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13 UNITED STATES DISTRICT COURT
 14 CENTRAL DISTRICT OF CALIFORNIA
 15 WESTERN DIVISION

16 WAYMAN TRIPP and SVEN
 17 MOSSBERG, Individually and on Behalf
 18 of all Others Similarly Situated,

Plaintiffs,

v.

19
 20 INDYMAC BANCORP, INC. and
 21 MICHAEL W. PERRY,

Defendants.

Case No. 2:07-CV-1635-GW (VBK)

**NOTICE OF MOTION AND
 MOTION FOR DISTRIBUTION OF
 NET SETTLEMENT FUND; AND
 MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT**

Date: October 8, 2015
 Time: 8:30 a.m.
 Room: 10
 Judge: Hon. George H. Wu

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1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on October 8, 2015 at 8:30 a.m. in Courtroom
3 10 of the United States District Court for the Central District of California, U.S.
4 Courthouse, 312 North Spring Street, Los Angeles, California 90012, the Honorable
5 George H. Wu presiding, Lead Counsel will and hereby do move this Court for an
6 order pursuant to Rule 23(e) of the Federal Rules of Civil Procedure: (i) approving
7 the administrative determinations of Rust Consulting, Inc. (“Rust”), the Court-
8 authorized claims administrator for the settlement of the above-captioned action
9 (“Settlement”), accepting and rejecting the claims submitted herein; (ii) directing
10 payment out of the Net Settlement Fund to Rust for the balance of its fees and
11 expenses incurred to date in connection with the administration of the Settlement and
12 expected to be incurred through the initial distribution of the Net Settlement Fund;
13 (iii) directing distribution of the Net Settlement Fund, after deduction of the payment
14 requested herein, to Class Members whose Proof of Claim and Release forms
15 (“Claim Forms” or Claims”) have been accepted for payment by the Court
16 (“Authorized Claimants”); (iv) approving the plan for re-distribution and/or donation
17 of any funds remaining in the Net Settlement Fund following distribution to
18 Authorized Claimants; (v) authorizing destruction of paper copies of Claims one year
19 after the initial distribution of the Net Settlement Fund and electronic copies of
20 Claims three years after the initial distribution of the Net Settlement Fund; and
21 (vi) for such other and further relief as this Court deems appropriate.

22 This motion is based upon this Notice of Motion and Motion, the
23 Memorandum of Points and Authorities set forth below, the accompanying
24 Declaration of Jason Rabe Regarding (A) Processing of Claim Forms, (B)
25 Calculation of Recognized Claims Pursuant to the Plan of Allocation, and (C)
26 Proposed Plan for Distribution of Settlement Proceeds (the “Rabe Decl.”) and the
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1 exhibits thereto, the pleadings and records on file in this action, and other such
2 matters and argument as the Court may consider at the hearing of this motion.

3 This motion is made following the conference of counsel pursuant to L.R. 7-3.
4 Counsel for the Defendant has advised Lead Counsel that the Defendant does not
5 oppose this motion.

6 A [Proposed] Order Authorizing Distribution of Net Settlement Fund is being
7 submitted herewith.

8 Dated: August 14, 2015

Respectfully submitted,

9
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Lead Counsel hereby submits this memorandum in support of the motion for
3 an order, pursuant to Federal Rule of Civil Procedure 23(e), approving the plan for
4 distribution of the Net Settlement Fund to eligible Class Members as set forth in the
5 accompanying Rabe Declaration submitted on behalf of Rust, the Court-authorized
6 claims administrator for the Settlement of the above-captioned action (the “Action”).¹

7 **BACKGROUND ON THE SETTLEMENT**

8 Lead Plaintiff (on behalf of the Class) and the Defendant Michael W. Perry
9 (together, the “Parties”) entered the Stipulation, wherein the Parties agreed, in
10 substance, that in exchange for the payment of \$5,500,000, plus any accrued interest
11 (the “Settlement Fund”), there would be a full and complete settlement of all
12 Released Claims against Defendant and the other Released Parties.² The Settlement
13 Fund, net of any taxes on the income thereof, and net of any funds used to pay Court-
14 awarded attorneys’ fees and expenses and other costs, including notice and
15 administrative costs and escrow fees, is the Net Settlement Fund.

