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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)

CLASS ACTION

**PLAINTIFFS' CORRECTED NOTICE
OF MOTION AND MOTION FOR
AWARD OF ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES,
AND AWARD OF CASE
CONTRIBUTION AWARDS**

Date: Monday, January 10, 2011

Time: 11:00 a.m.

Courtroom: 3, 2nd Floor

Before the Hon. Dean D. Pregerson

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on Monday, January 10, 2011, at 11:00 a.m.,
3 or as soon thereafter as the matter may be heard, in Courtroom 3 of the United
4 States District Court, located on the 2nd Floor at 312 N. Spring Street, Los Angeles,
5 California 90012, before the honorable Dean D. Pregerson, United States District
6 Judge, Interim Co-Lead Plaintiffs Sam Zhong Wong and Jeffrey Washington will
7 and hereby do move the Court for an Order awarding Class Counsel attorneys' fees
8 and reimbursement of expenses, as well as granting Case Contribution Awards for
9 the Named Plaintiffs.

10 This motion is supported by the Memorandum of Points and Authorities
11 attached hereto; the Joint Declaration of Jeffrey G. Lewis and Derek W. Loeser in
12 Support of (1) Plaintiffs' Motion for Final Approval of Class Action Settlement,
13 Certification of Settlement Class, and Approval of Plan of Allocation, and (2)
14 Plaintiffs' Motion for Award of Attorneys' Fees, Reimbursement of Expenses, and
15 Award of Case Contribution Awards to Named Plaintiffs; Plaintiffs' concurrently
16 filed Motion and supporting papers for Final Approval of Class Action Settlement,
17 Certification of Settlement Class, and Approval of Plan of Allocation, and the entire
18 Court file in this action.

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DATED this December 7, 2010.

Respectfully Submitted,

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TABLE OF AUTHORITIES

Cases

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2

3

4 *Alvidres v. Countrywide Fin. Corp.*,

5 No. 07-5810 (C.D. Cal. Nov. 16, 2009)14, 17

6 *Blum v. Stenson*,

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8 *Boeing Co. v. Van Gemert*,

9 444 U.S. 472 (1980).....5

10 *Bouman v. Block*,

11 940 F.2d 1211 (9th Cir. 1991)13

12 *Brieger v. Tellabs, Inc.*,

13 No. 06-1882, 2009 WL 1565203 (N.D. Ill. June 1, 2009)9

14 *Carter v. Anderson Merchandisers, LP*,

15 No. 08-0025, 2010 WL 1946757 (C.D. Cal. May 11, 2010).....3, 11

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18 *Craft v. County of San Bernardino*,

19 624 F. Supp. 2d 1113 (C.D. Cal. 2008)11, 14

20 *DiFelice v. U.S. Airways, Inc.*,

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22 *Fischel v. Equitable Life Ins. Soc'y of the U.S.*,

23 307 F.3d 997 (9th Cir. 2002)3, 5, 15

24 *Florida v. Dunne*,

25 915 F.2d 542 (9th Cir. 1990)3

26 *Glass v. UBS Financial Services, Inc.*,

27 No. 06-4068, 2007 WL 2211862 (N.D. Cal. Jan. 26, 2007)11

28 *Harris v. Marhoefer*,

24 F.3d 16 (9th Cir. 1994)16

1 *In re Activision Sec. Litig.*,
 2 723 F. Supp. 1373 (N.D. Cal. 1989).....4
 3 *In re Bank of Am. Corp. Sec., Derivative, & ERISA Litig.*,
 4 No., 09-2058, 2010 WL 3448197 (S.D.N.Y. Aug. 27, 2010)8
 5 *In re Bristol Myers Squibb Co, ERISA Litig.*,
 6 No. 02-10129 (S.D.N.Y. Oct. 12, 2005).....14
 7 *In re Calpine Corp. ERISA. Litig.*,
 8 No. 03-1685 (N.D. Cal. Oct. 23, 2008)11
 9 *In re Citigroup ERISA Litig.*,
 10 No. 07-9790, 2009 WL 2762708 (S.D.N.Y. Aug. 31, 2009)8
 11 *In re CMS ERISA Litig.*,
 12 No. 02-72834, 2006 WL 2109499 (E.D. Mich. June 27, 2006).....11
 13 *In re Coordinated Pretrial Proceedings in Petroleum Prods. Antitrust*
 14 *Litig.*, 109 F.3d 602 (9th Cir. 1997).....3
 15 *In re Dynegy ERISA Litig.*,
 16 No. 02-3076 (S.D. Tex. Nov. 24, 2004)14
 17 *In re Enron Corp. Sec., Derivative & "ERISA" Litig.*,
 18 228 F.R.D. 541 (S.D. Tex. 2005).....8, 9
 19 *In re Global Crossing Sec. & ERISA Litig.*,
 20 225 F.R.D. 436 (S.D.N.Y. 2004)8
 21 *In re HealthSouth ERISA Litig.*,
 22 No. 03-1700 (N.D. Ala. June 28, 2006).....14
 23 *In re Heritage Bond Litig.*,
 24 No. 02-ML-1475, 2005 WL 1594403 (C.D. Cal. June 10, 2005)11
 25 *In re Honeywell Int’l ERISA Litig.*,
 26 No. 03-1214 (D.N.J. July 20, 2005)14
 27 *In re Household Int’l ERISA Litig.*,
 28 No. 02-7921 (N.D. Ill. Nov. 22, 2004)11, 14
In re Huntington Bancshares Inc. ERISA Litig.,
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1 *In re Mego Fin. Corp. Sec. Litig.*,
2 213 F.3d 454 (9th Cir. 2000)7

3 *In re Merrill Lynch & Co., Inc., Securities, Derivative & ERISA*
4 *Litig.*, No. 07-10268 (S.D.N.Y. Aug. 21, 2009).....11, 14

