shall release and discharge all *Released Parties*
19 from all *Released Claims*.

20 2.2. Upon the *Effective Date* of the *Settlement*, *Named Plaintiffs* and all
21 *Class Members*, on behalf of themselves, their personal representatives, heirs,
22 executors, administrators, trustees, successors, and assigns will completely and
23 finally settle, release, and discharge the *Released Claims*. Upon the *Effective Date*
24 of the *Settlement*, *Named Plaintiffs* and all *Class Members* shall be bound by this
25 *Settlement*, and shall, regarding the *Released Claims*, have exclusive recourse to
26 the benefits, rights, and remedies provided by this *Settlement* and shall be
27 precluded from pursuing any other action, demand, suit, or other claim, in any
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1 judicial or administrative forum of any kind, against the *Released Parties* with
2 respect to the *Released Claims*.

3 2.3. Upon the *Effective Date* of the *Settlement*, *Bancorp*, the *Bank*,
4 Dismissed Defendants, and each *Defendant*, on behalf of each of them and of their
5 respective predecessors and successors in interest, release and forever discharge
6 each and every one of the *Named Plaintiffs*, all *Class Members*, and *Class Counsel*
7 with respect to the *Released Claims*.

8 2.4. It is understood by the *Named Plaintiffs* and *Class Members* that a risk
9 exists that, following the *Effective Date* of this *Settlement*, they may incur or suffer
10 losses, damages, or injuries which are related to the *Released Claims*, but which
11 they do not know about or anticipate on or before the *Effective Date*. Further a
12 risk exists that any loss or damage *Named Plaintiffs* and *Class Members* presently
13 associate with the *Released Claims* may be or become greater than currently
14 estimated. The *Named Plaintiffs* and *Class Members* assume these risks, and
15 agree to be bound by this *Settlement*, including the releases of claims contemplated
16 by the *Settlement*, even if such unknown or unanticipated results later become
17 known or anticipated. To this end, the *Named Plaintiffs* and *Class Members*
18 acknowledge that this *Settlement* will waive and relinquish all rights under Section
19 1542 of the California Civil Code, which provides that “[a] general release does
20 not extend to claims which the creditor does not know or suspect to exist in his or
21 her favor at the time of executing the release, which, if known by him or her must
22 have materially affected his or her settlement with the debtor,” as well as under
23 any statutes or common law principles of similar effect in any jurisdiction, to the
24 fullest extent they may lawfully do so.

25 2.5. The *Settlement* shall not bar, waive, or release any claims asserted in
26 any related securities, derivative, or other related actions pending against
27 *Defendants*, *Bancorp*, or *Bank*, including the *Tripp* and *Daniels* actions; provided,
28 however, that the *Parties* agree that the question of the extent, if any, to which the

1 amount paid in settlement of this matter may constitute an offset or credit against,
2 or a reduction in the gross amount of any claim asserted in any securities,
3 derivative, or other related actions pending against *Defendants, Bancorp, or Bank,*
4 is to be determined in such other action, and the *Parties* reserve all rights with
5 respect to the position they may take on that question in those actions. Provided,
6 however, that nothing herein shall permit *Named Plaintiffs* and *Class Members* to
7 recover more than 100% of their losses.

8 **3. CONSIDERATION FOR SETTLEMENT**

9 3.1. In consideration for the release and discharge provided for in
10 Paragraphs 2.2 and 2.4, on or before the tenth (10th) day following the later of
11 (1) preliminary approval of this *Settlement Stipulation* by the *Court* or (2) the entry
12 of a final order by the *Bankruptcy Court* providing that the use of insurance policy
13 proceeds to pay the *Settlement Amount* does not violate the automatic stay or that
14 the automatic stay, to the extent, if any, it applies, is lifted for purposes of
15 authorizing such payment and does not constitute a preference, voidable transfer,
16 fraudulent transfer, or similar transaction, the *Underwriter* shall deliver by wire
17 transfer \$7,000,000.00 (the "*Settlement Amount*") into an interest-bearing escrow
18 account established by *Class Counsel* (the "*Settlement Fund*").

19 3.2. *Defendants* agree to take reasonable and necessary steps to cause the
20 *Underwriter* to make the payment called for in Paragraph 3.1.

21 3.3. The *Settlement Fund*, together with all interest earned from the date of
22 deposit of the *Settlement Amount*, shall constitute the *Gross Settlement Fund*.

23 3.4. The *Gross Settlement Fund* shall be used to pay (i) all costs of *Notice,*
24 *Summary Notice,* and administration costs referred to in Paragraph 4.2; and (ii) the
25 attorneys' fee and expense award referred to in Paragraph 5.1, and the *Named*
26 *Plaintiff* case contribution awards, if any, referred to in Paragraph 5.1. The
27 balance of the *Gross Settlement Fund* (inclusive of interest earned) after the
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1 matters described in clauses (i) and (ii) of this Paragraph, and after the payment of
2 any *Taxes* shall be the *Net Settlement Fund*.

3 3.5. All *Taxes* shall be paid out of the *Gross Settlement Fund*, shall be
4 considered to be a cost of administration of the *Settlement*, and shall be timely paid
5 by the *Custodian* without prior order of the *Court*. The *Custodian* shall, to the
6 extent required by law, be obligated to withhold from any distributions to any
7 person entitled thereto pursuant to this *Stipulation* any funds necessary to pay
8 *Taxes* including the establishment of adequate reserves for *Taxes* as well as any
9 amount that may be required to be withheld under Treasury Reg. 1.468B-(1)(2) or
10 otherwise under applicable law in respect of such distributions. *Class Counsel*
11 shall provide to *Defendants' Counsel* copies of all tax returns filed with respect to
12 the *Gross Settlement Fund* promptly upon the filing thereof, and evidence of the
13 payment of *Taxes* as and when all such payments are made. Further, the *Gross*
14 *Settlement Fund* shall hold harmless and indemnify the *Defendants* and their
15 counsel for any liability for *Taxes* (including, without limitation, taxes payable by
16 reason of any such indemnification payments).

17 3.6. No later than seven (7) business days after the *Effective Date*, the *Net*
18 *Settlement Fund* shall be transferred by the *Custodian* pursuant to a *Plan of*
19 *Allocation* to be proposed by *Class Counsel* and approved by the *Court*. All funds
20 held by the *Custodian* shall be deemed to be in the custody of the *Court* held
21 exclusively for the purposes described in Paragraphs 3.4 and 3.5 of this *Settlement*
22 until such time as the funds shall be disbursed pursuant to this *Settlement* and/or
23 further order of the *Court*. The *Custodian* shall invest any funds in excess of
24 \$250,000 in U.S. Treasury securities, securities issued by United States agencies
25 or fully insured by the Federal Deposit Insurance Corporation (“FDIC”), deposits
26 and certificates of deposit fully insured by the FDIC and backed by the full faith
27 and credit of the U.S. Treasury, and/or short term debt or commercial paper fully
28 guaranteed by the FDIC under the Temporary Liquidity Guarantee Program and

1 backed by the full faith and credit of the U.S. Treasury, and shall collect and
2 reinvest in the *Net Settlement Fund* all earnings accrued thereon.

3 3.7. Any funds held by the *Custodian* in an amount of less than \$250,000
4 may be held in a bank account or Certificates of Deposit insured by the FDIC or
5 may be invested as funds in excess of \$250,000 are invested. The *Parties* agree
6 that the *Gross Settlement Fund* is intended to be a Qualified Settlement Fund
7 within the meaning of Treasury Regulation § 1.468B-1, and that the *Custodian* as
8 administrator of the *Gross Settlement Fund* within the meaning of Treasury
9 Regulation § 1.468B-2(k)(3), shall be responsible for filing tax returns and any
10 other tax reporting for or with respect to the *Gross Settlement Fund* and paying
11 from the *Gross Settlement Fund* any *Taxes* owed with respect to the *Gross*
12 *Settlement Fund*. The *Parties* agree that the *Gross Settlement Fund* shall be
13 treated as a Qualified Settlement Fund from the earliest date possible, and agree to
14 any relation-back election required to treat the *Gross Settlement Fund* as a
15 Qualified Settlement Fund from the earliest date possible. *Defendants* agree to
16 timely provide to the *Custodian* the statement described in Treasury Regulation
17 § 1.468B-3(e).

18 3.8. None of the *Defendants*, the *Released Parties*, the *Underwriter*, or
19 their respective counsel shall have any responsibility for or liability whatsoever
20 with respect to (i) any act, omission or determination of *Class Counsel* or the
21 *Custodian*, or any of their respective designees or agents, in connection with the
22 administration of the *Settlement* or otherwise; (ii) the management, investment, or
23 distribution of the *Gross Settlement Fund*; (iii) the formulation, design, or terms of
24 the *Plan of Allocation*; (iv) the determination, administration, calculation, or
25 payment of any claims asserted against the *Gross Settlement Fund*; (v) any losses
26 suffered by, or fluctuations in the value of, the *Gross Settlement Fund*; or (vi) the
27 payment or withholding of any *Taxes*, expenses, and/or costs incurred in
28

1 connection with the taxation of the *Gross Settlement Fund* or the filing of any
2 returns.

3 **4. ADMINISTRATION**

4 4.1. The *Custodian*, acting solely in its capacity as *Custodian*, shall be
5 subject to the jurisdiction of the *Court*.