17 ¹ Pursuant to ¶13 of the Stipulation and Agreement of Settlement dated June 25,
18 2012 (the “Stipulation”) previously filed with the Court on August 7, 2012 (Dkt. No.
19 319): “Lead Counsel shall apply to the Court for an order (the “Class Distribution
20 Order”) approving the Claims Administrator’s administrative determinations
21 concerning the acceptance and rejection of submitted claims, approving any fees and
22 expenses relating to the administration of the Settlement, not previously paid by the
23 Escrow agent pursuant to [¶10 of the Stipulation], including the fees and expenses of
24 the Claims Administrator, and, upon the Effective Date (as defined in [¶29 of the
25 Stipulation]), directing payment of the Net Settlement Fund to Authorized
26 Claimants.” Unless otherwise defined, all capitalized terms used herein shall have
27 the meanings set forth in the Stipulation and the Rabe Declaration submitted
28 herewith.

² “Released Parties” means the Defendant, all former co-defendants, and all of their
related parties, including their respective past and present agents, associates,
attorneys (including Defendant’s Counsel), advisors, spouses, family members,
partners, trustees, executors, estates, administrators, subsidiaries, affiliates,
predecessors, successors, assigns and insurers.

1 By its Order Preliminarily Approving Settlement dated August 10, 2012 (Dkt.
2 No. 322) (the “Preliminary Approval Order”), the Court directed that the Notice of
3 Pendency of Class Action and Proposed Settlement, Motion for Attorneys’ Fees and
4 Expenses and Settlement Fairness Hearing (the “Notice”) be mailed to all identifiable
5 members of the Class.³ The mailing of the Notice was conducted in accordance with
6 the Preliminary Approval Order.⁴ Thereafter, the Court held a hearing on January 28,
7 2013 to consider, among other things, whether the proposed Settlement should be
8 granted final approval. By its Order and Final Judgment dated July 29, 2013 (Dkt.
9 No. 350), the Court: (i) approved the Settlement as fair, reasonable and adequate and
10 in the best interests of the Class; (ii) approved the Plan of Allocation as fair and
11 reasonable; (iii) declared the notice procedures to be proper, and (iv) dismissed the
12 Action with prejudice. In addition, the Court reserved continuing jurisdiction over
13 the distribution of the Settlement Fund. *See* Judgment at ¶17.

14 Moreover, the Court authorized the retention of Rust to facilitate notice to the
15 Class, to administer the Settlement, to perform all analyses and accounting
16 procedures in connection with the Claims submitted and to effectuate distribution of

17 ³ Pursuant to the Order dated November 15, 2011 (Dkt. No. 284), the Court certified
18 a class comprised of all persons and entities who purchased or otherwise acquired
19 IndyMac Bancorp, Inc. (“IndyMac” or the “Company”) common stock from March
20 1, 2006 through March 1, 2007, inclusive. Excluded from the Class are: IndyMac,
21 the Defendant, the officers and directors of the Company, at all relevant times,
22 members of their immediate families and their legal representatives, heirs,
23 successors, or assigns and any entity in which IndyMac or the Defendant has or had a
24 controlling interest. Also excluded from the Class are all persons and entities who
25 excluded themselves from the Class by timely requesting exclusion in accordance
26 with the requirements set forth in the Notice, as set forth on Exhibit A to the Court’s
27 Order and Final Judgment dated July 29, 2013 (Dkt. No. 350).

28 ⁴ *See* Declaration of Eric Miller Regarding (A) Mailing of the Notice and Proof of
Claim and Release Form, (B) Publication of the Summary Notice, and (C) Report on
Exclusion Requests Received to Date, dated December 4, 2012 (Dkt. No. 332) and
Supplemental Declaration of Eric J. Miller Regarding (A) Mailing of the Notice and
Proof of Claim and Release Form; (B) Report on Exclusion Requests Received; and
(C) Report on Claims Received to Date, dated January 17, 2013 (Dkt. No. 338).