5 *In re Omnivision Techs., Inc.*,
6 No. 04-2297, 2007 WL 4293467 (N.D. Cal. Dec. 6, 2007)11

7 *In re Providian ERISA Litig.*,
8 No. 01-05027, 2003 WL 22005019 (N.D. Cal. June 30, 2003)11

9 *In re Royal Dutch/Shell Transport ERISA Litig.*,
10 No. 04-1398 (D.N.J. Aug. 30, 2005)11

11 *In re Syncor ERISA Litig.*,
12 516 F.3d 1095 (9th Cir. 2008)7

13 *In re Wachovia Corp. ERISA Litig.*,
14 No. 09-262, 2010 WL 3081359 (W.D.N.C. Aug. 6, 2010).....8

15 *In re Washington Pub. Power Supply Sys. Sec. Litig.*,
16 19 F.3d 1291 (9th Cir. 1994)3, 15

17 *In re Xerox ERISA Litig.*,
18 No. 02-1138 (D. Conn. Apr. 14, 2009).....11

19 *Keith v. Volpe*,
20 501 F. Supp. 403 (C.D. Cal. 1980)14

21 *Kirchoff v. Flynn*,
22 786 F.2d 320 (7th Cir. 1986)4

23 *Landgraff v. Columbia/HCA Healthcare Corp.*,
24 No. 3-98-0090, 2000 WL 33726564 (M.D. Tenn. May 24, 2000).....9

25 *Linney v. Cellular Alaska, P'ship*,
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27 *Mashburn v. Nat'l Healthcare, Inc.*,
28 684 F. Supp. 679 (M.D. Ala. 1988).....5

Mogck v. Unum Life Ins. Co. of Am.,
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1 *Nelson v. Hodowal*,
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 3 *Nobles v. MBNA Corp.*,
 4 No. 06-3723, 2009 WL 1854965 (N.D. Cal. June 29, 2009)11
 5 *Paul, Johnson, Alston & Hunt v. Grauly*,
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 7 *Pelletz v. Weyerhaeuser Co.*,
 8 592 F. Supp. 2d 1322 (W.D. Wash. 2009)17
 9 *Quan v. Computer Scis. Corp.*,
 10 623 F.3d 870 (9th Cir. 2010)7
 11 *Razilov v. Nationwide Mut. Ins. Co.*,
 12 No. 01-1466, 2006 WL 3312024 (D. Or. Nov. 13, 2006)17
 13 *Six Mexican Workers v. Arizona Citrus Growers*,
 14 904 F.2d 1301 (9th Cir. 1990)3
 15 *Sprague v. Ticonic Nat'l Bank*,
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 19 *Torrise v. Tucson Elec. Power Co.*,
 20 8 F.3d 1370 (9th Cir. 1993)3, 10
 21 *Vizcaino v. Microsoft Corp.*,
 22 290 F.3d 1043 (9th Cir. 2002) passim

23 **Other Authorities**

24 Charles Silver, *Class Actions in the Gulf South Symposium: Due*
 25 *Process and the Lodestar Method: You Can't Get There from*
 26 *Here*, 74 Tul. L. Rev. 1809 (June 2000).....4
 27 Denise N. Martin, Vinita M. Juneja, Todd S. Foster & Frederick C.
 28 *Dunbar, Recent Trends IV: What Explains Filings and Settlements*
in Shareholder Class Actions? Stan. J.L. Bus. & Fin. (1996).....6
Manual for Complex Litigation (Fourth) § 14.121 (2010)4, 6

1 Richard M. Phillips & Gilbert C. Miller, *The Private Securities*
2 *Litigation Reform Act of 1995: Rebalancing Litigation Risks and*
3 *Rewards for Class Action Plaintiffs, Defendants and Lawyers,*
4 51 Bus. Law. 1009 (1996)8
5
6 Third Circuit Task Force Report, *Selection of Class Counsel*, 208
7 F.R.D. 340 (2002)12
8
9 Thomas E. Willging, Laural L. Hooper & Robert J. Niemic, *Empirical*
10 *Study of Class Actions in Four Federal District Courts: Final*
11 *Report to the Advisory Committee on Civil Rules* (Fed. Judicial
12 Ctr. 1996)5
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1 **I. INTRODUCTION**

2 Following hard-fought litigation that encompassed extensive investigation
3 and contentious settlement negotiations and mediations, the parties have now
4 settled this ERISA fiduciary breach class action for a cash payment of \$7,000,000.
5 This Settlement was achieved through the dedicated efforts of Class Counsel,¹
6 working diligently to represent the IndyMac Bank, F.S.B. 401(k) Plan (the “Plan”)
7 and Plan Participants.

8 While the concurrently-filed Memorandum of Points and Authorities in
9 Support of Motion for Final Approval of Class Action Settlement, Certification of
10 Settlement Class, and Approval of Plan of Allocation (“Final Approval Memo”)
11 documents why the Settlement is an excellent result for the Class and should be
12 approved, this memorandum addresses Class Counsel’s request for: (1) an award
13 of attorneys’ fees in the amount of \$1,750,000, which represents 25% of the gross
14 Settlement amount; (2) reimbursement of out-of-pocket litigation expenses of
15 \$97,671.04; and (3) approval of a \$5,000 Case Contribution Award to each Named
16 Plaintiff in recognition of their valuable service to the Class.

17 As demonstrated below, the record in this case and the case law in the Ninth
18 Circuit fully support the requested fees, expenses, and Case Contribution Awards.
19 Accordingly, Class Counsel respectfully request that the Court grant this motion.