6 4.2. Following entry of the *Order for Notice and Hearing*, the *Custodian*
7 may pay from the *Gross Settlement Fund*, without further approval from the *Court*
8 or *Defendants*, all reasonable costs and expenses up to the amount of \$75,000
9 associated with identifying and notifying the *Class Members* and effecting mailing
10 of the *Notice* and publication of the *Summary Notice* as ordered by the *Court*, and
11 the administration of the *Settlement*, including without limitation, the actual costs
12 of printing and mailing the *Notice* and electronic publication of the *Summary*
13 *Notice* on the Business Wire. Notwithstanding the foregoing, the *Custodian* shall
14 not make any payment pursuant to this paragraph that would cause the aggregate
15 payments made under this paragraph to exceed \$75,000 without first obtaining
16 further approval from the *Court*. In the event that the *Settlement* is terminated as
17 provided for herein, the amounts expended pursuant to the first two sentences of
18 this Paragraph shall not be returned to the *Underwriter*. Neither the *Defendants*
19 nor the *Underwriter* shall have any responsibility for the costs and expenses
20 described in this paragraph.

21 4.3. Following entry of the *Order for Notice and Hearing*, the *Custodian*
22 may pay any required *Taxes* from the *Gross Settlement Fund*, without further
23 approval from the *Court* or *Defendants*.

24 4.4. *Defendants* shall cooperate with *Class Counsel* and the *Settlement*
25 *Administrator* to accomplish the *Notice* in accordance with the *Order for Notice*
26 *and Hearing*, including by authorizing the provision to and/or release by the
27 *Settlement Administrator* of participant names, addresses, social security numbers,
28 and contact information in electronic spreadsheet format.

1 4.5. The *Custodian* may rely upon any notice, certificate, instrument,
2 request, paper, or other document reasonably believed by it to be genuine and to
3 have been made, sent, or signed by an authorized signatory in accordance with this
4 *Settlement*, and shall not be liable for (and will be indemnified from the *Gross*
5 *Settlement Fund* and held harmless from and against) any and all claims, actions,
6 damages, costs (including reasonable attorneys' fees) and expenses claimed
7 against or incurred by the *Custodian* for any action taken or omitted by it,
8 consistent with the terms hereof concerning the *Gross Settlement Amount*, in
9 connection with the performance by it of its duties pursuant to the provisions of
10 this *Settlement* or order of the courts, except for its gross negligence or willful
11 misconduct. If the *Custodian* is uncertain as to its duties hereunder, the *Custodian*
12 may request that *Named Plaintiffs* (and, prior to the *Effective Date*, *Defendants*)
13 sign a document clarifying the action or non-action to be taken by the *Custodian*.
14 In the event the *Settlement* is terminated, as provided for herein, the *Gross*
15 *Settlement Fund* shall be returned to the *Underwriter*, except for indemnified
16 amounts and expenses incurred by the *Custodian* in connection with this
17 paragraph.

18 4.6. *Plan of Allocation Implementation Expenses* will be paid by (or
19 reimbursed from) the *Gross Settlement Fund* to the extent of the first \$100,000
20 thereof, with any excess above such amount paid promptly by the *Gross*
21 *Settlement Fund* if such payment is approved by the *Court*. Neither *Defendants*
22 nor the *Underwriter* shall have any responsibility for the *Plan of Allocation*
23 *Implementation Expenses* other than the *Underwriter's* contribution to the *Gross*
24 *Settlement Fund*.

25 **5. ATTORNEYS' FEES AND EXPENSES**

26 5.1. *Class Counsel* will apply to the *Court* for an award of attorneys' fees
27 not to exceed 30% of the *Gross Settlement Fund*, and reimbursement of expenses
28 payable from the *Gross Settlement Fund*, and shall further provide to the *Court*, as

1 part of the motion for approval of the *Settlement*, all necessary information
2 required by the *Court* concerning the total award of attorneys' fees and
3 reimbursement of expenses to be payable from the *Gross Settlement Fund*. Such
4 application shall be made in accordance with such schedule as the *Court* may
5 establish, and the proposed *Order for Notice and Hearing* shall provide that such
6 application shall be made no later than seven days prior to the *Fairness Hearing*.
7 *Class Counsel* may also apply to the *Court* for case contribution awards to *Named*
8 *Plaintiffs* in an amount not to exceed \$5,000 per *Named Plaintiff*. *Defendants* will
9 take no position with respect to any such applications for attorneys' fees or
10 expenses, or *Named Plaintiffs'* case contributions awards. Such amounts are
11 awarded by the *Court* from the *Gross Settlement Fund* and shall be payable by the
12 *Custodian* within fourteen (14) calendar days of the *Effective Date*. *Defendants*
13 shall have no obligations whatsoever with respect to any attorneys' fees or
14 expenses incurred by *Plaintiffs' Counsel*.

15 **6. TERMS OF ORDER FOR NOTICE AND HEARING**

16 6.1. Promptly after this *Stipulation* has been fully executed, *Class Counsel*
17 shall apply to the *Court* for entry of the *Order for Notice and Hearing*,
18 substantially in the form attached hereto as Exhibit A, which Order shall, among
19 other provisions, certify the *Class* as a non-opt-out class for settlement purposes
20 only.

21 6.2. The mailing or publication of the *Notice* and *Summary Notice* shall not
22 occur until the *Order for Notice and Hearing* has been entered by the *Court*.

23 **7. TERMS OF ORDER AND FINAL JUDGMENT**

24 7.1. If the *Settlement* contemplated by this *Stipulation* is approved by the
25 *Court*, *Class Counsel* and *Defendants' Counsel* shall request that a *Judgment* be
26 entered substantially in the form attached hereto as Exhibit B.

1 **8. EFFECTIVE DATE**

2 8.1. The *Effective Date* of the *Settlement* shall be the date when all of the
3 following conditions have been met:

4 8.1.1. the *Gross Settlement Amount* has been deposited into the
5 *Settlement Fund* in accordance with the provisions of Paragraph 3.1;

6 8.1.2. *Class Notice* has been sent to *Class Members* in accordance with
7 the provisions of Paragraph 4.2;

8 8.1.3. the *Court* has entered the *Order and Final Judgment* in all
9 material respects in the form set forth in Exhibit B, following the *Final Approval*
10 *and Fairness Hearing*; and

11 8.1.4. the *Final Order and Judgment* has become final and, in the
12 event that the *Court* modifies the *Final Order and Judgment*, neither the *Named*
13 *Plaintiffs* or *Defendants* have elected to terminate this *Settlement* pursuant to the
14 provisions in Paragraph 10.2.

15 **9. PROCEDURES AND TIMING FOR APPROVAL OF SETTLEMENT**

16 9.1. Notice to Class Members:

17 9.1.1. The mailing or publication of the *Class Notice* shall not occur
18 until the *Order for Notice and Hearing* has been entered by the *Court*.

19 9.1.2. Within thirty (30) days of the date the *Court* enters the *Order for*
20 *Notice and Hearing*, *Class Counsel* shall retain the *Settlement Administrator* to
21 facilitate *Class Notice* as provided herein and in the *Order for Notice and Hearing*.

22 9.1.3. By no later than sixty (60) days before the *Final Approval and*
23 *Fairness Hearing*, the *Settlement Administrator* shall cause the *Class Notice*,
24 together with such non-substantive modifications thereto as may be agreed upon by
25 the *Parties* and presented to the *Court* to be mailed, by first-class mail, postage
26 prepaid, to the last known address of each *Class Member* who can be identified by
27 reasonable effort.
28

1 9.1.4. By no later than sixty (60) days before the *Final Approval and*
2 *Fairness Hearing*, the *Settlement Administrator* shall cause the *Summary Notice*,
3 together with such non-substantive modifications thereto as may be agreed upon by
4 the *Parties*, to be published electronically on the Business Wire.

5 9.1.5. By no later than sixty (60) days before the *Final Approval and*
6 *Fairness Hearing*, *Class Counsel* shall cause the *Class Notice* to be published on
7 each website identified within the *Class Notice*.

8 9.1.6. The last day for *Class Members* to file objections to the
9 *Settlement* shall be no more than fifteen (15) days before the *Final Approval and*
10 *Fairness Hearing*.

11 9.1.7. No later than seven (7) days before the *Final Approval and*
12 *Fairness Hearing*, the *Settlement Administrator* and *Class Counsel* shall file with
13 the *Court* (a) a motion for entry of the *Final Order and Judgment* and approval of
14 the *Plan of Allocation*; (b) proofs of timely compliance with the foregoing mailing
15 and publication requirements; (c) the application for award of attorneys' fees and
16 costs referenced in Paragraph 5.1.

17 **9.2. Final Approval and Fairness Hearing:** The *Court* will, in its
18 discretion, conduct a hearing at which it will consider whether the *Settlement* is
19 fair, reasonable, and adequate (the "*Final Approval and Fairness Hearing*"). The
20 proposed Order for Notice and Hearing shall provide that the Final Approval and
21 Fairness hearing will be scheduled no earlier than 100 days after the filing of the
22 motion for preliminary approval. At or after the *Final Approval and Fairness*
23 *Hearing*, the *Court* will determine: (i) whether to enter judgment approving the
24 *Settlement* and dismissing the *Action* (which judgment is referred to herein as the
25 "*Final Order and Judgment*"); (ii) whether the distribution of the *Settlement*
26 *Amount* as provided in the proposed *Plan of Allocation* should be approved; and
27 (iii) what legal fees, case contribution awards, and costs and expenses should be
28 awarded to *Class Counsel* and to *Named Plaintiffs* as contemplated by Paragraph

1 5.1 of this *Settlement*. The *Parties* agree to support entry of the *Final Order and*
2 *Judgment* as contemplated by clause (i) of this Paragraph; however, pursuant to
3 the provisions in Paragraph 5.1, *Defendants* agree not to take any position, and are
4 not required to take any position, with respect to the matters described in clauses
5 (ii) or (iii) of this Paragraph (provided that nothing contained herein shall prohibit
6 the *Independent Fiduciary* from taking a position with respect to such matters),
7 nor will any of *Defendants* enter into any agreement that restricts the application
8 or disposition of the *Settlement Amount*. The *Parties* covenant and agree that they
9 will reasonably cooperate with one another in obtaining the *Final Order and*
10 *Judgment* as contemplated hereby at the *Fairness Hearing* and will not do
11 anything inconsistent with obtaining the *Final Order and Judgment*.

