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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
PRELIMINARILY APPROVING
SETTLEMENT**

Hearing Date: July 9, 2012
Time: 8:30 a.m.
Courtroom: 10
Judge: Hon. George H. Wu

1 WHEREAS, on June 25, 2012, Lead Plaintiff Sven Mossberg, on behalf of
2 himself and the certified Class (as defined below), and defendant Michael W. Perry
3 (the “Defendant” and, together with Lead Plaintiff, the “Parties”) in the above-
4 captioned class action (the “Action”), by and through their respective counsel,
5 entered into a Stipulation and Agreement of Settlement (the “Stipulation”) which is
6 subject to review under Rule 23 of the Federal Rules of Civil Procedure and which,
7 together with the exhibits thereto, sets forth the terms and conditions for the proposed
8 settlement of the claims alleged in the amended complaint filed with the Court on
9 February 16, 2010 (the “Complaint”);

10 WHEREAS, pursuant to Order dated November 15, 2011, the Court certified a
11 class comprised of all persons and entities who purchased or otherwise acquired
12 IndyMac Bancorp, Inc. (“IndyMac” or the “Company”) common stock from March
13 1, 2006 through March 1, 2007, inclusive;¹ and

14 WHEREAS, upon consent of the Parties, after review and consideration of the
15 Stipulation filed with the Court and the exhibits annexed thereto, and after due
16 deliberation,

17 IT IS HEREBY ORDERED that:

18 1. The Court, for purposes of this order (the “Preliminary Approval
19 Order”), adopts all defined terms as set forth in the Stipulation.

20 2. Lead Counsel is authorized to act on behalf of the Class with respect to
21 all acts required by, or which may be undertaken pursuant to, the Stipulation or such
22 other acts that are reasonably necessary to consummate the proposed Settlement set
23 forth in the Stipulation.

24 _____
25 ¹ Excluded from the Class are: IndyMac, the Defendant, the officers and
26 directors of the Company, at all relevant times, members of their immediate families
27 and their legal representatives, heirs, successors, or assigns and any entity in which
28 IndyMac or the Defendant has or had a controlling interest. Also excluded from the
Class are all persons and entities who exclude themselves from the Class by timely
requesting exclusion in accordance with the requirements set forth in the Notice of
Pendency of Class Action and Proposed Settlement, Motion for Attorneys’ Fees and
Expenses and Settlement Fairness Hearing (the “Notice”), which shall be mailed to
members of the Class.

1 3. The Court preliminarily approves: (i) the Settlement of the Action as set
2 forth in the Stipulation, and (ii) the proposed Plan of Allocation described in the
3 Notice, subject to the right of any Class Member to challenge the fairness,
4 reasonableness, and adequacy of the Settlement, the Stipulation or the proposed Plan
5 of Allocation, and to show cause, if any exists, why a final judgment dismissing the
6 Action based on the Stipulation should not be ordered herein after due and adequate
7 notice to the Class has been given in conformity with this Order.

8 4. Lead Counsel is hereby authorized to retain Rust Consulting, Inc.
9 (“Rust”) as the Claims Administrator in connection with the Settlement to supervise
10 and administer the notice and claims procedures. The Parties and their counsel shall
11 not be liable for any act or omission of the Claims Administrator.

12 5. Lead Counsel, or an agent thereof, is authorized and directed to prepare
13 any tax returns and any other tax reporting for or in respect of the Settlement Fund
14 and to pay from the Settlement Fund any Taxes owed with respect to the Settlement
15 Fund, and to otherwise perform all obligations with respect to Taxes and any
16 reporting or filings in respect thereof as contemplated by the Stipulation, without
17 further order of the Court.

18 6. Pursuant to Fed. R. Civ. P. 23(e), a hearing (the “Settlement Fairness
19 Hearing”) shall be held on _____, 2012, at _____.m., in the United States
20 District Court for the Central District of California, the Honorable George H. Wu
21 presiding, for the following purposes:

22 a. to determine whether the Settlement should be approved by the
23 Court as fair, reasonable, adequate, and in the best interests of the Class;

24 b. to determine whether the Plan of Allocation for the proceeds of
25 the Settlement should be approved by the Court as fair and reasonable;

26 c. to determine whether the Order and Final Judgment should be
27 entered pursuant to the Stipulation, *inter alia*, dismissing the Action against the
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1 Defendant with prejudice and extinguishing and releasing all Released Claims (as
2 defined in the Stipulation);

3 d. to consider Lead Counsel’s application for an award of attorneys’
4 fees and the reimbursement of litigation expenses;

5 e. to consider Lead Plaintiff’s application for reimbursement of costs
6 and expenses (including lost wages) in connection with his representation of the
7 Class; and

8 f. to rule on such other matters as the Court may deem appropriate.

9 7. The Court reserves the right to adjourn the Settlement Fairness Hearing
10 or any adjournment thereof, including the consideration of the application for
11 attorneys’ fees and reimbursement of expenses or to change the location thereof,
12 without further notice of any kind to Class Members.

13 8. The Court reserves the right to approve the Settlement at or after the
14 Settlement Fairness Hearing with such modification as may be consented to by the
15 Parties to the Stipulation and without further notice to the Class.

16 9. The Claims Administrator shall make reasonable efforts to identify all
17 Persons who are members of the Class, including beneficial owners whose shares of
18 IndyMac common stock are held by banks, brokerage firms, or other nominees.
19 Pursuant to the Stipulation, the Parties have requested that IndyMac’s Chapter 11
20 bankruptcy trustee (“Trustee”) provide the shareholder lists of IndyMac, as the
21 Trustee or his transfer agent may possess, as appropriate for providing notice to the
22 Class.