20 **II. BACKGROUND**

21 Because the Final Approval Memo and Joint Declaration of Margaret E.
22 Hassleman and Derek W. Loeser in Support of Plaintiffs’ Renewed Motion for
23

24 ¹ “Class Counsel” refers to Keller Rohrbach LLP and Lewis, Feinberg, Lee,
25 Renaker & Jackson, P.C. (“Lewis Feinberg”). Capitalized terms not otherwise
26 defined herein have the meaning given them in the Stipulation and Agreement of
27 Settlement of Class Action – ERISA attached as Exhibit 1 to the concurrently-
28 filed Memorandum of Points and Authorities in Support of Motion for Final
Approval of Class Action Settlement, Certification of Settlement Class, and
Approval of Plan of Allocation.

1 Preliminary Approval, attached to the Final Approval Memo as Exhibit 2 (“Joint
2 Declaration” or “Joint Dec.”) contain detailed discussions of this litigation’s
3 progress, risks, and ultimate success, Plaintiffs ask the Court to consider these
4 documents in connection with this request for fees, expenses, and Case
5 Contribution Awards, and Plaintiffs incorporate those documents by reference.

6
7 **III. CLASS COUNSEL’S INVESTMENT OF TIME AND MONEY IN THE
CASE**

8 As of December 1, 2010, Class Counsel has devoted almost 2,200 hours to
9 this case, representing a lodestar of \$899,154.25 at their hourly rates, and has
10 incurred \$97,671.04 in out-of-pocket expenses. Joint Declaration of Jeffrey G.
11 Lewis and Derek W. Loeser in Support of (1) Plaintiffs’ Motion for Final Approval
12 of Class Action Settlement, Certification of Settlement Class, and Approval of Plan
13 of Allocation, and (2) Plaintiffs’ Motion for Award of Attorneys’ Fees,
14 Reimbursement of Expenses, and Award of Case Contribution Awards to Named
15 Plaintiffs (“Lewis/Loeser Declaration” or “Lewis/Loeser Dec.”) at ¶¶ 13-30, 37-42.
16 Class Counsel will continue to incur additional attorney hours in connection with
17 final approval of the Settlement, responding to inquiries from Class Members,
18 interacting with the Settlement Administrator, and generally overseeing
19 implementation of the Settlement. *Id.* at ¶¶ 31-32. Since Class Counsel will not
20 apply later for additional fees, we will analyze our fee request using a lodestar
21 cross-check based on total fees including a very conservative estimate of \$100,000
22 for future work required to implement the Settlement and Plan of Allocation,
23 yielding a lodestar of \$999,154.25. *Id.*

24
25 **IV. AWARD OF ATTORNEYS’ FEES AND EXPENSES**

26 Class Counsel request an award of attorneys’ fees of \$1,750,000, which is
27 25% of the \$7,000,000 Settlement. This method of calculating the fee award—
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1 based on a percentage-of-the-fund—is both straightforward and fair under the
2 circumstances of the case. Moreover, cross-checking this fee request against the
3 lodestar fee calculation validates its reasonableness, as explained below.

4
5 **A. A Reasonable Percentage of the Fund Recovered Is the Appropriate**
6 **Method for Awarding Class Counsel’s Attorneys’ Fees in this Common**
7 **Fund Settlement.**

8 When a settlement confers a “substantial benefit” upon a class of
9 beneficiaries, attorneys are entitled to recover attorneys’ fees from the fund
10 recovered. *Fischel v. Equitable Life Ins. Soc’y of the U.S.*, 307 F.3d 997, 1006 (9th
11 Cir. 2002). The doctrine is ““based on the equitable notion that those who have
12 benefited from litigation should share in its costs.”” *In re Coordinated Pretrial*
13 *Proceedings in Petroleum Prods. Antitrust Litig.*, 109 F.3d 602, 607 (9th Cir.
14 1997) (quoting *Florida v. Dunne*, 915 F.2d 542, 546 (9th Cir. 1990)).

15 In this Circuit, the district court has discretion to award fees in common fund
16 cases based on either the lodestar/multiplier method or the percentage-of-the-fund
17 method. *In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1296
18 (9th Cir. 1994) (“WPPSS”). The Ninth Circuit has frequently expressed its
19 approval of the use of the percentage method in common fund cases. *See Vizcaino*
20 *v. Microsoft Corp.*, 290 F.3d 1043 (9th Cir. 2002); *Torrise v. Tucson Elec. Power*
21 *Co.*, 8 F.3d 1370 (9th Cir. 1993); *Six Mexican Workers v. Arizona Citrus Growers*,
22 904 F.2d 1301 (9th Cir. 1990). Indeed, many courts in this district use the
23 percentage-of-the-fund method. *See, e.g., Carter v. Anderson Merchandisers, LP*,
24 No. 08-0025, 2010 WL 1946757, at *2 (C.D. Cal. May 11, 2010) (relying on the
25 percentage-of-the-fund method and listing cases).

26 The rationale for compensating counsel in common fund cases on a
27 percentage basis is three-fold. First, the percentage method is consistent with the
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1 practice in the private marketplace where contingent fee attorneys are customarily
2 compensated with a percentage of the recovery.

3 Second, the percentage method directly aligns the interests of the class and
4 its counsel to prosecute and resolve all claims quickly and efficiently. *See, e.g.,*
5 *Kirchoff v. Flynn*, 786 F.2d 320, 325 (7th Cir. 1986). It provides class counsel with
6 a strong incentive to effectuate the maximum possible recovery in the shortest
7 amount of time, which is a tangible benefit to class members and the judicial
8 system. Under the lodestar approach, there is an “inherent incentive to prolong the
9 litigation until sufficient hours have been expended.” *Manual for Complex*
10 *Litigation* (Fourth) § 14.121 at 256 (2010); *see also Vizcaino*, 290 F.3d at 1050 n.5
11 (“The lodestar method is merely a cross-check on the reasonableness of a
12 percentage figure, and it is widely recognized that the lodestar method creates
13 incentives for counsel to expend more hours than may be necessary on litigating a
14 case so as to recover a reasonable fee.”). Consequently, one of the nation’s leading
15 scholars in the field of class actions and attorneys’ fees, Professor Charles Silver of
16 the University of Texas School of Law, has concluded that the percentage method
17 of awarding fees is the only method of fee awards that is consistent with class
18 members’ due process rights. *See* Charles Silver, *Class Actions in the Gulf South*
19 *Symposium: Due Process and the Lodestar Method: You Can’t Get There from*
20 *Here*, 74 Tul. L. Rev. 1809 (June 2000).