12 **10. TERMINATION OF SETTLEMENT**

13 10.1. *Defendants'* obligation to respond to the *Complaint* is suspended upon
14 filing of this *Settlement Stipulation* with the *Court*. This *Settlement* shall be
15 voidable pursuant to the procedures set forth in paragraph 10.2 and under the
16 circumstances listed in paragraph 10.2. If this *Settlement* is terminated or not
17 consummated for any reason, this *Settlement* shall be deemed null and void and
18 shall have no further force and effect, and neither this *Settlement* nor the
19 negotiations leading up to it shall be used or referred to by any *Party* in this *Action*
20 or in any other action or proceeding for any purpose. The *Parties* shall then be
21 restored to their respective positions in the *Action* as of August 25, 2009, except
22 that *Defendants* shall have thirty days from the date of termination of the
23 *Settlement* to respond to the operative complaint. In such event, any judgment or
24 order entered by the *Court* in accordance with the terms of this *Settlement* shall be
25 treated as vacated *nunc pro tunc*. Nothing in this Paragraph gives any *Party* any
26 right to unilaterally terminate or not to consummate the *Settlement*.

27 10.2. *Named Plaintiffs* and *Defendants* shall each have the right to terminate
28 this *Settlement* as provided in Paragraph 10.3.2 or by providing written notice of

1 their election to do so to one another within thirty (30) days of any of the
2 following: (a) the *Court* declining to enter the *Order for Notice and Hearing* in
3 any material respect; (b) the *Court* refusing to approve this *Settlement* as set forth
4 in this *Stipulation*; (c) the *Court* declining to enter the *Order and Final Judgment*;
5 or (d) the date upon which the *Judgment* is modified or reversed in any material
6 respect by any level of appellate court.

7 **10.3. Independent Fiduciary:**

8 10.3.1. Within thirty (30) days of the date the *Court* grants
9 preliminary approval to the *Settlement*, *Defendants* shall either cause an
10 *Independent Fiduciary* to be appointed or shall notify *Class Counsel* in writing that
11 *Defendants* have waived their right to terminate the *Settlement* pursuant to this
12 paragraph 10.3.

13 10.3.2. If, as of the date that is thirty (30) days prior to the
14 *Fairness Hearing*, the *Independent Fiduciary* has not approved the *Settlement*,
15 authorized settlement of the *Action* consistent with the terms of this *Settlement*
16 *Stipulation*, and approved the release of the *Released Claims* in its capacity as
17 fiduciary of the Plan as contemplated by Department of Labor Prohibited
18 Transaction Class Exemption 2003-39; *Defendants* each shall have the right to
19 terminate this *Settlement* by providing written notice of their election to do so
20 within twenty (20) days of the *Fairness Hearing*.

21 10.3.3. The *Parties* shall promptly provide to the *Independent*
22 *Fiduciary* such non-privileged information, documents, and other materials (and
23 shall make available for interview by the *Independent Fiduciary* such persons) as
24 the *Independent Fiduciary* reasonably requests. All fees and expenses (including
25 the cost of counsel and other advisors) of the *Independent Fiduciary* shall be paid
26 by the *Underwriter*, and *Defendants* shall cause the *Underwriter* to make such
27 payments if *Defendants* have not waived their right to terminate the *Settlement*
28 pursuant to this paragraph 10.3.

1 **11. MISCELLANEOUS PROVISIONS**

2 11.1. **No Admission of Liability:** Each *Party* understands and agrees that
3 the agreement embodied in this *Settlement* is a compromise and settlement of
4 disputed claims, and that this *Settlement* is not and shall not be construed as an
5 admission or evidence of liability by any of the *Defendants* regarding any of the
6 claims made in the *Action* or otherwise.

7 11.2. **Cooperation:** The *Parties* agree to cooperate fully with one another
8 in seeking *Court* approval of this *Settlement* and to use their best efforts to effect
9 its consummation. Such efforts include, without limitation, the execution of any
10 documents reasonably necessary to implement the provisions of this *Settlement*,
11 and cooperation seeking appropriate orders from the *Court*. Neither *Named*
12 *Plaintiffs* nor *Defendants* shall evade their good faith obligation to seek approval
13 of this *Settlement* by virtue of any rulings, orders, governmental reports, or any
14 other developments in any action that might occur after the *Parties* execute this
15 *Settlement* that might be deemed to alter the relative strength of the *Parties*'
16 positions with respect to any claim or defense in this *Action*.

17 11.3. **Amendment of Settlement:** This *Settlement* may be amended or
18 modified only by a written instrument signed by the *Parties* or their respective
19 successors-in-interest or their respective counsel and approved by the *Court*.

20 11.4. **Waiver:** No waiver of any breach of any term or provision of this
21 *Settlement* shall be construed to be, or shall be, a waiver of any other breach of this
22 *Settlement*. No waiver shall be binding unless in writing and signed by the *Party*
23 waiving the breach.

24 11.5. **Successors and Assigns:** This *Settlement* shall be binding upon, and
25 inure to the benefit of, the successors and assigns of the *Parties*.

26 11.6. **Counterparts:** This *Settlement* may be executed in one or more
27 counterparts, all and each of which shall be deemed one and the same instrument.
28

1 Signatures transmitted via facsimile or email shall have the same force and effect
2 as the originals.

3 11.7. **Construction:** Each *Party* represents that he, she, or it has cooperated
4 in the drafting and preparation of this *Settlement*. The *Parties* additionally agree
5 that in any construction of this *Settlement*, this *Settlement* shall not be construed
6 against any *Party* on the basis that the *Party* might have had a greater hand in
7 drafting this *Settlement*. The *Parties* also agree that the terms of this *Settlement*
8 shall be interpreted according to their fair meaning. The headings of sections and
9 paragraphs herein are for convenience of reference only and shall not affect the
10 meaning or interpretation of this *Settlement*.

11 11.8. **Entire Agreement:** This *Settlement* and its accompanying exhibits set
12 forth the entire agreement and understanding of the *Parties* concerning the subject
13 matter hereof, and supersede and replace all prior negotiations, proposed
14 agreements, and any other agreements, written or verbal. Each of the *Parties* to
15 this *Settlement* acknowledges that no other *Party* to this *Settlement*, nor any
16 attorney of any such *Party*, has made any promise, statement, representation, or
17 warranty whatsoever, express or implied, not contained in this *Settlement*, to
18 induce either *Party* to execute this *Settlement*. The *Parties* further acknowledge
19 that they are not executing this *Settlement* in reliance on any promise,
20 representation, or warranty by any *Party* not contained in this *Settlement*.

21 11.9. **Governing Law:** To the extent not governed by federal law, the
22 rights and obligations of the *Parties* and the *Class Members* shall be construed and
23 enforced in accordance with, and governed by, the laws of the State of California,
24 without giving effect to choice of law principles.

25 11.10. **Advice of Counsel:** In entering into this *Settlement*, the *Parties*
26 represent that they have relied upon the advice of their attorneys, who are the
27 attorneys of their own choice, that the terms of this *Settlement* have been read
28

1 completely and explained to them by their attorneys, and that those terms are fully
2 understood and voluntarily accepted by them.

3 11.11. **Severability:** In the event any of the provisions of this
4 *Settlement* are deemed to be invalid and unenforceable, except for any of the
5 releases contained in Paragraphs 2.1 through 2.4, such provision shall be severed
6 from the remainder of this *Settlement* and the invalidity of any severed provision
7 shall not affect any other provision of this *Settlement* that can be given effect
8 unless either the *Named Plaintiffs* or *Defendants* invoke their right to terminate the
9 *Settlement* pursuant to Paragraph 10.2.

10 11.12. **Authority:** Each person, including counsel, executing this
11 *Settlement* on behalf of any *Party* hereby warrants and represents that he or she
12 has the full authority to do so. Each *Party* further warrants and represents that he,
13 she or it has not assigned or transferred to any person not a *Party* to this *Settlement*
14 any *Released Claim*, in whole or in part, and that each *Party* shall hold harmless
15 the other *Parties* from and against any claim based on or in connection with any
16 such assignment or transfer made, or claimed to have been made, by him, her or it.

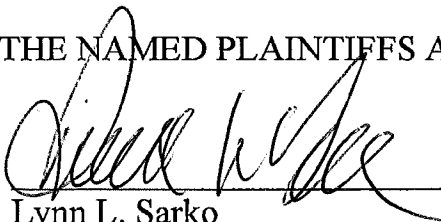
17 11.13. **Continuing Jurisdiction:** The administration, effectuation, and
18 enforcement of the *Stipulation* as provided for herein will be under the authority of
19 the *Court*. The *Court* will retain continuing and exclusive jurisdiction over the
20 *Parties* and *Class Members*, and over the administration, effectuation, and
21 enforcement of the terms of the *Stipulation* and the benefits to *Class Members*
22 hereunder, and for such other matters that may properly come before the *Court*,
23 including any dispute or controversy arising with respect to the interpretation,
24 enforcement, or implementation of the *Stipulation* or any of its terms. Any such
25 dispute or controversy must be brought to the attention of the *Court* by written
26 motion. The *Parties* and each of the *Class Members* consent to the jurisdiction of
27 the *Court* with respect to any proceedings brought to enforce or interpret this
28

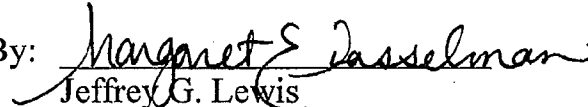
1 *Settlement* and hereby waive all objections to venue and personal and subject
2 matter jurisdiction in that regard.

