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

**IN RE INDYMAC ERISA  
LITIGATION**

**Master File No.:**

CV 08-04579 DDP(VBKx)

**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*.<sup>1</sup> 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

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27 <sup>1</sup> 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 January 10, 2011 at  
8 11:00 a.m., (the "*Fairness 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.  
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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 25% 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 October 15, 2010 (within 30 days of *Preliminary*  
13 *Approval Order*), retain the *Settlement Administrator* to facilitate notice of the  
14 *Settlement* to the *Class* as provided for herein and in the Settlement Agreement.

15           • By no later than November 4, 2010 (60 days before *Fairness*  
16 *Hearing*), cause the *Notice*, with blanks completed and such non-substantive  
17 modifications thereto as may be agreed upon by the *Parties*, to be sent to each  
18 *Person* within the *Class* who can be identified by reasonable effort. Such *Notice*  
19 shall be sent by first-class mail, postage prepaid, to the *Person's* last known  
20 address. The *Defendants* shall cooperate with *Class Counsel* to accomplish *Notice*  
21 provided for in this paragraph, including by providing *Class Counsel*, in  
22 accordance with Section 9 of the Settlement Agreement, with the names and last  
23 known addresses of the members of the *Class* to the extent such information is  
24 within *Defendants'* custody or control.

25           • By no later than November 4, 2010 (60 days before *Fairness*  
26 *Hearing*), cause the Settlement Agreement with all of its exhibits and the *Notice* to  
27 be posted on a website *Class counsel* establishes for this purpose.  
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1           • By no later than November 4, 2010 (60 days before *Fairness*  
2 *Hearing*), cause a *Summary Notice* in the form attached hereto as Exhibit 2, with  
3 blanks completed and such non-substantive modifications thereto as may be agreed  
4 upon by the *Parties*, to be electronically published on at least one occasion for  
5 nationwide distribution on Business Wire and/or such other publications as the  
6 Court may authorize.

7           • By no later than December 27, 2010 (7 days before *Fairness*  
8 *Hearing*), file with the Court a proof of timely compliance with the foregoing  
9 mailing and publication requirements.

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

1           9.     Appearance at Fairness Hearing. Any objector who serves a timely,  
2 written objection in accordance with the instructions above and herein, may also  
3 appear at the *Fairness Hearing* either in person or through counsel retained at the  
4 objector's expense. Objectors or their attorneys intending to appear at the *Fairness*  
5 *Hearing* must effect service of a notice of intention to appear setting forth, among  
6 other things, the name, address, and telephone number of the objector (and, if  
7 applicable, the name, address, and telephone number of the objector's attorney) on  
8 the *Settlement Administrator* (at the addresses set out in the Notice) no later than  
9 December 13, 2010 (21 days before *Fairness Hearing*). Any objector who does  
10 not timely serve a notice of intention to appear in accordance with this paragraph  
11 shall not be permitted to appear at the *Fairness Hearing*, except for good cause  
12 shown.

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

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

21           12.    Motion for Final Approval of Settlement, Plan of Allocation, and Fee  
22 Petition. No later than December 6, 2010 (28 days before the *Fairness Hearing*),  
23 the *Settlement Administrator* and *Class Counsel* shall file with the Court (a) a  
24 motion for entry of the *Final Order and Judgment* and approval of the *Plan of*  
25 *Allocation*; (b) proofs of timely compliance with the foregoing mailing and  
26 publication requirements; (c) the application for award of attorneys' fees and costs  
27 referenced in Paragraph 5.1 of the Settlement Agreement. No later than December  
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1 20, 2010 (14 days before the *Fairness Hearing*), Plaintiffs shall file with the Court  
2 reply in support of application for attorneys' fees and costs and for final approval  
3 of the Settlement.

4 13. Termination of Settlement. This Order shall become null and void,  
5 and shall be without prejudice to the rights of the *Parties*, all of whom shall be  
6 restored to their respective positions existing immediately before this Court entered  
7 this Order, if the *Settlement* is terminated in accordance with the Settlement  
8 Agreement. In such event, Section 10 of the Settlement Agreement shall govern  
9 the rights of the *Parties*.


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

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

20 16. Response to Consolidated Complaint. *Defendants'* obligation to  
21 respond to the *Complaint* is suspended as provided in Section 10 of the Settlement  
22 Agreement.

23 IT IS SO ORDERED.

24 Date: September 16, 2010

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26 Dean D. Pregerson  
27 United States District Judge  
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