21 Third, use of the percentage method decreases the burden imposed on the
22 court by eliminating a comprehensive and time-consuming “lodestar” analysis
23 while assuring that the beneficiaries do not experience undue delay in receiving
24 their share of the settlement. *See In re Activision Sec. Litig.*, 723 F. Supp. 1373,
25 1375 (N.D. Cal. 1989); *Manual for Complex Litigation* (Fourth) § 14.121 at 256
26 (noting that courts “increasingly recognize that the lodestar method is difficult to
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1 apply, time-consuming to administer, inconsistent in result, and capable of
2 manipulation to reach a predetermined result” (internal quotation omitted)).

3 Furthermore, the Supreme Court has consistently endorsed awarding
4 attorneys’ fees using the percentage-of-the-fund method. *See, e.g., Blum v.*
5 *Stenson*, 465 U.S. 886, 900 n.16 (1984); *Boeing Co. v. Van Gemert*, 444 U.S. 472,
6 478-79 (1980); *Sprague v. Ticonic Nat’l Bank*, 307 U.S. 161, 165-67 (1939).
7 Accordingly, the Ninth Circuit has upheld common fund fee awards based on the
8 percentage-of-the-fund method that have been “cross-checked” by the lodestar for
9 reasonableness. *See, e.g., Vizcaino*, 290 F.3d at 1050. Thus, Class Counsel request
10 that the Court rely on the percentage-of-the-fund method here.

11 **B. A Fee Award Based on 25% of the Common Fund Is Fair and**
12 **Reasonable.**

13 The Ninth Circuit has adopted a 25% “benchmark” for attorneys’ fee awards
14 in cases with a common fund recovery. *See, e.g., Paul, Johnson, Alston & Hunt v.*
15 *Grauly*, 886 F.2d 268, 272 (9th Cir. 1989) (citing with approval, the adoption of a
16 25% benchmark in *Mashburn v. Nat’l Healthcare, Inc.*, 684 F. Supp. 679, 692
17 (M.D. Ala. 1988)); *Fischel*, 307 F.3d at 1006; *Vizcaino*, 290 F.3d at 1047. The
18 Ninth Circuit’s benchmark is very much in keeping with nationwide practice. A
19 Federal Judiciary Center study of all class action attorneys’ fees in four federal
20 district courts with a high number of class actions found that “[m]edian rates
21 ranged from 27% to 30%.” Thomas E. Willging, Laural L. Hooper & Robert J.
22 Niemic, *Empirical Study of Class Actions in Four Federal District Courts: Final*
23 *Report to the Advisory Committee on Civil Rules*, at 69 (Fed. Judicial Ctr. 1996). A
24 separate study conducted by National Economic Research Associates similarly
25 concluded that “[r]egardless of case size, fees average approximately 32 percent of
26 the settlement.” Denise N. Martin, Vinita M. Juneja, Todd S. Foster & Frederick C.
27

1 Dunbar, *Recent Trends IV: What Explains Filings and Settlements in Shareholder*
2 *Class Actions?* Stan. J.L. Bus. & Fin. (1996).

3 While the Ninth Circuit’s 25% benchmark “can then be adjusted upward or
4 downward to account for any unusual circumstances,” any such “adjustment . . .
5 must be accompanied by a reasonable explanation of why the benchmark is
6 unreasonable under the circumstances.” *Grauldy*, 886 F.2d at 272-73. For instance,
7 in *Vizcaino*, the Ninth Circuit found that a fee award of 28% of the common fund
8 was reasonable because of: (1) the exceptional results achieved for the class;
9 (2) the extreme riskiness of the litigation; (3) the benefits generated beyond the
10 cash settlement fund; and (4) the financial burdens of representing the class on a
11 contingency basis. 290 F.3d at 1048-50. The *Manual for Complex Litigation*
12 recommends consideration of three additional factors, among others: (1) any
13 objections by class members; (2) the skill and efficiency of the attorneys involved;
14 and (3) attorneys’ fee awards in other cases. *Manual for Complex Litigation*
15 (Fourth) § 14.121 at 257-58 (2010). Here, Class Counsel are requesting the 25%
16 benchmark with no adjustment. Nonetheless, an examination of these seven factors
17 further supports the reasonableness of the requested fee.

18 **1. Class Counsel Obtained Exceptional Results.**

19 As discussed in the Preliminary Approval Memo and Final Approval Memo,
20 the \$7,000,000 recovery represents a substantial amount of the Plan’s total
21 potential recovery in this case. There is a broad range of potential recoveries if the
22 case were to be litigated to judgment depending on the date (if any) on which
23 Defendants’ actions amounted to breaches of fiduciary duty, as well as the legal
24 framework for the measure of damages. *See* Joint Dec. at ¶¶ 23-35. Thus, assuming
25 liability were established, principal damages—including both holder and purchaser
26 losses—could range from approximately \$22.1 million down to \$13.3 million, with
27 the Settlement representing 31.7% to 52.5% (respectively) of total possible losses.

1 *Id.* at ¶ 32. If Plaintiffs were limited to purchaser damages only, the principal
2 damages would decrease to a range of approximately \$11.2 million to \$5.27
3 million, representing 62.5% to 132.8% of total possible losses. *Id.* Defendants’
4 expert calculated even lower potential damages, estimating that Plaintiffs’ potential
5 recovery was, *at most*, \$3 million. *Id.* at ¶ 35. Although Plaintiffs disagree with
6 Defendants’ calculations, had Defendants’ prevailed in their damages theory, the
7 amount recovered in the Settlement would be in excess of 200% of the total
8 damages.