3 11.14. **Calculation of Time Periods:** The computation of any date or
4 period of time prescribed by the *Stipulation* shall be governed by Rule 6(a) of the
5 Federal Rules of Civil Procedure.

6
7 IN WITNESS WHEREOF, the *Parties* have executed this *Stipulation* on the
8 dates set forth below.

9 FOR THE NAMED PLAINTIFFS AND CLASS MEMBERS:

10
11 By:  Dated: 5/28/10
12 Lynn L. Sarko
13 Derek W. Loeser
14 Erin M. Riley
15 Sarah H. Kimberly
16 KELLER ROHRBACK L.L.P.
17 1201 Third Avenue, Suite 3200
Seattle, WA 98101
Telephone: (206) 623-1900
Facsimile: (206) 623-3384

18 By:  Dated: 5-28-10
19 Jeffrey G. Lewis
20 Margaret E. Hasselman
21 James P. Keenley
22 LEWIS, FEINBERG, LEE,
23 RENAHER & JACKSON, P.C.
24 1330 Broadway, Suite 1800
Oakland, CA 94612
Telephone: (510) 839-6824
Facsimile: (510) 839-7839

25
26 Michael D. Braun
27 BRAUN LAW GROUP, P.C.
28 10680 West Pico Boulevard, Suite 280
Los Angeles, California 90064
Telephone: (310) 836-6000

1 Facsimile: (310) 836-6010

2
3 *Class Counsel and Attorneys for Named Plaintiffs*

4
5
6
7
8 FOR THE DEFENDANTS:

9
10 By: *Kathleen M. McDowell* Dated: *28-May-2010*
11 John W. Spiegel
12 Kathleen M. McDowell
13 MUNGER, TOLLES & OLSON LLP
14 355 South Grande Ave., 35th Floor
15 Los Angeles, CA 90071-1560
16 Telephone: (213) 683-9100
17 Facsimile: (213) 687-3702

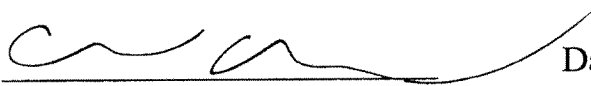
18 *Counsel for Defendants Louis E. Caldera, Hugh M. Grant, and John F. Seymour*

19 By: _____ Dated: _____
20 Tammy Albarran
21 Kelly P. Finley
22 COVINGTON & BURLING LLP
23 One Front Street, 35th Floor
24 San Francisco, CA 94111
25 Telephone: (415) 591-6000
26 Facsimile: (415) 591-6091
27
28

1
2 FOR THE DEFENDANTS:

3
4 By: _____ Dated: _____
5 John W. Spiegel
6 Kathleen M. McDowell
7 MUNGER, TOLLES & OLSON LLP
8 355 South Grande Ave., 35th Floor
9 Los Angeles, CA 90071-1560
10 Telephone: (213) 683-9100
11 Facsimile: (213) 687-3702

12 *Counsel for Defendants Louis E. Caldera, Hugh M. Grant, and John F. Seymour*

13 By:  Dated: June 1, 2010
14 Jeffrey G. Huvelle
15 Christian J. Pistilli
16 COVINGTON & BURLING LLP
17 1201 Pennsylvania Ave., NW
18 Washington, DC 2004-2401
19 Telephone: (202) 662-6000
20 Facsimile: (202) 662-6291

21 Tammy Albarran
22 Kelly P. Finley
23 COVINGTON & BURLING LLP
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26 Telephone: (415) 591-6000
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28 *Counsel for Defendant Michael W. Perry*

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By: Gregory S. Bruch /sm
Gregory S. Bruch
Julie A. Smith
WILLKIE FARR & GALLAGHER LLP
1875 K Street, NW
Washington, DC 20006
Telephone (202) 303-1000

Dated: June 1, 2010

Counsel for Defendant A. Scott Keys

By: _____
Robert L. Corbin
Michael W. Fitzgerald
Joel M. Athey
CORBIN, FITZGERALD & ATHEY LLP
601 West Fifth Street, Suite 1150
Los Angeles, CA 90071-2024
Telephone (213) 612-0001
Facsimile (213) 612-0061

Dated: _____

Counsel for Defendants Jim Barbour, Kevin Cochrane, Ken Horner, Rayman Mathoda, and Jennifer Pikoos

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By: _____ Dated: _____
Gregory S. Bruch
Julie A. Smith
WILLKIE FARR & GALLAGHER LLP
1875 K Street, NW
Washington, DC 20006
Telephone (202) 303-1000

Counsel for Defendant A. Scott Keys

By: Joel M. Athey Dated: 5/26/10
Robert L. Corbin
Michael W. Fitzgerald
Joel M. Athey
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601 West Fifth Street, Suite 1150
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Telephone (213) 612-0001
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Counsel for Defendants Jim Barbour, Kevin Cochran, Ken Horner, Rayman Mathoda, and Jennifer Pikoos

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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

**IN RE INDYMAC ERISA
LITIGATION**

Master File No.: 08-04579 DDP(VBKx)

**[PROPOSED] FINDINGS AND
ORDER PRELIMINARILY
APPROVING PROPOSED CLASS
ACTION SETTLEMENT,
PRELIMINARILY CERTIFYING
SETTLEMENT CLASS, APPROVING
NOTICE PLAN, AND SETTING TIME
FOR FAIRNESS HEARING**

JUDGE: DEAN D. PREGERSON

1 This matter comes to the Court for hearing on Plaintiffs' Motion for
2 Preliminary Approval of Proposed Class Action Settlement, Preliminary
3 Certification of Settlement Class, Approval of Notice Plan, and Time for Fairness
4 Hearing. Presented to the Court for preliminary approval is a settlement of this
5 litigation as against all *Defendants*.¹ The terms of the *Settlement* are set out in the
6 Stipulation and Agreement of Settlement of Class Action – ERISA (“Settlement
7 Agreement”) executed by counsel for the *Parties* on June 1, 2010. The Court,
8 having considered the Settlement Agreement, motion and supporting materials,
9 hereby finds and orders as follows:

10 1. Jurisdiction: The Court has jurisdiction over the subject matter of this
11 *Action* and over the *Parties*.

12 2. Class Certification: The Court preliminarily certifies the *Class* for
13 settlement purposes only. The *Class* means, for purposes of this *Settlement* only, a
14 non-opt-out class of all persons other than *Defendants* and *Defendants*' spouses,
15 parents, or children who were participants in or beneficiaries of the IndyMac Bank,
16 F.S.B. 401(k) Plan at any time between July 1, 2006, and the date of execution of
17 the *Settlement* and whose accounts included investments in the IndyMac Stock
18 Fund.

19 3. The Court preliminarily appoints *Named Plaintiffs* Sam Zhong Wang
20 and Jeffrey Washington as the *Class* Representatives.

21 4. The Court preliminarily appoints Co-Lead Counsel, Lewis, Feinberg,
22 Lee, Renaker & Jackson, P.C. and Keller Rohrback, L.L.P., and Liaison Counsel,
23 Braun Law Group, P.C., as Class Counsel to represent the proposed Class.

24 5. Preliminary Findings Concerning Proposed Settlement. The Court
25 preliminarily finds that the proposed *Settlement* should be approved as: (i) the

26
27 ¹ Terms capitalized and italicized in this order shall have the meaning ascribed to
28 them in the Settlement Agreement.

1 result of serious, extensive, arm's-length, and non-collusive negotiations; (ii) fair,
2 reasonable, and adequate; (iii) having no obvious deficiencies; (iv) not improperly
3 granting preferential treatment to the *Named Plaintiffs* or segments of the *Class*;
4 (v) falling within the range of possible approval; and (vi) warranting notice of the
5 *Settlement* to the *Class* of a formal fairness hearing, at which evidence may be
6 presented in support of and in opposition to the proposed *Settlement*.

7 6. Fairness Hearing. A hearing is scheduled for _____ (the "Fairness
8 Hearing") to determine, among other things:

9 • Whether the *Settlement* should be approved as fair, reasonable, and
10 adequate;

11 • Whether this *Action* should be dismissed with prejudice pursuant to
12 the terms of the *Settlement*;

13 • Whether the *Notice* and *Summary Notice* and the means of
14 dissemination provided for by the Settlement Agreement: (i) constituted the best
15 practicable notice; (ii) constituted notice that was reasonably calculated, under the
16 circumstances, to apprise members of the *Class* of the pendency of the litigation,
17 their right to object to the *Settlement*, and their right to appear at the Fairness
18 Hearing; (iii) was reasonable and constituted due, adequate, and sufficient notice to
19 all *Persons* entitled to notice; and (iv) met all applicable requirements of the
20 Federal Rules of Civil Procedure, and any other applicable law;

21 • Whether *Class Counsel* adequately represented the *Class* for purposes
22 of entering into and implementing the Settlement Agreement;

23 • Whether the *Plan of Allocation* should be approved;

24 • Whether the application for attorneys' fees and expenses filed by
25 *Class Counsel* should be approved; and

26 • Whether the application for compensation for the *Named Plaintiffs*
27 should be approved.

