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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)

**DECLARATION OF HON. DANIEL H.
WEINSTEIN (RET.) IN SUPPORT OF
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT**

I, Hon. Daniel H. Weinstein (Ret.), hereby declare as follows:

1. Since 2010, I have served as the mediator regarding a variety of claims concerning IndyMac Bancorp, Inc., IndyMac Bank, F.S.B., its former directors, officers, employees, and related entities, and specifically in *Tripp, et al. v. Perry et al.* I submit this declaration at the joint request of the consolidated securities class action *Tripp* Plaintiffs and defendant Michael W. Perry, who seek entry of a final approval order of their class action settlement. Except as otherwise noted, I have personal knowledge of the matters set forth herein and I am competent to testify

1 thereto in a Court of law.

2 2. All of the Parties who were represented during the mediation process or
3 who participated in the negotiations executed a Confidentiality Agreement indicating
4 that the mediation process was to be considered settlement negotiations for the
5 purpose of all state and federal rules protecting disclosures made during such process
6 from later discovery and / or used in evidence. The Parties further agreed that the
7 Confidentiality Agreement extends to all present and future civil, judicial, quasi-
8 judicial, arbitral, administrative or other proceedings. Nothing in my declaration
9 divulges any privileged information. Further, the filing of this declaration does not
10 constitute the waiver of any such confidentiality.

11 3. From 1982 through 1988, I served as Judge of the Superior Court of the
12 State of California, County of San Francisco. I also served as an Associate Justice
13 Pro Tem of the California Supreme Court and of the First District Court of Appeal.

14 4. Since retiring from the bench, I have been a full-time mediator. For over
15 twenty years, I have presided over the mediation of countless disputes, including
16 many of the most complex multi-party disputes throughout the United States. For
17 example, I have mediated dozens of federal securities class actions involving public
18 companies such as Enron, Qwest, Adelphia, New Century, Broadcom, Aviva, Marsh
19 & McLennan, PIMCO, and other major New York Stock Exchange and NASDAQ
20 corporations. I have also mediated a host of other types of class actions, including
21 litigation with bankruptcy and regulatory aspects, financial institutions in
22 receivership, intellectual property actions, subprime litigation, environmental cases,
23 ERISA actions, and litigation brought by Trustee, borrowers, credit card customers,
24 insurance purchasers and air crash victims. Many of these cases involve complex
25 fact patterns and legal issues and hundreds of millions (or billions) of dollars in
26 claimed damages. They often include numerous plaintiffs and their counsel, as well
27 as numerous defendants (directors, officers, professional firms, insurance carriers,
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1 etc.) and defense counsel. For each year in the last decade, I have assisted parties in
2 forging settlements of complex disputes involving more than one billion dollars in the
3 aggregate.

4 5. I set forth my background as a mediator to provide context for the
5 comments that follow and to demonstrate that my perspective on the settlement of
6 these matters is rooted in significant experience in the resolution of complex
7 litigation. As described below, this action presented complicated legal, factual and
8 practical issues.

9 6. In January 2010, my office was initially contacted by counsel for certain
10 former directors for the Bank who were organizing a mediation involving the *Tripp*
11 Securities Class Action Plaintiffs and other Plaintiffs' groups to negotiate claims
12 arising out of the failure of the IndyMac Bank and its associated entities. These
13 parties were joined in the request for my services by the Bankruptcy Trustee (*Siegel*
14 *v. Caldera, et al.*); the FDIC, as Receiver of IndyMac Bank, F.S.B. (*FDIC-R v. Van*
15 *Dellen, et al.*, and *FDIC-R v. Perry*); by other securities' class plaintiffs in separate
16 consolidated actions (*Coady, et al. v. Perry, et al.*, and *In re IndyMac MBS Securities*
17 *Litigation*); and by subrogation plaintiffs of purchasers of RMBS for losses in
18 connection with the securitizations of IndyMac mortgages (*MBIA v. IndyMac ABS,*
19 *Inc., et al.* and *Assured Guaranty v. UBS Securities LLC, et al.*). In July, a mediation
20 was scheduled and the first session took place on September 22, 2010.

21 7. In the interim months, I and my office worked with the negotiating
22 parties to establish a procedure for the mediation and for the submission and
23 exchange of lengthy mediation briefs and exhibits. These exchanged submissions
24 included thorough analyses of the claims, defenses, and the current status of each of
25 the proceedings, as well as a review of the insurance policies and the competing
26 demands being made upon them. In confidential submissions for the Mediator's Eyes
27 Only, and in separate caucuses, the parties provided additional candid assessments of
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1 their cases and their settlement positions. The parties' positions reflected highly
2 disparate views about the claims and liability asserted against the defendant, and their
3 defenses thereto.

4 8. Recognizing the complexity of the interrelated claims in these matters, I
5 established a structure whereby I would attempt to mediate all of the pending claims
6 submitted for mediation.