9 Furthermore, courts are not of one mind as to what Plaintiffs must show to
10 prove that company stock became an imprudent investment for a retirement plan.
11 Compare *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1102 (9th Cir. 2008) (holding
12 that a “myriad of circumstances” can require fiduciaries to divest company stock
13 under ERISA’s “prudent man” standard) with *Quan v. Computer Scis. Corp.*, 623
14 F.3d 870, 882 (9th Cir. 2010) (requiring plaintiffs to show either that “the
15 company’s viability as an ongoing concern” is threatened or there was
16 “a precipitous decline in the employer’s stock . . . combined with evidence that the
17 company is on the brink of collapse or is undergoing serious mismanagement”
18 (internal quotations omitted)). Whatever the standard, Plaintiffs’ likelihood of
19 success increases as the condition of the Company deteriorated. Accordingly, the
20 start of Class Period \$22.1 million damage figure is far less likely an outcome than
21 the damages resulting from later breach dates, such as February 8, 2007, or August
22 1, 2007, which would result in damages estimates of approximately \$19.9 million
23 and \$13.3 million, respectively. Joint Dec. at ¶¶ 28-29. In light of the range of
24 potential losses—and the more likely provable losses, in particular—the results
25 achieved in this case are outstanding. *Id.* at ¶¶ 30-32; *see also* Declaration of Hon.
26 Daniel H. Weinstein (Ret.), attached to the Final Approval Memo as Exhibit 3;
27 *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (approving
28

1 settlement that comprised one sixth of the plaintiffs’ potential recovery); Richard
2 M. Phillips & Gilbert C. Miller, *The Private Securities Litigation Reform Act of*
3 *1995: Rebalancing Litigation Risks and Rewards for Class Action Plaintiffs,*
4 *Defendants and Lawyers*, 51 Bus. Law. 1009, 1029 & n.131 (1996) (typical
5 recoveries are within range of 7-11% of claimed losses).

6 **2. This Litigation Was Extremely Risky.**

7 ERISA company stock cases such as this one contain a number of risks, in
8 part because ERISA is a specialized and complex area of the law, which is still
9 being developed. *See In re Enron Corp. Sec., Derivative & “ERISA” Litig.*, 228
10 F.R.D. 541, 565 (S.D. Tex. 2005) (the “complexity, expense and likely duration of
11 the litigation . . . are self evident and exceptional”); *In re Global Crossing Sec. &*
12 *ERISA Litig.*, 225 F.R.D. 436, 456 (S.D.N.Y. 2004) (finding “numerous legal
13 issues concerning fiduciary liability in connection with company stock in 401(k)
14 plans remain unresolved” and “[t]hese uncertainties would substantially increase
15 the ERISA cases’ complexity, duration, and expense – and thus militate in favor of
16 settlement approval”).

17 While Plaintiffs believe the claims in this case are solidly grounded in
18 ERISA law, several similar ERISA company stock cases involving the financial
19 meltdown of 2008 were dismissed at the pleading stage after the Consolidated
20 Complaint was filed. *See, e.g., In re Bank of Am. Corp. Sec., Derivative, & ERISA*
21 *Litig.*, No. 09-2058, 2010 WL 3448197 (S.D.N.Y. Aug. 27, 2010); *In re Wachovia*
22 *Corp. ERISA Litig.*, No. 09-262, 2010 WL 3081359 (W.D.N.C. Aug. 6, 2010);
23 *In re Citigroup ERISA Litig.*, No. 07-9790, 2009 WL 2762708 (S.D.N.Y. Aug. 31,
24 2009); *In re Huntington Bancshares Inc. ERISA Litig.*, No. 08-175, 2009 WL
25 330308 (S.D. Ohio Feb. 9, 2009). Those cases demonstrate the significant risks
26 plaintiffs face in cases of this type. In addition, to date, only four ERISA employer
27 stock cases have proceeded to a judgment after trial, and in each instance,
28

1 defendants prevailed. *See Brieger v. Tellabs, Inc.*, No. 06-1882, 2009 WL 1565203
2 (N.D. Ill. June 1, 2009); *Nelson v. Hodowal (IPALCO)*, 512 F.3d 347 (7th Cir.
3 2008); *DiFelice v. U.S. Airways, Inc.*, 436 F. Supp. 2d 756 (E.D. Va. 2006);
4 *Landgraff v. Columbia/HCA Healthcare Corp.*, No. 3-98-0090, 2000 WL
5 33726564 (M.D. Tenn. May 24, 2000).

6 Furthermore, this case posed additional risks because the assets available to
7 satisfy a potential judgment were extremely limited due to the Bank's failure and
8 the holding company's bankruptcy filing. Therefore, not only was there a risk that
9 Plaintiffs would not prevail, but there was a risk that—even if Plaintiffs *did*
10 prevail—there would be no remaining assets to satisfy a judgment.

11 **3. The Settlement Provides Benefits Beyond the Settlement Fund.**

12 The Settlement provides the Class with the benefit of substantial financial
13 recovery without further delay inherent in continued litigation. This is particularly
14 important here given the composition of the Class: current and former IndyMac
15 employees, many of whom have suffered significant financial hardships (including
16 the loss of retirement savings along with their jobs). The immediate restoration to
17 their retirement accounts of their allocable share of the recovery here will provide a
18 meaningful benefit beyond the dollar amount recovered in the form of liquidity for
19 Class members in the immediate need of the funds and reduced financial anxiety
20 for many others. As Judge Harmon aptly put it when approving one of the
21 settlements in the Enron ERISA litigation: “The settlement at this point would save
22 great expense and would give the Plaintiff hard cash, a bird in the hand.” *Enron*,
23 228 F.R.D. at 566.