28

1 7. Notice. A proposed form of *Notice* is attached hereto as Exhibit 1.
2 With respect to such form of *Notice*, the Court finds that such form fairly and
3 adequately: (i) describes the terms and effect of the Settlement Agreement and of
4 the *Settlement*; (ii) notifies the *Class* concerning the proposed *Plan of Allocation*;
5 (iii) notifies the *Class* that *Class Counsel* will seek a case contribution award from
6 the *Settlement Fund* for the *Named Plaintiffs* in an amount not to exceed \$5,000 for
7 each *Named Plaintiff*, for attorneys' fees not to exceed 30% of the *Settlement*
8 *Fund*, and reimbursement of out-of-pocket expenses; (iv) gives notice to the *Class*
9 of the time and place of the Fairness Hearing; and (v) describes how the recipients
10 of the *Notice* may object to any of the relief requested. The Court directs that
11 *Class Counsel* shall:

12 • By no later than _____, 2010, retain the *Settlement Administrator* to
13 facilitate notice of the *Settlement* to the *Class* as provided for herein and in the
14 Settlement Agreement.

15 • By no later than _____, 2010, cause the *Notice*, with blanks completed
16 and such non-substantive modifications thereto as may be agreed upon by the
17 *Parties*, to be sent to each *Person* within the *Class* who can be identified by
18 reasonable effort. Such *Notice* shall be sent by first-class mail, postage prepaid, to
19 the *Person's* last known address. The *Defendants* shall cooperate with Class
20 Counsel to accomplish Notice provided for in this paragraph, including by
21 providing *Class Counsel*, in accordance with Section 9 of the Settlement
22 Agreement, with the names and last known addresses of the members of the *Class*
23 to the extent such information is within *Defendants'* custody or control.

24 • By no later than _____, 2010, cause the Settlement Agreement with
25 all of its exhibits and the *Notice* to be posted on a website Class counsel establishes
26 for this purpose.

1 • By no later than _____, 2010, cause a *Summary Notice* in the form
2 attached hereto as Exhibit 2, with blanks completed and such non-substantive
3 modifications thereto as may be agreed upon by the *Parties*, to be electronically
4 published on at least one occasion for nationwide distribution on Business Wire
5 and/or such other publications as the Court may authorize.

6 • By no later than _____, 2010, file with the Court a proof of timely
7 compliance with the foregoing mailing and publication requirements.

8 8. Objections to Settlement. Any member of the *Class* who wishes to
9 object to the fairness, reasonableness, or adequacy of the *Settlement*, to the *Plan of*
10 *Allocation*, to any term of the Settlement Agreement, to the proposed award of
11 attorneys' fees and expenses, or to any request for compensation for the *Named*
12 *Plaintiffs*, may file an objection. An objector must send to the Settlement
13 Administrator a letter or other written filing with a statement of his, her or its
14 objection(s), specifying the reason(s), if any, for each such objection made,
15 including any legal support and/or evidence that such objector wishes to bring to
16 the Court's attention or introduce in support of such objection, as well as the
17 objector's full name, address, telephone number, and signature, and the name,
18 address, and telephone number of any counsel representing the objector. The
19 objector or his, her or its counsel (if any) must effect service of the objection on the
20 *Settlement Administrator* at the address provided in the *Notice* so that it is received
21 by no later than _____, 2010. Any member of the *Class* or other *Person* who does
22 not timely serve a written objection complying with the terms of this paragraph
23 shall be deemed to have waived, and shall be foreclosed from raising, any
24 objection to the *Settlement*, and any untimely objection shall be barred.

25 9. Appearance at Fairness Hearing. Any objector who serves a timely,
26 written objection in accordance with the instructions above and herein, may also
27 appear at the Fairness Hearing either in person or through counsel retained at the
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1 objector's expense. Objectors or their attorneys intending to appear at the Fairness
2 Hearing must effect service of a notice of intention to appear setting forth, among
3 other things, the name, address, and telephone number of the objector (and, if
4 applicable, the name, address, and telephone number of the objector's attorney) on
5 the *Settlement Administrator* (at the addresses set out in the Notice) no later than
6 _____, 2010. Any objector who does not timely serve a notice of intention to
7 appear in accordance with this paragraph shall not be permitted to appear at the
8 Fairness Hearing, except for good cause shown.

9 10. Service of Papers. The *Settlement Administrator* shall promptly
10 furnish *Defendants' Counsel* and *Class Counsel* with copies of any and all
11 objections that come into its possession, and *Defendants' Counsel* and *Class*
12 *Counsel* shall promptly furnish each other with copies of any and all objections
13 that come into their possession.

14 11. Notice Expenses. The expenses of printing and mailing all notices
15 required hereby to the extent of the first \$75,000 shall be paid from the *Settlement*
16 *Fund* as provided in Section 4.2 of the Settlement Agreement.

17 12. Motion for Final Approval of Settlement, Plan of Allocation, and Fee
18 Petition. No later than seven _____, 2010, the *Settlement Administrator* and *Class*
19 *Counsel* shall file with the Court (a) a motion for entry of the *Final Order and*
20 *Judgment* and approval of the *Plan of Allocation*; (b) proofs of timely compliance
21 with the foregoing mailing and publication requirements; (c) the application for
22 award of attorneys' fees and costs referenced in Paragraph 5.1 of the Settlement
23 Agreement.

24 13. Termination of Settlement. This Order shall become null and void,
25 and shall be without prejudice to the rights of the *Parties*, all of whom shall be
26 restored to their respective positions existing immediately before this Court entered
27 this Order, if the *Settlement* is terminated in accordance with the Settlement
28

1 Agreement. In such event, Section 10 of the Settlement Agreement shall govern
2 the rights of the *Parties*.

3 14. Use of Order. This Order shall not be construed or used as an
4 admission, concession, or declaration by or against *Defendants* of any fault,
5 wrongdoing, breach, or liability or as a waiver by any *Party* of any arguments,
6 defenses, or claims he, she, or it may have, including, but not limited to, any
7 objections by *Defendants* to class certification in the event that the Settlement
8 Agreement is terminated. In the event this Order becomes of no force or effect, it
9 shall not be construed or used as an admission, concession, or declaration by or
10 against *Defendants, Named Plaintiffs, or the Class*.

11 15. Continuance of Hearing. The Court reserves the right to continue the
12 Fairness Hearing without further written notice.

13 16. Response to Consolidated Complaint. *Defendants'* obligation to
14 respond to the *Complaint* is suspended as provided in Section 10 of the Settlement
15 Agreement.

16 IT IS SO ORDERED.

17 Date:

18 _____
19 Dean D. Pregerson
20 United States District Court Judge
21
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

**IN RE INDYMAC ERISA
LITIGATION**

Master File No.: 08-04579 DDP (VBKx)
CLASS ACTION

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT, SETTLEMENT FAIRNESS
HEARING, AND MOTION FOR ATTORNEYS' FEES AND REIMBURSEMENT OF
EXPENSES AND NAMED PLAINTIFFS' COMPENSATION**

You have received this notice because records show that you, or someone who designated you as their retirement plan beneficiary, participated in the IndyMac Bank, F.S.B. 401(k) Plan (the "Plan") and had a portion of your account invested in the fund containing IndyMac Bancorp common stock anytime between July 1, 2006 and June 1, 2010 ("Class Period"). As a result of class action litigation over the propriety of this investment, you may be eligible to receive money in the proposed settlement (the "Settlement").

Please read this notice carefully.

This Notice has been ordered by the Court overseeing the case.

This is not a solicitation or advertisement from an attorney.

You have not been sued.

- This notice advises you of the settlement of a consolidated class action lawsuit brought by Plaintiffs Sam Zhong Wang and Jeffrey Washington on behalf of themselves, the Plan, and as representatives of a class described herein (the "Class") against the Defendants (persons named personally as defendants in the lawsuit).
- This class action lawsuit involves claims that the fiduciaries responsible for overseeing the Plan breached their fiduciary duties to the Plan and its participants by allowing the Plan and its participants to maintain and continue investments in IndyMac Bancorp common stock after July 1, 2006. The fiduciaries deny that they breached any fiduciary duties.
- The United States District Court for the Central District of California (the "Court") has preliminarily approved the Settlement and has scheduled a hearing to evaluate the fairness and adequacy of the Settlement and consider the Plaintiffs' motion for final approval of the Settlement and for class certification, motion for approval of a proposed plan of allocation, and motion for an award of attorneys' fees and costs and for case contributions awards to the Plaintiffs. That hearing, before the Hon. Dean D. Pregerson, has been scheduled for _____, 2010, at ____m. in Courtroom 3, Second Floor, of the United States District Court for the Central District of California, 312 N. Spring St., Los Angeles, California.
- If the Settlement is approved and you are a member of the Class, you will receive money in exchange for releasing the Defendants from legal claims that were or could have been brought in the lawsuit.
- The terms of the Settlement are contained in a Stipulation and Agreement of Settlement – ERISA Action (the "Settlement Agreement"), a copy of which is available at www._____.com or by contacting Plaintiffs' Counsel as described below. Capitalized terms used in this notice and not defined herein have the meanings assigned to them in the Settlement Agreement. The Settlement is summarized below.

- **Your legal rights will be affected whether or not you take any action. Read this notice carefully.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

No Action is Necessary to Receive Payment

If you do nothing in response to this notice, and the proposed Settlement is approved by the Court, you will receive a monetary payment and release certain legal claims.

Object (no later than _____)

If you wish to object to any part of the Settlement, you can write to the Court and counsel and explain why.

Appear at a Hearing on _____

If you have submitted a written objection to the Court and Plaintiffs' Counsel, as explained below, you can ask to speak in Court about the fairness of the Settlement.

These rights and options – ***and the deadlines to exercise them*** – are explained in this notice.