1 the Net Settlement Fund. See Preliminary Approval Order at ¶4. Rust has consented
2 to this Court’s jurisdiction.

3 **THE SETTLEMENT FUND**

4 Pursuant to the terms of the Stipulation, Defendant caused to be paid (from
5 insurance policies providing coverage to former officers and directors of IndyMac for
6 the period March 1, 2007 through March 1, 2008) \$5,500,000 in cash into an escrow
7 account established by Lead Counsel for the benefit of the Class. In total, \$5,139.82
8 in income has been earned on the settlement proceeds from the date of the initial
9 deposit through July 24, 2015. In addition, the following amounts have been paid
10 from the Settlement Fund: (i) a total of \$196,844.62 in administrative and escrow
11 related expenses⁵ and (ii) \$1,748,064.81 in attorneys’ fees, expenses and interest
12 awarded by the Court.⁶ As of July 24, 2015, the balance of the Net Settlement Fund
13 was \$3,560,230.39.

14 **CLAIMS ADMINISTRATION**

15 In accordance with the Notice, Class Members wishing to participate in the
16 Settlement were required to complete a Claim Form and to mail the Claim Form,
17 together with supporting documentation, to the post office box identified in the
18 Notice, which was maintained by Rust, postmarked by December 28, 2012.
19 Employees of Rust have carefully reviewed, processed and analyzed all Claim Forms
20 submitted. Rabe Decl. at ¶¶6-12. All Claims have been processed in accordance
21

22 ⁵ Under the terms of the Stipulation, Lead Counsel was authorized to pay the costs
23 and expenses incurred in connection with, *inter alia*, providing notice of the
24 Settlement to Class Members, administering the Settlement and distributing the Net
25 Settlement Fund without further approval of the Defendant or the Court. See
26 Stipulation at ¶10; see also ¶22 of the Preliminary Approval Order (“The Court
authorizes payment out of the Settlement Fund of notice and administration expenses
in accordance with the Stipulation.”).

27 ⁶ Pursuant to its Order and Final Judgment dated July 29, 2013, the Court awarded
28 Lead Counsel 25% of the Settlement Fund (or \$1,375,000) in attorneys’ fees and
\$371,914.84 in expenses, plus interest on these amounts (calculated as \$1,149.97).

1 with the Stipulation and the Court-approved Plan of Allocation set forth in the
2 Notice. *Id.* at ¶7.⁷ In addition, Rust has responded in a prompt manner to all
3 inquiries regarding the Action, the Settlement and the procedures for completing and
4 submitting Claims. *Id.* at ¶5.

5 **DEFICIENT AND REJECTED CLAIMS**

6 As set forth in the accompanying Rabe Declaration, for all submitted Claims
7 that were determined to be intrinsically ineligible (*i.e.*, Claims that cannot be cured
8 by submitting additional information) or duplicative of another submitted Claim,
9 Rust mailed a “Rejection Letter” to the claimant advising him, her or it of the
10 ineligibility/rejection of the Claim. Rabe Decl. at ¶13. For all submitted Claims that
11 were determined to be deficient due to missing information and/or documentation
12 and that could potentially be cured by the submission of additional information, Rust
13 mailed a “Deficiency Letter” to the claimant advising him, her or it of the
14 deficiency(ies) with the Claim and what was necessary to cure the Claim. *Id.* at ¶14.⁸
15 Electronically submitted Claims that were determined to be ineligible or deficient
16 were notified of their ineligibility or deficiency by means of a Transaction Report.
17 *Id.* at ¶15.

18 The Deficiency and Rejection Letters and the Transaction Reports advised
19 claimants and filers that they had the right to contest Rust’s administrative
20 determinations with respect to their Claims. Rabe Decl. at ¶17. There is one
21 claimant contesting Rust’s administration determination to partially reject their Claim
22 and requesting the Court’s review of their Claim. *Id.* at ¶¶17, 19-20. This Claim

23 ⁷ The Plan of Allocation approved by the Court was complex – based on, among
24 other things, multiple disclosures by the Defendant and IndyMac as well as the dollar
25 inflation applicable to each eligible share of IndyMac common stock during the Class
26 Period as determined by Lead Plaintiff’s damages expert. *See* Notice at pp. 11-15.
27 The application of the Plan of Allocation to the Claims submitted required careful
analysis and review by Rust employees.