7 9. The initial mediation session in this case occurred on September 22,
8 2010, at our JAMS San Francisco Resolution Center. At that session, and its
9 subsequent settlement sessions and negotiations, I was assisted by Michelle Yoshida,
10 another mediator who regularly works with me in mediating complex matters. The
11 Trustee and representatives and counsel for the FDIC-R, the *Coady, Tripp*, and *MBS*
12 securities class action plaintiffs, the *MBIA* and *Assured Guaranty* subrogation
13 plaintiffs, the director, officer, and employee defendants, and the Carriers attended
14 the mediation.

15 10. I oversaw the settlement negotiations between the Settling Parties for
16 approximately one and a half years. Throughout the mediation process there have
17 been numerous, and often lengthy, conference calls and numerous communications
18 with me and / or Michelle Yoshida.

19 11. I received arguments from the *Tripp* Plaintiffs concluding that the
20 liability aspects of the case were not without material risks to Defendant Perry and
21 that their case had achieved class certification. Further, they offered a liability
22 analysis that, in the best-case scenario for them, could have yielded a significant
23 damages award against Mr. Perry. I also heard from Defendant Perry credible
24 arguments concerning why the *Tripp* plaintiffs faced various legal and factual
25 hurdles. He further identified what he contended were areas of vulnerability in the
26 plaintiffs' damages methodology which, if accepted by a jury, could have
27 substantially reduced the damages the Plaintiffs could reasonably expect to recover,
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1 and emphasized a shorter class period. I note that there were occasions during the
2 negotiation process where the *Tripp* parties appeared to have reached an impasse,
3 however, through numerous telephonic conferences and other communications, the
4 parties were ultimately able to resolve all of the material issues and agree to a
5 settlement, subject to Court approval.

6 12. In addition to these strongly disputed legal claims, defenses and
7 damages issues, there were challenging and complicated financial issues due to the
8 amount of damages being sought for settlement and the available potential resources
9 for satisfaction of any judgments that might be obtained. The parties early settlement
10 demands and offers reflected vastly different views about the merits, damages, and
11 available financial resources to resolve the concerns. There were also strong
12 positions taken by the parties that would have taken years to litigate, with uncertain
13 results, and extraordinary fiscal costs to all of the parties.

14 13. Additionally, the amount of available insurance was being eroded at a
15 fast pace by the sheer expense of the litigation landscape and the significant defense
16 costs being incurred. Failure to reach a settlement posed the legitimate concern that
17 significant resources would be consumed in the expense of the ongoing litigation
18 when there were also a number of separate actions pending. Thus, there were some
19 common sense, practical considerations of resources and collection that had to be
20 factored in along with the plethora of legal and factual issues in the mediated case.

21 14. The negotiations culminated in a Mediator's Proposal of \$5,500,000
22 (Five Million, Five Hundred Thousand Dollars). The Mediator's Proposal was in a
23 range that I believed reasonably reflected the parties' factual, legal, and financial
24 positions, and also took into consideration the risks and costs of litigation, the other
25 pending matters, and the extent to which insurance coverage and other resources
26 would be depleted should this matter not settle. Following some very strong
27 advocacy on behalf of each group, the Mediator's Proposal of \$5,500,000 was
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1 accepted by the *Tripp* parties in March 2012.

2 15. In light of the sophisticated factual, legal, and financial issues involved
3 and the significant time to litigate and negotiate this resolution, I view the settlement
4 in large part as a testament to the abilities and efforts of sophisticated and
5 professional counsel who were fully prepared and well-informed on the law and facts
6 of this case. I can state that each settlement term represents a heavily negotiated and
7 arm's-length compromise of disputed claims among experienced and able counsel.

8 16. Based on my experience as a mediator, and my specific experience
9 overseeing the complicated negotiation process in this case, I believe that the total
10 recovery proposed for the *Tripp* Plaintiffs' Class through the settlement is fair,
11 reasonable, and adequate. This Court, of course, will make its own determination as
12 to the "fairness" of the settlement under applicable legal standards. From a
13 mediator's perspective, however, I can say that it represents meaningful consideration
14 flowing to Class Members, with due recognition of the complexity of the facts and
15 legal contentions at issue, the risks presented to both sides, the limited financial
16 resources, and the threat of continued protracted litigation and possible appeals. As
17 such, I unreservedly and respectfully recommend that this settlement be approved in a
18 final basis by the Court.

19 I declare under penalty of perjury, under the laws of the United States, that the
20 foregoing is true and correct. Executed this 6th day of December 2012.

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24 Hon. Daniel H. Weinstein (Ret.)
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CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2012, 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 attached 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. Executed on December 7, 2012.

/s/ Ramzi Abadou
Ramzi Abadou

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

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Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

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