The Court in charge of this case has given preliminary approval to the Settlement but will be conducting a hearing on _____, 2010, to evaluate whether to give final approval to the Settlement. Your benefits under the Settlement will be provided if the Court gives its final approval to the Settlement and after any appeals are resolved. Thank you for your patience.

WHY DID I RECEIVE THIS NOTICE?

You have received this notice because you or someone in your family are or may have been a participant in, beneficiary of, or alternate payee of the Plan during the Class Period.

The Court caused this notice to be sent to you because you have a right to know about the Settlement and all of the options available to you regarding the Settlement before the Court decides whether to approve the Settlement. This notice describes the litigation, the Settlement, your legal rights, what benefits are available, and who is eligible for them.

The Court in charge of this case is the United States District Court for the Central District of California. The people who brought this suit are called the "Plaintiffs," and the people they sued are called the "Defendants." The Plaintiffs in this case are Sam Zhong Wang and Jeffrey Washington. The Defendants are Jim Barbour, Louis E. Caldera, Kevin Cochrane, Hugh M. Grant, Ken Horner, A. Scott Keys, Rayman Mathoda, Michael W. Perry, Jennifer Pikoos, and John F. Seymour.

The legal action that is the subject of this notice and the Settlement is titled *In re IndyMac ERISA Litigation*, Case No. 2:08-cv-04579-DDP-(VBK).

WHAT IS THIS CASE ABOUT?

This case stems from the mortgage crisis of 2007 and 2008 and the resulting failure of IndyMac Bank, F.S.B. (the “Bank”). The Bank was taken over by federal government regulators on July 11, 2008, and shortly thereafter the Bank’s holding company, IndyMac Bancorp, Inc. (“Bancorp”), filed for bankruptcy protection in the United States Bankruptcy Court for the Central District of California. As a result of the Bank’s failure, Bancorp’s publicly traded stock became virtually worthless.

The Plaintiffs who brought this case and the class of people they are seeking to represent are former participants in the Plan who had a portion of their Plan accounts invested in IndyMac Bancorp, Inc. common stock (“IndyMac stock”). Between July 14, 2008, and August 13, 2008, eight lawsuits were filed to recover damages on behalf of participants in the Plan for the losses they suffered as a result of the Plan’s investments in IndyMac stock. On October 7, 2008, the Court ordered that all these cases be consolidated into a single lawsuit, and it appointed lead plaintiffs and lead attorneys to prosecute the claims. On January 5, 2009, the Plaintiffs filed a consolidated complaint for all the actions. This lawsuit is brought on behalf of the Plan and its participants, and the Plan participants will recover money if this Settlement is given final approval. The settlement proceeds will be allocated among Class Members who lost money in their Plan accounts during the Class Period due to investment in IndyMac stock.

The consolidated lawsuit alleges that the Defendants breached fiduciary duties they owed to the Plan and its participants under a federal law called the Employee Retirement Income Security Act (“ERISA”). ERISA is a comprehensive statute that regulates the operations of most private-sector employee benefit plans, including the retirement plan at issue in this case. Under ERISA, the people and entities responsible for overseeing the Plan’s investment owe the Plan itself, and the current and former employees who participate in it, fiduciary duties to loyally and prudently manage the Plan’s assets. This lawsuit alleges that the Plan’s fiduciaries breached these duties by allowing the Plan and its participants to make and maintain investments in IndyMac stock after July 1, 2006. The Defendants have vigorously denied that they breached any legal duties and strongly contest their liability for the Plan’s losses.

WHY AND HOW DID THE PARTIES REACH THIS SETTLEMENT?

This litigation is strongly contested by both the Defendants and the Plaintiffs, and both parties bear the risk that they will not prevail on key legal and factual issues if the case proceeds all the way to a judgment. The Plaintiffs and their counsel believe the Class’s legal claims are strong, and the Defendants and their counsel believe their defenses are strong. This litigation is further complicated for the Plaintiffs because there are limited assets available to satisfy a judgment in favor of the Plan and its participants due to the federal takeover of the Bank and the bankruptcy of its holding company, and because there are numerous other legal claims on the remaining assets of the Bank. The primary source of assets available to satisfy a judgment in this case is from insurance policies, which are also used to cover the ongoing costs of litigation.

Counsel for the Plaintiffs and Defendants exchanged relevant documents and retained financial experts to analyze the potential damages in the case. After this information was exchanged and discussed between the parties, they agreed to participate in a mediation session to attempt to resolve the case at an early stage of the litigation, before assets available to pay a judgment were further depleted by litigation costs. On August 25, 2009, the parties met with the Honorable Daniel Weinstein (Ret.), a

retired judge and highly experienced mediator. As a result of this meeting and subsequent negotiations between the parties' counsel and Judge Weinstein, the parties reached this Settlement on behalf of the Plan and all of its participants.

The Settlement calls for the payment of \$7,000,000 in cash by the Defendants' fiduciary insurance carrier, which will be allocated to Class Members based on how much each lost due to investments in Bancorp stock during the Class Period. In exchange for the cash payment, the Class Members agree to release the Defendants from any liability related to the claims that have been asserted in this lawsuit. The Settlement payment is a compromise that reflects extensive investigation, hard-fought negotiations, and the risks faced by both the Plan participants and the Defendants if the litigation were pursued to judgment. It is the considered opinion of the Plaintiffs and their attorneys, who have substantial experience in this type of litigation, that the Settlement is an excellent recovery for the Plan's participants.

WHY IS THIS CASE A CLASS ACTION?

This case is a class action because the legal and factual issues that pertain to each member of the Class are very similar or identical. In a class action, one or more plaintiffs, called "named plaintiffs," sue on behalf of people who have similar claims. The Court resolves the issues for all members of the Class. United States District Judge Dean D. Pregerson is presiding over this case and must approve this Settlement before it can become final.

HOW DO I KNOW IF I AM A MEMBER OF THE CLASS?

The Class of Plan participants in this Settlement is defined as follows:

All persons other than Defendants and Defendants' spouses, parents, or children who were participants in or beneficiaries of the IndyMac Bank, F.S.B. 401(k) Plan at any time between July 1, 2006, and June 1, 2010, and whose accounts included investments in the IndyMac Bancorp stock fund.

You have received this notice because the Plan's records show that you, or someone who designated you as a beneficiary of his or her retirement account, had such investments. If you have any questions about whether you are a member of the Class, you can contact Plaintiffs' counsel, whose information is listed in the section titled "Contact Information for Plaintiffs' Counsel."

WHAT DOES THE SETTLEMENT PROVIDE?

The Settlement provides that the Defendants' fiduciary insurance carrier will pay \$7,000,000, which will be deposited into an interest bearing account called the "Gross Settlement Fund." The amount remaining in the Gross Settlement Fund (including interest, but after accounting for taxes and Court-approved expenses and attorneys fees) will be allocated among and paid to members of the Class according to a Plan of Allocation to be approved by the Court. Disbursement of the Settlement Fund to the Class will occur once the Settlement has become final – after all appeals relating to the Settlement are favorably decided and all appeal periods have expired.

In exchange for the Settlement payment, Class Members will release all claims that were or could have been asserted in this Action against the Defendants, Bank, Bancorp, the fiduciaries of the Plan, and

their successors. The release does not include claims asserted in unrelated lawsuits pertaining to Bancorp stock¹ or individual claims that you may have separate and apart from the claims asserted in this lawsuit. For more information about the scope of the release, please see the section of this notice titled “How Do I Get More Information?”

WHAT WILL BE MY SHARE OF THE SETTLEMENT FUND?

You will receive a pro rata share of the \$7,000,000 Settlement Fund after costs and fees have been deducted. The Settlement payment is a compromise; accordingly, it does not compensate Plan participants for 100% of their losses.

By _____, 2010, Plaintiffs’ Counsel will file a detailed Plan of Allocation for Court approval at or after the Fairness Hearing. The Plan of Allocation, which may be obtained at www._____.com or by contacting Plaintiffs’ Counsel after it is filed, will describe the manner in which the Settlement proceeds (the “Net Settlement Fund”) will be distributed to Class Members. In general terms, the Plan of Allocation will provide that each Class Member’s share of the Net Settlement Fund will be calculated as follows:

Each member of the Class will be assigned an “Alleged Net Loss Percentage,” showing the percentage of his or her alleged net loss in relation to all other Class members’ alleged net losses. Each member of the Class’s share of the Net Settlement Fund will be equal to the Net Settlement Fund, less the Plan expenses associated with implementing the Plan of Allocation, multiplied by his or her Alleged Net Loss Percentage.

The Settlement Administrator will perform all calculations for you and determine your pro rata amount. The Settlement Administrator will have access to all available records, so you do not need to be concerned if you no longer have your Plan account statements. The Court will be asked to approve a more detailed statement of the Plan of Allocation, a copy of which will be available along with other settlement documents at www._____.com.

HOW DO I GET A PAYMENT?

If the Settlement is given final approval, you will not have to do anything to get a payment from the Settlement. You will receive a check for your pro rata share of the Settlement along with general information about what to do with those funds in order to maintain their tax-protected status as retirement savings. Because each individual’s financial situation is unique, we cannot give specific tax advice. ***You should consult with your own tax advisor about what to do with your payment prior to depositing the check.***

WHEN WOULD I RECEIVE MY PAYMENT?

¹ Such unrelated lawsuits include, but are not limited to, *Daniels v. Indymac Bancorp, Inc.*, Case No. 2:08-cv-03812-GW-VBK (C.D. Cal.), and *Tripp v. Indymac Financial Inc.*, Case No. 2:07-cv-01635-GW-VBK (C.D. Cal.).