28 ⁸ Sample Rejection and Deficiency Letters are attached to the Rabe Declaration as
Exhibits C and D, respectively.

1 (Claim No. 1307) was partially rejected by Rust for the inclusion of an ineligible
2 transaction – a transfer of IndyMac common stock from one account to another
3 account. *Id.*, *see also* Exhibit G (attaching a copy of Claim No. 1307 and all
4 correspondence between Rust and the claimant). Since this Claim is only being
5 recommended for partial rejection, the portion of the Claim that is valid is eligible to
6 participate in the distribution and is included in the list of valid Claims on Exhibit H
7 to the Rabe Declaration. *Id.* at ¶20. Lead Counsel has reviewed Claim No. 1307 and
8 concurs with Rust’s determination to partially reject the Claim.

9 **ADMINISTRATIVE DETERMINATIONS FOR SUBMITTED CLAIMS**

10 **I. Submitted Claims Recommended for Acceptance**

11 A total of 15,415 claims (including timely and late claims received through
12 December 31, 2014)⁹ were submitted in connection with the Settlement, 8,307 of
13 which have been deemed valid and are being recommended for acceptance. Rabe
14 Decl. at ¶22; *see also* Exhibit H and I to the Rabe Declaration listing all valid Claims,
15 in Claim number order. Of the 8,307 valid Claims, 975 Claims were submitted after
16 the claims submission deadline set forth in the Notice. *Id.* at 22(b). Lead Counsel
17 believes that it would be appropriate to allow these late but otherwise valid Claims to
18 share in the Net Settlement Fund as they were received while the processing of the
19 timely valid Claims was ongoing. The Court has discretion to accept Claims
20 submitted after the claims submission deadline.¹⁰

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23 ⁹ In anticipation of completing the administration for this Settlement and in order for
24 there to be a proportional distribution of the Net Settlement Fund, December 31,
25 2014 was selected as the last day Claims would be accepted for processing. Rabe
26 Decl. at ¶¶7, n.3, 23.

27 ¹⁰ Pursuant to ¶16 of the Preliminary Approval Order: Any Class Member who
28 wishes to participate in the Net Settlement Fund must timely submit a valid Proof of
Claim to the Claims Administrator, at the Post Office Box indicated in the Notice,
postmarked not later than one hundred and twenty (120) calendar days following the
Notice Date. *Such deadline may be extended further by Court order.*” (emphasis
added).

1 The total Recognized Claims for the 8,307 valid Claims calculated pursuant to
2 the Court-approved Plan of Allocation is \$102,702,264.15. *Id.* Lead Counsel
3 respectfully requests that this Court approve Rust's administrative determinations
4 with respect to the valid Claims being recommended for acceptance as listed on
5 Exhibits H and I to the Rabe Declaration.

6 **II. Submitted Claims Recommended for Rejection**

7 Of the total claims submitted, 7,108 Claims were deemed ineligible and are
8 being recommended for rejection. Rabe Decl. at ¶18; *see also* Exhibit F to the Rabe
9 Declaration listing all ineligible Claims, in Claim number order. The 7,108 Claims
10 being recommended for rejection were deemed to be ineligible for the following
11 reasons: (i) 3,457 Claims did not include a purchase/acquisition of IndyMac common
12 stock during the Class Period; (ii) 3,309 Claims did not result in a Recognized Claim
13 when calculated pursuant to the Court-approved Plan of Allocation; (iii) 206 Claims
14 were duplicates of Claims previously submitted; (iv) 113 Claims were withdrawn;
15 and (v) 23 Claims were deemed deficient and the deficiency(ies) were never cured.
16 Rabe Decl. at ¶18. Lead Counsel respectfully requests that this Court approve Rust's
17 administrative determinations with respect to the rejected Claims as listed on Exhibits
18 F to the Rabe Declaration.