24 **4. Class Counsel Carried the Financial Burdens of this Litigation.**

25 Class Counsel accepted this matter on a contingent basis with the attendant
26 risk that Counsel would receive no fee or expense reimbursement. As is evident
27 from the attorney time and expenses invested in the case to date, Class Counsel
28

1 were committed to litigating the case through trial and beyond. Furthermore,
2 litigating this case required Class Counsel to forgo significant other work. All of
3 “[t]hese burdens are relevant circumstances.” *Torrise v. Tucson Elec. Power Co.*,
4 8 F.3d 1370, 1377 (9th Cir. 1993) (approving 25% fee award for class counsel).

5 **5. No Objections to the Settlement Have Been Filed To Date.**

6 As of the date of this filing (which is one week before the December 13,
7 2010, deadline to submit objections), no Class Member has objected to the
8 Settlement. The absence of objections thus far demonstrates that Class Members
9 support the Settlement. If any objections are submitted between this filing and the
10 objection deadline (December 13, 2010), Plaintiffs’ will respond to those in a reply
11 brief.

12 **6. Class Counsel Are Highly Skilled and Acted Efficiently.**

13 Class Counsel is or has been lead or co-lead counsel in important ERISA
14 breach of fiduciary duty cases throughout the nation. For example, Keller
15 Rohrback is lead or co-lead counsel in ERISA fiduciary breach class actions filed
16 against Fremont General Corp., Washington Mutual, Inc., and Bear Stearns and
17 served as co-lead counsel in ERISA fiduciary class actions against Enron, Merrill
18 Lynch, Countrywide, and Global Crossing. Similarly, Lewis Feinberg is class or
19 lead counsel in ERISA class actions filed against ANB Bancshares, Inc., R.J.
20 Reynolds Tobacco, Co., K M Industries Holding Co., Sam Zell, and Greatbanc
21 Trust Co., and served as class or lead counsel in ERISA litigations against Dynege,
22 Inc., Koch Industries, Inc., Southern California Gas Co., SBC Communications,
23 Inc., and Pacific Lumber Co. Class Counsel are also experienced at efficiently
24 litigating complex class actions together, including current litigation on behalf of
25 several union employee benefit plans that sustained losses in the Madoff fraud and
26 landmark employer stock class action ERISA litigation against WorldCom.

1 Additional information regarding Lewis Feinberg and Keller Rohrback is described
2 in the Joint Declaration. *See* Joint Dec. at ¶¶ 59-91.

3 **7. Attorneys' Fee Awards in Other Cases Support a 25% Fee Here.**

4 Courts in this Circuit have routinely awarded fees of 25 to 30% or more in
5 common fund cases. *See, e.g., Carter*, 2010 WL 1946757, at *2 (awarding 25%
6 and listing cases); *see also Nobles v. MBNA Corp.*, No. 06-3723, 2009 WL
7 1854965 (N.D. Cal. June 29, 2009) (awarding 30%); *Craft v. County of San*
8 *Bernardino*, 624 F. Supp. 2d 1113 (C.D. Cal. 2008) (awarding 25%); *In re Calpine*
9 *Corp. ERISA Litig.*, No. 03-1685 (N.D. Cal. Oct. 23, 2008) (Order and Final
10 Judgment) (awarding 25%); *In re Omnivision Techs., Inc.*, No. 04-2297, 2007 WL
11 4293467, at *11 (N.D. Cal. Dec. 6, 2007) (awarding 28%); *Glass v. UBS Financial*
12 *Services, Inc.*, No. 06-4068, 2007 WL 2211862 (N.D. Cal. Jan. 26, 2007)
13 (awarding 25%); *In re Heritage Bond Litig.*, No. 02-ML-1475, 2005 WL 1594403,
14 at *23 (C.D. Cal. June 10, 2005) (awarding 33.33%); *In re Providian ERISA Litig.*,
15 No. 01-05027, 2003 WL 22005019 (N.D. Cal. June 30, 2003) (awarding 25% in
16 ERISA company stock litigation). Similarly, courts elsewhere have routinely
17 awarded 25% or more of the common fund in ERISA company stock litigation.
18 *See, e.g., In re Merrill Lynch & Co., Inc., Securities, Derivative & ERISA Litig.*,
19 No. 07-10268 (S.D.N.Y. Aug. 21, 2009) (awarding 25%); *In re Xerox ERISA*
20 *Litig.*, No. 02-1138 (D. Conn. Apr. 14, 2009) (awarding 30%); *In re CMS ERISA*
21 *Litig.*, No. 02-72834, 2006 WL 2109499 (E.D. Mich. June 27, 2006) (awarding
22 29%); *In re Royal Dutch/Shell Transport ERISA Litig.*, No. 04-1398 (D.N.J. Aug.
23 30, 2005) (awarding 25%); *In re Household Int'l ERISA Litig.*, No. 02-7921 (N.D.
24 Ill. Nov. 22, 2004) (awarding 30%).

25 Review of all seven of the above factors confirms that Class Counsel's
26 request for 25% of the common fund as an award for attorneys' fees is reasonable
27 and merited. The exceptional results obtained by Class Counsel, despite significant
28

1 obstacles, the high risk and complexity of the case, and the skill and efficiency
2 with which the case was brought to successful resolution by Class Counsel confirm
3 the reasonableness of the award.