Payment is conditioned on several matters, including the Court's approval of the Settlement and that approval becoming final and no longer subject to any appeals. Upon satisfaction of various conditions, the Net Settlement Fund will be distributed pursuant to the Plan of Allocation described above. The Settlement Agreement may be terminated on several grounds, including if the Court does not approve or otherwise modifies the terms of the Settlement. If the Settlement Agreement is terminated, the Settlement will also be terminated, and the Action will proceed as if the Settlement had not been reached.

CAN I OPT OUT OF THE SETTLEMENT?

No. Because of the legal issues involved, the class of Plan participants affected by this Settlement has been preliminarily certified as a mandatory class. If final approval is granted by the Court, it will remain a mandatory class. This means that you cannot opt out of the benefits of the Settlement in order to pursue your own claims or for any other reason. You can, however, object to the Settlement and try to convince the Court not to approve the Settlement for any reasons that you see fit to present. For information on how to file an objection with the Court and/or attend the Settlement Fairness Hearing, see the sections below titled "How Do I Object to the Settlement?" and "How Can I Attend the Settlement Fairness Hearing?"

WHO ARE THE PLAINTIFFS' ATTORNEYS? DO THEY REPRESENT ME?

The Court has appointed Plaintiffs' Counsel to represent the Class of Plan participants in this case. Plaintiffs' Counsel are: Lewis, Feinberg, Lee, Renaker & Jackson, P.C., in Oakland, California; and Keller Rohrback, L.L.P., in Seattle, Washington (referred to herein as "Plaintiffs' Counsel" or "Class Counsel"). These firms have extensive experience representing employees in complex ERISA litigation. If you are a member of the Class, these law firms represent your interests in this lawsuit.

If you wish, you can retain your own lawyer at your own expense to represent you in connection with the Settlement. If you do hire your own attorney, he or she must send a Notice of Intent to Appear to the Settlement Administrator by _____, 2010.

HOW WILL THE PLAINTIFFS' ATTORNEYS BE COMPENSATED?

Class Counsel has spent hundreds of hours working on this case, and tens of thousands of dollars on the costs and expenses of the investigation and prosecution of the lawsuit. The terms of the Settlement call for Class Counsel's fees and expenses to be paid out of the Settlement Fund. Class Counsel will apply to the Court for no more than 25% of the Settlement Fund in fees, plus out-of-pocket costs.

The individual Plaintiffs who brought this case will also request a case contribution award from the Settlement Fund to compensate them for the time and effort they spent assisting with the investigation and prosecution of the case. Class Counsel will request that the Court approve case contribution awards of \$5,000 for each of the two Plaintiffs.

You have the right to object to this aspect of the Settlement even if you approve of the other aspects of the Settlement.

HOW DO I OBJECT TO THE SETTLEMENT?

If you are a member of the Class, you can object to the Settlement if you disagree with any part of it. You can give reasons why you think the Court should not approve the Settlement, and the Court will consider your views prior to giving the Settlement final approval. Because the Settlement is a private agreement, the Court does not have the power to modify terms of the Settlement without the consent of the parties. Therefore, even if you only object to part of the Settlement, your objection, if successful, might result in a rejection of the entire Settlement.

To object, you must send a letter or other written filing stating that you object to the Settlement in *In re IndyMac ERISA Litigation*, Case No. 2:08-cv-04579-DDP-(VBK). You must also include your full name, address, telephone number, signature, and a full explanation of all reasons you object to the Settlement, as well as the name, address, and telephone number of any counsel representing you. Your written objection must be received by the Settlement Administrator by _____, 2010. The Settlement Administrator's address is _____.

If your written objection is not received by _____, 2010, you will lose your opportunity to have your objection considered by the Court, to attempt to prevent the Settlement from being approved, or to appeal from any orders or judgments by the Court in connection with the proposed Settlement.

HOW DO I ATTEND THE FAIRNESS HEARING?

The Court will hold a Fairness Hearing before the Honorable Dean. D. Pregerson to evaluate the fairness of the Settlement at _____ on _____, 2010, in the United States District Court for the Central District of California, located at 312 N. Spring St., Los Angeles, California 90012, Courtroom 3, Second Floor.

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 will listen to people who have asked to speak at the hearing. The Court may also decide how much Class Counsel and the Plaintiffs will be compensated for their efforts to secure the Settlement. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

You do not have to attend the hearing. The attorneys representing the Plaintiffs and the Class will present the Settlement to the Court and answer any questions the Court may have. If you file a written objection, you do *not* have to attend the hearing in order for it to be considered by the Court.

You are welcome to come to the hearing at your own expense. You may also arrange for your own counsel to attend on your behalf. You may also ask the Court for permission to speak at the hearing. To do so, you must send a letter or other paper called a "Notice of Intention to Appear at Fairness Hearing in *In re IndyMac ERISA Litigation*, Case No. 2:08-cv-04579-DDP-(VBK)" to the Settlement Administrator. Be sure to include your name, address, telephone number, and signature. Your Notice of Intention to Appear must be sent to the Settlement Administrator at the address listed above in the answer to the question "How Do I Object to the Settlement?" and must be received by no later than _____, 2010.

WHAT HAPPENS IF I DO NOTHING AT ALL?

If you do nothing at all, you will remain a part of the Class, and if the Court approves the Settlement you will receive the payment described in this notice and release your claims against the Defendants as described in this notice.

HOW DO I GET MORE INFORMATION?

Please do not contact the Court, the Bank, or Bancorp. They are not in a position to provide you with information about the Settlement.

This notice is a summary of the Settlement. The complete Settlement is set forth in the Settlement Agreement. You can get a copy of the Settlement Agreement at www._____.com, by calling (800) ____ - ____, or by emailing Class Counsel at _____.

You may also review the case file in the United States District Court, located at 312 N. Spring St., Los Angeles, California, 90012. Or you can review the case file online through the PACER system at <http://pacer.psc.uscourts.gov/>. Please note that users must pay fees to access court files through PACER.

**Keller Rohrback L.L.P. and Lewis, Feinberg, Lee, Renaker & Jackson, P.C.
are Issuing the Following Statement Regarding the IndyMac ERISA
Litigation**

LOS ANGELES—(BUSINESS WIRE)—Keller Rohrback L.L.P. and Lewis,
Feinberg, Lee, Renaker & Jackson, P.C.:

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

**IN RE INDYMAC ERISA
LITIGATION**

**Master File No.: 08-04579 DDP (VBKx)
CLASS ACTION**

TO ALL MEMBERS OF THE FOLLOWING CLASS:

All persons who were participants in or beneficiaries of the IndyMac Bank,
F.S.B. 401(k) Plan (the “Plan”) at any time between July 1, 2006, and June 1, 2010
(the “Class Period”), and whose accounts included investments in the IndyMac
Bancorp, Inc. stock fund.

**PLEASE READ THIS NOTICE CAREFULLY.
THIS IS A COURT-ORDERED LEGAL NOTICE.
THIS IS NOT A SOLICITATION.**

A proposed settlement (the “Settlement”) has been preliminarily approved
by a federal court in the above-captioned class action lawsuit alleging breaches of
fiduciary duties under the Employee Retirement Income Security Act (“ERISA”) in
connection with the Plan. The terms of the Settlement are contained in a
Stipulation and Agreement of Settlement – ERISA Action (“Settlement

Agreement”), which was executed on June 1, 2010. A copy of the Settlement Agreement is available at www._____.com. Capitalized terms used in this Summary Notice and not defined herein have the same meaning assigned to them in the Settlement Agreement.

The proposed Settlement provides for a payment of \$7 million to settle all claims against all Defendants. Under the Settlement, the proceeds, net of expenses described in the Settlement Agreement (which include notice and administrative expenses, Court-approved attorneys’ fees and expenses and Plaintiff case contribution awards, taxes, and other costs related to the Settlement Fund administration) will be allocated to members of the Class whose Plan account(s) suffered losses as a result of investing in IndyMac Bancorp, Inc. stock during the Class Period. Settlement proceeds will be allocated in accordance with a Plan of Allocation approved by the Court.

If you qualify, you will receive such an allocation. You do not need to submit a claim or take any other action unless you wish to object to the Settlement. The United States District Court for the Central District of California (the “Court”) authorized this Notice.

THE COURT WILL HOLD A HEARING AT __:__.M. ON _____, 2010 TO DECIDE WHETHER TO APPROVE THE SETTLEMENT.

Additional information about the proposed Settlement, including the Notice of Proposed Class Action Settlement that has been mailed to Class Members and explains how Class Members can object to the Settlement and the Settlement Agreement is available at www._____.com. In addition, Plaintiffs' Counsel have established a toll-free number, _____, to assist in answering questions regarding the Settlement.

PLEASE DO NOT CONTACT THE COURT.

DATED: _____, 2010.

By Order of the Court

The Hon. Dean D. Pregerson, United States District Court Judge

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7 **UNITED STATES DISTRICT COURT**
8 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
9 **WESTERN DIVISION**

10 **IN RE INDYMAC ERISA**
11 **LITIGATION**

Master File No.: 08-04579 DDP(VBKx)

[PROPOSED] FINAL ORDER
AND JUDGMENT

JUDGE: DEAN D. PREGERSON

12
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15
16 This *Action* involves claims for alleged violations of the Employee
17 Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001, *et seq.*
18 (“*ERISA*”), with respect to the IndyMac Bank, F.S.B. 401(k) Plan (the “*Plan*”).¹

19 This matter came before the Court for a hearing pursuant to the order of this
20 Court entered on _____, 2010, on the application of the *Parties* for approval
21 of the *Settlement* set forth in the Stipulation and Agreement of Settlement of Class
22 Action – ERISA (the “*Settlement Agreement*”), executed on June 1, 2010, and
23 filed with the Court on June 2, 2010.