19 **FEES AND EXPENSES OF CLAIMS ADMINISTRATOR AND TAXES**

20 In accordance with Rust's agreement with Lead Counsel to act as the claims
21 administrator in connection with the Settlement of the Action, Rust is responsible for,
22 among other things, mailing notice to the Class, processing Claim Forms, and
23 allocating and distributing the Net Settlement Fund to eligible claimants. As set forth
24 in the accompanying Rabe Declaration, Rust's outstanding administrative fees and
25 expenses incurred in connection with the administration of the Settlement and
26 processing Claims and expected to be incurred through the distribution of the Net
27 Settlement Fund amount to \$297,315.92. Rabe Decl. at ¶¶33-34; *see also* Exhibits J
28 and K to the Rabe Declaration (attaching copies of Rust's invoices for its outstanding

1 administration fees and expenses and its estimated fees and expenses that will be
2 incurred in connection with the distribution of the Net Settlement Fund).

3 In addition, under the provisions of §1.468B of the Internal Revenue Code,
4 monies payable to the Internal Revenue Service at the time of distribution on the
5 interest earned on the settlement proceeds, if any, will be withheld from payment to
6 the Class and immediately paid to the Internal Revenue Service.

7 Lead Counsel respectfully requests that the Court approve Rust's unreimbursed
8 fees and expenses and direct payment of Rust's unreimbursed fees and expenses, as
9 well as any taxes due, prior to distribution of the Net Settlement Fund to the Class.

10 **DISTRIBUTION PROCESS**

11 The Net Settlement Fund is ready to be distributed at this time. Lead Counsel,
12 therefore, respectfully requests the Court direct Rust to distribute the Net Settlement
13 Fund to the claimants whose claims Rust has administratively determined to be valid,
14 as listed on Exhibits H and I to the Rabe Declaration (the "Authorized Claimants"),
15 in accordance with ¶¶26-31 of the Rabe Declaration. If Rust's administrative
16 determinations are approved, each of these claimants will receive a *pro rata* share of
17 the Net Settlement Fund based on his, her, or its Recognized Claim compared to the
18 total Recognized Claims of all Authorized Claimants.

19 It is expected that not all of the checks sent to the Authorized Claimants will be
20 cashed promptly and some of these checks will remain uncashed. Rabe Decl. at
21 ¶29.¹¹ Pursuant to the Plan of Allocation, if any funds remain in the Net Settlement
22 Fund by reason of uncashed checks, or otherwise, after the Claims Administrator has
23 made reasonable and diligent efforts to have Authorized Claimants who are entitled
24 to participate in the distribution of the Net Settlement Fund cash their distribution
25 checks then any balance remaining in the Net Settlement Fund six (6) months after
26

27 ¹¹ In order to encourage Authorized Claimants to promptly cash their checks, all
28 distributions will bear a notation "CASH PROMPTLY, VOID AND SUBJECT TO
RE-DISTRIBUTION IF NOT CASHED BY DATE 90 DAYS AFTER ISSUE
DATE."

1 the initial distribution of such funds shall be used: (i) first, to pay any amounts
2 mistakenly omitted from the initial distribution to Authorized Claimants or to pay any
3 late, but otherwise valid and fully documented claims received after the cut-off date
4 used to make the initial distribution, which were not previously authorized by the
5 Court to be paid, provided that such distributions to any late post-distribution
6 claimants meet all of the other criteria for inclusion in the initial distribution,
7 including the \$10.00 minimum check amount set forth in the Notice; (ii) second, to
8 pay any additional fees and expenses incurred in administering the Settlement; and
9 (iii) finally, to make a second distribution to Authorized Claimants who cashed their
10 checks from the initial distribution and who would receive at least \$10.00 from such
11 second distribution, after payment of the estimated costs and fees to be incurred in
12 administering the Net Settlement Fund and in making this second distribution, if such
13 second distribution is economically feasible.

14 If after six (6) months after such second distribution, if undertaken, or if such
15 second distribution is not undertaken, any funds remain in the Net Settlement Fund
16 after the Claims Administrator has made reasonable and diligent efforts to have
17 Authorized Claimants who are entitled to participate in this Settlement cash their
18 checks, the funds remaining in the Net Settlement Fund shall be donated to a
19 501(c)(3) charity selected by Lead Counsel and approved by the Court.

