

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 January 10, 2011, at 11:00 a.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 <http://www.gcginc.com/cases/idm> 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 December 13, 2010)

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 January 10, 2011 at 11:00 a.m.

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 January 10, 2011, 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.

QUESTIONS? CALL TOLL-FREE 1 (888) 404-8013 OR VISIT [HTTP://WWW.GCGINC.COM/CASES/IDM](http://www.GCGINC.COM/CASES/IDM)

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 December 6, 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 <http://www.gcginc.com/cases/idm> 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 <http://www.gcginc.com/cases/idm>.

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.***

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.).

WHEN WOULD I RECEIVE MY PAYMENT?

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 December 13, 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 December 13, 2010. The Settlement Administrator's address is *In re IndyMac ERISA Litigation*, c/o The Garden City Group, Inc., P.O. Box 91207, Seattle, WA 98111-9307.

If your written objection is not received by December 13, 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 11:00 a.m. on January 10, 2011, 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 December 13, 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 <http://www.gcginc.com/cases/idm>, by calling (888) 404-8013, or by emailing Class Counsel at indymacsettlement@kellerrohrback.com.

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.