4 **C. The Lodestar Cross-Check Confirms the Reasonableness of the**
5 **Requested Fee.**

6 Courts in the Ninth Circuit often examine the lodestar calculation as a cross-
7 check on the percentage fee award. *Vizcaino*, 290 F.3d at 1050 (“[W]hile the
8 primary basis of the fee award remains the percentage method, the lodestar may
9 provide a useful perspective on the reasonableness of a given percentage award.”).
10 The cross-check is not designed to be a “full-blown lodestar inquiry,” but rather an
11 estimation of the value of counsel’s investment in the case. Third Circuit Task
12 Force Report, *Selection of Class Counsel*, 208 F.R.D. 340, 422-23 (2002) (noting
13 that “[t]he lodestar remains difficult and burdensome to apply,” and “should not
14 receive exaggerated importance in assessing the appropriate fee”).

15 The cross-check analysis is a two-step process. First, the lodestar is
16 determined by multiplying the number of hours reasonably expended by the
17 reasonable rates requested by the attorneys. *See Caudle v. Bristow Optical Co.,*
18 *Inc.*, 224 F.3d 1014, 1028 (9th Cir. 2000). Second, the court determines the
19 multiplier required to match the lodestar to the percentage-of-the-fund request
20 made by counsel and determines whether the multiplier falls within the accepted
21 range for such a case. *See Vizcaino*, 290 F.3d at 1051. Here, the lodestar cross-
22 check confirms that the 25% request is reasonable.

23 **1. Class Counsel’s Lodestar Is Reasonable.**

24 Class Counsel and staff have spent a total of 2,198.27 hours working on this
25 case.² *See* Lewis/Loeser Dec. at ¶ 26-30. As reflected in the Preliminary Approval

26
27 ² Class Counsel’s lodestar does not include any of the work related to this fee
28 petition.

1 Memo, Final Approval Memo, Joint Declaration, and Lewis/Loeser Declaration,
2 the hours claimed were incurred by, among other things, investigating the claims
3 against Defendants; reviewing and analyzing Plan documents and information;
4 preparing the initial complaints and Consolidated Complaint; conducting necessary
5 legal research; retaining and working with experts; researching and filing claims in
6 FDIC administrative proceedings; negotiating, obtaining, and reviewing documents
7 from the FDIC; obtaining and reviewing documents from the record-keeper;
8 engaging in extensive mediation and settlement negotiations; and preparing the
9 necessary agreements and pleadings related to the Settlement. Joint Dec. at ¶¶ 3-
10 51; Lewis/Loeser Dec. at ¶¶ 14, 16-17. Given these activities, the complexity of the
11 legal issues involved, and the intensity of both the FDIC’s involvement and
12 Defendants’ defenses, the hours incurred are reasonable. Class Counsel anticipate
13 expending substantial additional hours on this litigation to bring it to conclusion,
14 for which we will not seek additional compensation. Lewis/Loeser Dec. at ¶ 31-32.
15 Thus, these are appropriately taken into account when performing the lodestar
16 cross-check.

17 Class Counsel’s rates, between \$335 and \$785 per hour, are reasonable
18 based on each attorney’s position, experience level, and location. *See id.* at ¶¶ 19-
19 25. These rates are based on the prevailing rates in the communities in which Class
20 Counsel practices or on hourly rates obtained by counsel in other complex or class
21 action litigation. *Id.*; *Bouman v. Block*, 940 F.2d 1211, 1235 (9th Cir. 1991)
22 (finding that declarations submitted by counsel of the “prevailing market rate in the
23 relevant community . . . [are] sufficient to establish the appropriate [billing] rate
24 for lodestar purposes”); *Mogck v. Unum Life Ins. Co. of Am.*, 289 F. Supp. 2d
25 1181, 1191 (S.D. Cal. 2003). Taking into account the several factors discussed
26 above, including the result achieved, the complexity and risk of the litigation, and
27
28

1 the skill and experience of counsel, Class Counsel's rates are reasonable and
2 appropriate in this case.

3 Thus, Class Counsel's reasonable hours and reasonable rates produce a
4 current lodestar of \$899,154.25, and estimating and taking into account work that
5 will be necessary following final approval, a total lodestar of \$999,154.25.

6 **2. The Lodestar Cross-Check Also Supports the Requested Fee**
7 **Award.**

8 The 1.95 and 1.76 multipliers produced by cross-checking the 25% against
9 the current \$899,154.25 lodestar and the \$999,154.25 estimated total lodestar are
10 well within the accepted range in the Ninth Circuit. *See, e.g., Vizcaino*, 290 F. 3d at
11 1051 (approving 25% fee after lodestar crosscheck resulted in multiplier of 3.65);
12 *Craft*, 624 F. Supp. 2d at 1125 (approving 25% fee award resulting in a multiplier
13 of 5.2, and collecting similar cases); *Alvidres v. Countrywide Fin. Corp.*, No. 07-
14 5810 (Final Order and Judgment) (C.D. Cal. Nov. 16, 2009) (2.4 multiplier); *Keith*
15 *v. Volpe*, 501 F. Supp. 403, 414 (C.D. Cal. 1980) (3.5 multiplier). Similarly, other
16 ERISA company stock cases outside the Ninth Circuit confirm that a multiplier of
17 1.95 or 1.76 is reasonable. *See In re Merrill Lynch ERISA Litig.*, No. 07-9633
18 (Order and Final Judgment) (S.D.N.Y. Aug. 21, 2009) (2.9 multiplier); *In re*
19 *HealthSouth ERISA Litig.*, No. 03-1700 (Order and Final Judgment) (N.D. Ala.
20 June 28, 2006) (2.2 multiplier); *In re Bristol Myers Squibb Co, ERISA Litig.*, No.
21 02-10129 (S.D.N.Y. Oct. 12, 2005) (Order) (3.9 multiplier); *In re Royal*
22 *Dutch/Shell Transport ERISA Litig.*, No. 04-1398 (D.N.J. Aug. 30, 2005) (Order
23 Approving Settlement) (3.3 multiplier); *In re Honeywell Int'l ERISA Litig.*, No. 03-
24 1214 (D.N.J. July 20, 2005) (Order) (3.7 multiplier); *In re Dynegy ERISA Litig.*,
25 No. 02-3076 (S.D. Tex. Nov. 24, 2004) (Final Order) (4.4 multiplier); *In re*
26 *Household Int'l Inc. ERISA Litig.*, No. 02-7921 (N.D. III. Nov. 22, 2004) (Minute
27 Order) (4.8 multiplier).