20 **RELEASE OF CLAIMS**

21 Lead Counsel respectfully requests this Court release and discharge all persons
22 who are involved in the review, verification, calculation, tabulation, or any other
23 aspect of the processing of the Claims submitted in connection with the Settlement of
24 this Action, or who are otherwise involved in the administration or taxation of the
25 Settlement Fund or the Net Settlement Fund from any and all claims arising out of
26 such involvement, and, pursuant to the release terms of the Settlement, bar all Class
27 Members, whether or not they are to receive payment from the Net Settlement Fund,
28 from making any further claim against the Net Settlement Fund or the parties

1 released pursuant to the Settlement beyond the amount allocated to them by the
2 Settlement as approved by the Court.¹²

3 **RECORD RETENTION AND DESTRUCTION**

4 Lead Counsel respectfully requests that the Court authorize Rust to destroy
5 paper copies of Claims and all supporting documentation one year after the initial
6 distribution of the Net Settlement Fund and electronic copies of the same three years
7 after the initial distribution of the Net Settlement Fund.

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10 _____
11 ¹² As set forth in the Court-approved Notice distributed to more than 75,000
12 potential Class Members and posted on the website for the Settlement,
13 www.IndyMacClassActionSettlement.com, (*see* Rabe Decl. at ¶4): “Payment
14 pursuant to the Plan of Allocation approved by the Court shall be conclusive against
15 all Authorized Claimants. No person shall have any claim against the Defendant,
16 Defendant’s Counsel, Lead Plaintiff, Plaintiffs’ Counsel or the Claims Administrator
17 or other agent designated by Lead Counsel based on the distributions made
18 substantially in accordance with the Stipulation and the Settlement contained therein,
19 Plan of Allocation, or further orders of the Court. Each claimant shall be deemed to
20 have submitted to the jurisdiction of the Court with respect to the claimant’s Proof of
21 Claim. All persons involved in the review, verification, calculation, tabulation, or
22 any other aspect of the processing of the claims submitted in connection with the
23 Settlement, or otherwise involved in the administration or taxation of the Settlement
24 Fund or the Net Settlement Fund shall be released and discharged from any and all
25 claims arising out of such involvement, and all Class Members, whether or not they
26 are to receive payment from the Net Settlement Fund, will be barred from making
27 any further claim against the Net Settlement Fund beyond the amount allocated to
28 them as provided in any distribution orders entered by the Court.” Notice at p. 15.
Accordingly, Class Members were notified that they would be barred from bringing
the types of claims described in this release and had the opportunity to object.
Moreover, similar language has been routinely approved by courts in connection with
the distribution of settlement proceeds. *See, e.g., In re Marvell Technology Group
Ltd. Sec. Litig.*, Master File No. C-06-06286 RMW (N.D. Cal. Apr. 13, 2015) at p. 3
(Dkt. No. 306); *Minneapolis Firefighters’ Relief Association, et al. v. Medtronic,
Inc., et al.*, Civil No. 08-6324 (PAM/AJB) (D. Minn. Feb. 24, 2015) at 3(j) (Dkt. No.
359); *Coady, et al. v. Perry, et al.*, Case No. CV 08-03812-GW (VBKx) (C.D. Cal.
June 20, 2014) at ¶12 (Dkt. No. 293).

CONCLUSION

Based on the foregoing, Lead Counsel respectfully requests that the Court approve the Motion for Distribution of Net Settlement Fund and enter the [Proposed] Order Authorizing Distribution of Net Settlement Fund submitted herewith.

Dated: August 14, 2015

Respectfully submitted,

**KESSLER TOPAZ
MELTZER & CHECK, LLP**

/s/ Stacey M. Kaplan

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Additional Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Stacey M. Kaplan
Stacey M. Kaplan

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

WAYMAN TRIPP and SVEN
MOSSBERG, Individually and
on Behalf of all Others
Similarly Situated,

Plaintiffs,

v.

INDYMAC BANCORP, INC. and
MICHAEL W. PERRY,

Defendants.

