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20 *\*Additional counsel listed on signature page*

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 others<sup>1</sup>, 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;

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22 <sup>1</sup> 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 Cochran, 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.  
27  
28

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.

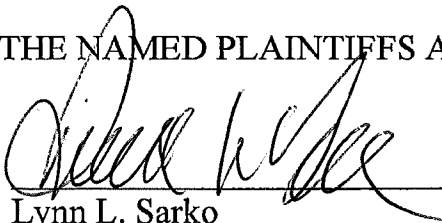
17 11.13. **Continuing Jurisdiction:** The administration, effectuation, and  
18 enforcement of the *Stipulation* as provided for herein will be under the authority of  
19 the *Court*. The *Court* will retain continuing and exclusive jurisdiction over the  
20 *Parties* and *Class Members*, and over 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  
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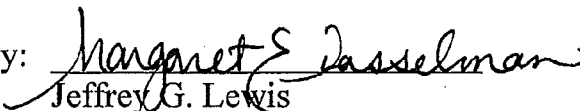
1 *Settlement* and hereby waive all objections to venue and personal and subject  
2 matter jurisdiction in that regard.

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  
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18 By:  Dated: 5-28-10  
19 Jeffrey G. Lewis  
20 Margaret E. Hasselman  
21 James P. Keenley  
22 LEWIS, FEINBERG, LEE,  
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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  
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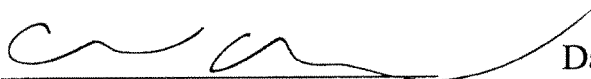
18 *Counsel for Defendants Louis E. Caldera, Hugh M. Grant, and John F. Seymour*

19 By: \_\_\_\_\_ Dated: \_\_\_\_\_  
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2 FOR THE DEFENDANTS:

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

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28 *Counsel for Defendant Michael W. Perry*

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By: Gregory S. Bruch /js Dated: June 1, 2010  
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