1 Even when courts in the Ninth Circuit have relied on the lodestar method
2 alone to award attorney fees, these courts “have routinely enhanced the lodestar to
3 reflect the risk of nonpayment in common-fund cases” by using a multiplier.
4 *WPPSS*, 19 F.3d at 1299-1300. The rationale for enhancing the lodestar figure
5 derives in part from the established practice in the private legal market of
6 rewarding attorneys who take contingency cases with the risk of non-payment by
7 paying them “a premium over their normal hourly rates” when they win. *Id.* at
8 1299.

9 Moreover, the multiplier incentivizes counsel to resolve litigation as quickly
10 as possible, rather than cause delay merely to generate additional attorneys’ fees.
11 Thus, the Ninth Circuit has found that even though a district court generally has
12 discretion to apply a multiplier to compensate for the risk of nonpayment, “[i]t is
13 an abuse of discretion to fail to apply a risk multiplier [] when: (1) attorneys take a
14 case with the expectation that they will receive a risk enhancement if they prevail,
15 (2) their hourly rate does not reflect that risk, and (3) there is evidence that the case
16 was risky.” *Fischel*, 307 F.3d at 1008. This is precisely the case here. Thus, a
17 multiplier of 2.11 or 1.88 is reasonable, because it accounts for the risk and
18 complexity of the litigation while also recognizing that the Settlement resolves this
19 litigation before trial and any other steps in the proceedings that would have
20 generated a substantially larger lodestar than presented at this point.

21 **V. CLASS COUNSEL SHOULD BE REIMBURSED FOR THEIR**
22 **EXPENSES**

23 Class Counsel also request reimbursement for the reasonable and necessary
24 expenses advanced to prosecute this litigation since its inception in July 2008.
25 These expenses, totaling \$97,671.04, are detailed in the Lewis/Loeser Declaration
26 and supporting exhibits. *See* Lewis/Loeser Dec. at ¶¶ 37-42.

1 The appropriate analysis to apply in deciding which expenses are
2 compensable in a common fund case of this type is whether the particular costs are
3 the type typically billed by attorneys to paying clients in the marketplace. *Harris v.*
4 *Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (allowing recovery of “out-of-pocket
5 expenses that would normally be charged to a fee paying client”); *see also Linney*
6 *v. Cellular Alaska P’ship*, No. 96-3008, 1997 WL 450064, at *7 (N.D. Cal. July
7 18, 1997) (“It appears to the Court that the costs requested are reasonable in light
8 of the complexity of the litigation and the number of counsel involved, and [the
9 costs of litigation] are therefore approved by the Court.”). The categories of
10 expenses for which Class Counsel seek reimbursement are the type of expenses
11 routinely charged to hourly clients and, therefore, the full requested amount should
12 be reimbursed. *See Lewis/Loeser Dec.* at ¶ 37.

13
14 **VI. CASE CONTRIBUTION AWARDS ARE WARRANTED FOR NAMED
PLAINTIFFS**

15 Finally, Class Counsel request that the Court award \$5,000 to each Named
16 Plaintiff for the time they have expended in representing the Class members. The
17 criteria courts consider when determining whether to reward a class representative
18 and the amount of the award include “the actions the plaintiff has taken to protect
19 the interests of the class, the degree to which the class has benefitted from those
20 actions, . . . [and] the amount of time and effort the plaintiff expended in pursuing
21 the litigation.” *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003).

22 Here, Named Plaintiffs have diligently fulfilled their obligations as Class
23 Representatives. They alone represented the Class, despite the potential negative
24 effects their involvement in a case of this type might have on their careers.
25 Throughout the two-plus years of litigation, Named Plaintiffs kept informed of the
26 litigation and communicated with Class Counsel as necessary to assist with the
27

1 effective prosecution of the case. Lewis/Loeser Dec. at ¶¶ 43-45. For these reasons,
2 Case Contribution Awards of \$5,000 for each Named Plaintiff are warranted.

3 This award is fair and in line with what other courts have awarded in similar
4 cases. *See, e.g., Alvidres v. Countrywide Fin. Corp.*, No. 07-5810 (C.D. Cal. Nov.
5 16, 2009) (Final Order and Judgment) (awarding \$10,000 service award); *Pelletz v.*
6 *Weyerhaeuser Co.*, 592 F. Supp. 2d 1322, 1330 (W.D. Wash. 2009) (awarding
7 \$30,000 to four plaintiffs); *Razilov v. Nationwide Mut. Ins. Co.*, No. 01-1466, 2006
8 WL 3312024, at *3-4 (D. Or. Nov. 13, 2006) (approving \$10,000 award to each
9 class representative). Thus, Class Counsel respectfully request that the Court award
10 Case Contribution Awards in the amount of \$5,000 for each Named Plaintiff for
11 the valuable services they provided to the Class.

12 VII. CONCLUSION

13 The case pursued and settled by Class Counsel has produced a meaningful
14 and substantial settlement award for Class Members whose 401(k) accounts
15 suffered huge losses as a result of the decline of IndyMac stock. Based on the
16 foregoing, Plaintiffs respectfully request that the Court: (1) award Class Counsel
17 payment of attorneys' fees in the amount of 25% of the Settlement amount;
18 (2) order reimbursement of litigation expenses incurred by Class Counsel in the
19 amount of \$97,671.04; and (3) award \$5,000 each to Named Plaintiffs for the time
20 and resources they dedicated towards representing the Class.

21 DATED this 7th day of December, 2010.

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