Case No. 2:07-CV-1635-GW (VBK)

**[PROPOSED] ORDER
AUTHORIZING DISTRIBUTION
OF NET SETTLEMENT FUND**

Date: October 8, 2015
Time: 8:30 a.m.
Room: 10
Judge: Hon. George H. Wu

1 WHEREAS, by its Order and Final Judgment entered in the above-
2 captioned action (“Action”) on July 29, 2013 (Dkt. No. 350), this Court approved
3 the terms of the settlement set forth in the Stipulation and Agreement of
4 Settlement dated June 25, 2012 (the “Stipulation”) (Dkt. No. 306) and the plan
5 for allocating the settlement proceeds to eligible Class Members (the “Plan of
6 Allocation”), respectively; and

7 WHEREAS, this Court had directed the parties to consummate the terms
8 of the Stipulation and Plan of Allocation; and

9 WHEREAS, the \$5,500,000 cash settlement proceeds have been deposited
10 into an escrow account maintained by The Huntington National Bank on behalf
11 of the Class (the “Settlement Fund”); and

12 WHEREAS, as set forth in the Notice of Pendency of Class Action and
13 Proposed Settlement, Motion for Attorneys’ Fees and Expenses and Settlement
14 Fairness Hearing (the “Notice”), the deadline for Class Members to submit Proof
15 of Claim and Release forms (“Claim Forms” or “Claims”) to the Court-approved
16 claims administrator for the Settlement, Rust Consulting, Inc (“Rust”), in order
17 to be potentially eligible to participate in the distribution of the Net Settlement
18 Fund has passed; and

19 WHEREAS, in satisfaction of due process requirements, all Class
20 Members who submitted Claims that were in any way ineligible or deficient
21 were: (1) informed that their Claims were ineligible or deficient; and (2) given
22 opportunities to correct any curable deficiency(ies) prior to their Claims being
23 finally rejected, or to contest the determination as to such deficiency(ies), by
24 requesting review by the Court; and

25 WHEREAS, the process of reviewing all Claims has been completed; and

26 WHEREAS, Lead Counsel now seeks authorization to distribute the
27 proceeds of the Settlement Fund to Authorized Claimants, after deduction of any
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1 taxes, fees and expenses previously approved by the Court or approved by this
2 Order (the “Net Settlement Fund”); and

3 WHEREAS, this Court has retained jurisdiction of this Action for the
4 purposes of supervising the implementation, enforcement, construction, and
5 interpretation of the Stipulation, the Plan of Allocation and the Judgment and
6 supervising the distribution of the Settlement Fund;

7 NOW, THEREFORE, upon reading: (1) the Declaration of Jason Rabe
8 Regarding (A) Processing of Claim Forms; (B) Calculation of Recognized
9 Claims Pursuant to the Court-Approved Plan of Allocation; and (C) Proposed
10 Plan for Distribution of Settlement Proceeds (the “Rabe Declaration”) submitted
11 on behalf of Rust; (2) the Notice of Motion and Motion for Distribution of Net
12 Settlement Fund; and Memorandum of Points and Authorities in Support; and (3)
13 the other submissions and papers on file with the Court; and upon all prior
14 proceedings heretofore had herein, and after due deliberation, it is hereby

15 ORDERED, that the administrative determinations of Rust accepting the
16 Claims as indicated on the schedules of valid Claims submitted and described in
17 the Rabe Declaration, calculated pursuant to the Court-approved Plan of
18 Allocation set forth in the Notice, be and the same hereby are approved, and said
19 Claims are hereby accepted; and it is further

20 ORDERED, that the administrative determinations of Rust rejecting the
21 Claims as indicated on the schedules of ineligible and rejected Claims submitted
22 with and described in the Rabe Declaration under the Court-approved Plan of
23 Allocation set forth in the Notice, be and the same hereby are approved, and said
24 Claims are hereby rejected; and it is further

25 ORDERED, that payment be made from the Settlement Fund to the
26 Internal Revenue Service for the proper amount of taxes due and owing on the
27 interest earned on the Settlement Fund while in escrow, if any; and it is further
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1 ORDERED, that Rust be paid the sum of \$297,315.92 from the Settlement
2 Fund as payment for the balance of its fees and expenses incurred and to be
3 incurred in connection with the administration of the Settlement and the
4 distribution of the Net Settlement Fund; and it is further