24 Before the Court are: (1) *Named Plaintiffs’* Motion for Final Approval of
25 Settlement and for Settlement Class Action Certification (“*Final Approval*
26 *Motion*”); (2) *Named Plaintiffs’* Motion and Memorandum for Approval of Plan of

27 _____
28 ¹ Terms capitalized and italicized in this order shall have the meaning ascribed to
them in the *Settlement Agreement*.

1 Allocation (“Plan of Allocation Motion”); and (3) *Class Counsel’s* Motion for
2 Award of Attorneys’ Fees and Expenses and Named Plaintiffs’ Case Contribution
3 Awards (collectively, the “Fees and Expenses Motion”).

4 The Court has received declarations attesting to the mailing of the *Notice*
5 and publication of the *Summary Notice* in accordance with the Court’s Findings
6 and Order Preliminarily Approving Proposed Settlement, Preliminarily Certifying
7 Settlement Class, Approving Notice Plan, and Setting Time and Fairness Hearing
8 (“Order for Notice and Hearing”).

9 A hearing was held on _____, 2010 (the “Final Approval Hearing”), to:
10 (1) determine whether to grant the Final Approval Motion; (2) determine whether
11 to grant the Plan of Allocation Motion; (3) determine whether to grant the Fees and
12 Expenses Motion; and (4) rule upon such other matters as the Court might deem
13 appropriate.

14 Due and adequate notice having been given to the *Class* as required, and the
15 Court having considered all papers filed and all related proceedings, hereby finds
16 and orders as follows:

17 1. This Court has jurisdiction over the subject matter of this *Action* and
18 over all *Parties* to the *Action*, including all members of the *Class*.

19 2. On _____, 2010, _____ copies of the *Notice* were mailed to
20 *Class Members*.

21 3. On _____, 2010, a copy of the *Summary Notice* was
22 electronically published on the Business Wire in accordance with the Settlement
23 Agreement and the Court’s Order for Notice and Hearing.

24 4. In accordance with the Court’s Order for Notice and Hearing, the
25 *Notice* and Settlement Agreement were posted on www._____.com.

26 5. The *Notice* and the *Summary Notice* fully informed *Class Members* of
27 their rights with respect to the *Settlement*, including the right to object to the
28 *Settlement* or the application for an award of attorneys’ fees and reimbursement of

1 expenses.

2 6. The *Notice* and *Summary Notice* collectively met the statutory
3 requirements of notice under the circumstances, including the individual notice to
4 all members of the *Class* who could be identified through reasonable effort, and
5 fully satisfied the requirements of Federal Rule of Civil Procedure 23 and the
6 requirements of due process.

7 7. The *Action* and all claims contained therein, as well as all of the
8 *Released Claims*, are dismissed with prejudice as to the *Named Plaintiffs*, the *Class*
9 *Members*, and the *Plan*, and as against the *Released Parties*. The *Parties* are to
10 bear their own costs, except as otherwise provided in the Settlement Agreement.

11 8. The Final Approval Motion is GRANTED, and the *Settlement* is
12 hereby APPROVED as fair, just, reasonable, and adequate as to each member of
13 the *Class*, and in the public interest. The *Parties* are hereby directed to implement
14 the *Settlement* in accordance with its terms and conditions.

15 9. The *Named Plaintiffs*, on behalf of themselves, the *Plan*, and the
16 *Class*, are deemed to have, and by operation of this Order and Judgment shall have,
17 absolutely and unconditionally released and forever discharged the *Released*
18 *Parties* from the *Released Claims*.

19 10. All members of the *Class* are hereby forever barred and enjoined from
20 prosecuting the *Released Claims* against the *Released Parties*. As set forth in
21 Paragraph 1.31 of the Settlement Agreement, the *Released Claims* shall be: any
22 and all claims whether known or unknown, (i) that were asserted in the *Action* or
23 that could have been asserted in this *Action*; (ii) that would have been barred by *res*
24 *judicata* had the *Action* been fully litigated to a final judgment; or (iii) that relate to
25 any investment in *Bancorp* stock or the *IndyMac Stock Fund* by the *Plan* or any
26 such investment by any *Plan* participant through the *Plan*. *Released Claims* shall
27 extend to all *Released Parties*. The *Released Claims* shall not extend to any claims
28 asserted by or on behalf of the plaintiffs in (i) the *Tripp Action* or (ii) the *Daniels*

1 *Action*. Further, *Released Claims* shall not extend to claims (i) related to
2 enforcement of the Settlement Agreement; (ii) for individual or vested benefits
3 separate and distinct from the claims asserted in the *Action*; or (iii) against the
4 *Independent Fiduciary*.

5 11. Each of the *Defendants*, by operation of this Order and Judgment,
6 absolutely and unconditionally releases and forever discharges the *Named*
7 *Plaintiffs*, the *Class*, and *Class Counsel* from any and all claims relating to, or in
8 connection with the institution or prosecution of this *Action* or the *Settlement* of
9 any *Released Claim*.

10 12. The *Plan of Allocation* is hereby APPROVED as fair and reasonable.
11 *Class Counsel* are directed to administer the *Settlement* in accordance with its
12 terms and provisions. Any modification or change in the *Plan of Allocation* that
13 may hereafter be approved shall in no way disturb or affect this Judgment and shall
14 be considered separate from this Judgment.

15 13. *Class Counsel* is hereby awarded attorneys' fees in the amount of
16 _____% of the *Settlement Fund*, which the Court finds to be fair and reasonable, and
17 \$_____ in reimbursement of *Class Counsel's* reasonable expenses incurred in
18 prosecuting the *Action*. The attorneys' fees and expenses so awarded shall be paid
19 from the *Gross Settlement Fund* pursuant to the terms of the Settlement
20 Agreement, as provided in the Settlement Agreement, with interest on such
21 amounts from the date the *Settlement Fund* was funded to the date of payment at
22 the same net rate that the *Gross Settlement Fund* earns. All fees and expenses paid
23 to *Class Counsel* shall be paid pursuant to the timing requirements described in the
24 Settlement Agreement.

25 14. The *Named Plaintiffs* are hereby awarded case contribution awards in
26 the amount of \$5,000 each and shall be paid pursuant to the timing requirements
27 described in the Settlement Agreement.

28 15. In making this award of attorneys' fees and reimbursement of

1 expenses to be paid from the *Settlement Fund*, and the compensation awards to the
2 *Named Plaintiffs*, the Court has considered and found that:

3 a) The *Settlement* achieved as a result of the efforts of *Class*
4 *Counsel* has created a fund of \$7,000,000 in cash that is already on
5 deposit, plus interest thereon, and will benefit thousands of *Class*
6 *Members*;

7 b) *Class Counsel* have conducted the litigation and achieved the
8 *Settlement* with skill, perseverance, and diligent advocacy;

9 c) The *Action* involves complex factual and legal issues
10 prosecuted over several years and, in the absence of a settlement,
11 would involve further lengthy proceedings with uncertain resolution of
12 the complex factual and legal issues;

13 d) Had *Class Counsel* not achieved the *Settlement*, there would
14 remain a significant risk that the *Named Plaintiffs* and the *Class* may
15 have recovered less or nothing from the *Defendants*;

16 e) The amount of attorneys' fees awarded and expenses
17 reimbursed from the *Settlement Fund* are consistent with awards in
18 similar cases; and

19 f) The *Named Plaintiffs* rendered valuable service to the *Plan* and
20 to all *Plan Participants*. Without this participation, there would have
21 been no case and no settlement.

22 16. Neither the Settlement Agreement nor the terms of the Settlement
23 Agreement shall be offered or received into any action or proceeding for any
24 purposes, except (i) in an action or proceeding arising under the Settlement
25 Agreement or arising out of or relating to the Preliminary Approval Order or the
26 this Final Order and Judgment, (ii) in any action or proceeding where the releases
27 provided pursuant to this Settlement Agreement may serve as a bar to recovery, or
28 (iii) in any action or proceeding to determine the availability, scope, or extent of

1 insurance coverage (or reinsurance related to such coverage) for the sums
2 expended for the *Settlement* and defense of the *Action*.

3 17. Without affecting the finality of this Judgment in any way, this Court
4 hereby retains continuing jurisdiction over: (a) implementation of the *Settlement*
5 and any award or distribution of the *Settlement Fund*, including interest earned
6 thereon; (b) disposition of the *Settlement Fund*; (c) hearing and determining
7 applications for attorneys' fees, costs, interest, and reimbursement of expenses in
8 the *Action*; and (d) all *Parties* hereto for the purpose of construing, enforcing, and
9 administering the *Settlement*.

10 18. The Court finds that during the course of the litigation, the *Named*
11 *Plaintiffs* and the *Defendants* and their respective counsel at all times complied
12 with the requirements of Federal Rule of Civil Procedure 11.

13 19. This Order and Judgment shall not be considered or used as an
14 admission, concession, or declaration by or against *Defendants* of any fault,
15 wrongdoing, breach, or liability.

16 20. In the event that the *Settlement* does not become effective in
17 accordance with the terms of the Settlement Agreement or in the event that the
18 *Gross Settlement Fund*, or any portion thereof, is returned to the *Defendants* or
19 their insurers, then this Judgment shall be rendered null and void to the extent
20 provided by and in accordance with the Settlement Agreement and shall be
21 vacated, and in such event, all orders entered and releases delivered in connection
22 herewith shall be null and void to the extent provided by and in accordance with
23 the Settlement Agreement.

24 21. Final Judgment shall be entered herein.

25 IT IS SO ORDERED.

26 Date:

27 _____
28 Dean D. Pregerson
United States District Court Judge