5 ORDERED, that the Net Settlement Fund shall be distributed to the
6 Authorized Claimants listed on Exhibits H and I to the Rabe Declaration
7 pursuant to the Court-approved Plan of Allocation in proportion to each
8 Authorized Claimant's Recognized Claim as compared to the total Recognized
9 Claims of all Authorized Claimants as shown on such exhibits; and it is further

10 ORDERED, that the checks for distribution to the Authorized Claimants
11 shall bear the notation "CASH PROMPTLY, VOID AND SUBJECT TO RE-
12 DISTRIBUTION IF NOT CASHED BY [DATE 90 DAYS AFTER ISSUE
13 DATE]." Lead Counsel and Rust are authorized to take appropriate actions to
14 locate and/or contact any Authorized Claimant who has not cashed his, her or its
15 check within said time; and it is further

16 ORDERED, that Authorized Claimants who do not cash their checks
17 within the time allotted will irrevocably forfeit all recovery from the Settlement
18 Fund; and it is further

19 ORDERED, that, any funds remaining following the distribution of the
20 Net Settlement Fund to the Class, will be used: (i) first, to pay any amounts
21 mistakenly omitted from the initial distribution to Authorized Claimants or to
22 pay any late, but otherwise valid and fully documented claims received after the
23 cut-off date used to make the initial distribution, which were not previously
24 authorized by the Court to be paid, provided that such distributions to any late
25 post-distribution claimants meet all of the other criteria for inclusion in the initial
26 distribution, including the \$10.00 minimum check amount set forth in the Notice;
27 (ii) second, to pay any additional fees and expenses incurred in administering the
28 Settlement; and (iii) finally, to make a second distribution to Authorized

1 Claimants who cashed their checks from the initial distribution and who would
2 receive at least \$10.00 from such second distribution, after payment of the
3 estimated fees to be incurred in administering the Net Settlement Fund and in
4 making this second distribution, if such second distribution is economically
5 feasible; and it is further

6 ORDERED, that, any funds remaining six (6) months after such second
7 distribution, if undertaken, or if such second distribution is not undertaken, and
8 after the Claims Administrator has made reasonable and diligent efforts to have
9 Authorized Claimants who are entitled to participate in this Settlement cash their
10 checks, shall be donated to a 501(c)(3) charity selected by Lead Counsel and
11 approved by the Court; and it is further

12 ORDERED, that the Court finds that the administration of the Settlement
13 and the proposed distribution of the Net Settlement Fund comply with the terms
14 of the Stipulation and the Plan of Allocation and that all persons involved in the
15 review, verification, calculation, tabulation, or any other aspect of the processing
16 of the Claims submitted in connection with the Settlement of this Action, or who
17 are otherwise involved in the administration or taxation of the Settlement Fund
18 or the Net Settlement Fund are released and discharged from any and all claims
19 arising out of such involvement, and, pursuant to the release terms of the
20 Settlement, all Class Members, whether or not they are to receive payment from
21 the Net Settlement Fund, are barred from making any further claims against the
22 Net Settlement Fund or the parties released pursuant to the Settlement beyond
23 the amount allocated to them pursuant to this Order; and it is further

24 ORDERED, that Rust is hereby authorized to destroy the paper copies and
25 all supporting documentation of the Claims one (1) year after the initial
26 distribution of the Net Settlement Fund and all electronic copies and supporting
27 documentation of the Claims three (3) years after the initial distribution of the
28 Net Settlement Fund; and it is further

1 ORDERED, that this Court retain jurisdiction over any further application
2 or matter which may arise in connection with this Action; and it is further

3 ORDERED, that any Claim received after December 31, 2014 be rejected
4 as untimely and not included in the initial distribution of the Net Settlement; and
5 it is further

6 ORDERED, that any response to a Deficiency or Ineligibility Letter
7 submitted after December 31, 2014 be rejected as untimely and not included for
8 consideration in connection with the initial distribution of the Net Settlement.

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Dated: _____

The Honorable George H. Wu
United States District Judge