23 10. Within twenty (20) calendar days after the entry of this Order, the
24 Claims Administrator shall cause a copy of the Notice and the Proof of Claim and
25 Release form (“Proof of Claim”), substantially in the forms of Exhibit A(1) and A(2)
26 to the Stipulation, to be mailed by first class mail, postage pre-paid, to all identifiable
27 members of the Class, at their last known address appearing in the shareholder lists of
28 IndyMac, as the Trustee or his transfer agent may possess (the “Notice Date”).

1 11. Pursuant to the Notice, each nominee shall either: (i) send the Notice and
2 Proof of Claim to Class Members for which they act as nominee by first class mail
3 within ten (10) calendar days after the nominee receives the Notice; or (ii) send a list
4 of the names and addresses of such beneficial owners to the Claims Administrator
5 within ten (10) calendar days after the nominee receives the Notice and, in the event
6 of the latter, the Claims Administrator shall send by first class mail the Notice and
7 Proof of Claim to all Class Members who are on the list received from the nominee.
8 The Claims Administrator shall, if requested, reimburse banks, brokerage houses, or
9 other nominees for their reasonable out-of-pocket expenses incurred in providing
10 notice to beneficial owners who are Class Members, which expenses would not have
11 been incurred except for the sending of such notice, subject to further order of this
12 Court with respect to any dispute concerning such compensation. Lead Counsel shall
13 file with the Court and serve upon Defendant's Counsel no later than seven (7)
14 calendar days prior to the Settlement Fairness Hearing an affidavit or declaration
15 describing the efforts taken to comply with this Order and stating that the mailings
16 have been completed in accordance with the terms of this Order.

17 12. Within ten (10) calendar days of the Notice Date, the Claims
18 Administrator shall publish the Summary Notice, substantially in the form of Exhibit
19 A(3) to the Stipulation, once in *Investor's Business Daily* and once over the *PR*
20 *Newswire*. Lead Counsel shall file with the Court and serve upon Defendant's
21 Counsel no later than seven (7) calendar days prior to the Settlement Fairness
22 Hearing an affidavit or declaration stating that the Summary Notice has been
23 published in accordance with the terms of this Order.

24 13. The form and content of the Notice, the Proof of Claim, and the
25 Summary Notice, attached to the Stipulation as Exhibits A(1), A(2), and A(3),
26 respectively, and the method set forth herein of notifying the Class of the Settlement
27 and its terms and conditions, meet the requirements of Rule 23 of the Federal Rules
28 of Civil Procedure, Section 21D(a)(7) of the Securities Exchange Act of 1934, 15

1 U.S.C. § 78u-4(a)(7), as amended by the Private Securities Litigation Reform Act of
2 1995 (the “PSLRA”), and due process, constitute the best notice practicable under the
3 circumstances, and shall constitute due and sufficient notice to all Persons entitled
4 thereto.

5 14. Any member of the Class who wishes to object to the Settlement must,
6 at least twenty-one (21) calendar days prior to the Settlement Fairness Hearing, file
7 with the Court and serve on counsel (listed below) a written statement of objection to
8 the Settlement, the Plan of Allocation, the application of Lead Counsel for attorneys’
9 fees and reimbursement of expenses and/or Lead Plaintiff’s request for
10 reimbursement of costs and expenses (including lost wages) in connection with his
11 representation of the Class. Any member of the Class who timely objects to the
12 Settlement, the Plan of Allocation, Lead Counsel’s application for attorneys’ fees and
13 reimbursement of expenses and/or Lead Plaintiff’s request for reimbursement of costs
14 and expenses, or who otherwise wishes to be heard, may appear in person or by his,
15 her, or its attorney, at his, her, or its own expense, at the Settlement Fairness Hearing
16 and present evidence or argument that may be proper or relevant; *provided, however,*
17 that no Person other than the Parties and their counsel shall be heard, and no papers,
18 briefs, pleadings, or other documents submitted by any Person shall be considered by
19 the Court, unless within twenty-one (21) calendar days prior to the Settlement
20 Fairness Hearing, such Person files with the Court and serves upon counsel listed
21 below: (1) a statement of such Person’s objections to any matters before the Court
22 concerning this Settlement; (2) the grounds therefor or the reasons that such Person
23 desires to appear and be heard, as well as all documents or writings such Person
24 desires the Court to consider; (3) whether that Person intends to present any
25 witnesses; and (4) proof of the Person’s membership in the Class, which proof shall
26 include the Person’s purchases and/or acquisitions of IndyMac common stock during
27 the Class Period and any sales thereof, including the dates, the number of shares and
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1 price(s) paid and received for each such purchase, acquisition and sale. Such filings
2 shall be served upon the Court and the following counsel:

3 ***Lead Counsel for Lead Plaintiff***
4 ***and the Class:***

5 John J. Gross, Esq.
6 Jennifer L. Enck, Esq.
7 KESSLER TOPAZ MELTZER & CHECK, LLP
8 280 King of Prussia Road
9 Radnor, PA 19087

10 ***Counsel for Defendant:***

11 David B. Bayless, Esq.
12 Tammy Albarran, Esq.
13 COVINGTON & BURLING LLP
14 One Front Street
15 San Francisco, CA 94111

16 15. Any Person falling within the definition of the Class may, upon request,
17 be excluded from the Class. Any such Person must submit to the Claims
18 Administrator a request for exclusion (“Request for Exclusion”) at least twenty-one
19 (21) calendar days prior to the date of the Settlement Fairness Hearing. A Request
20 for Exclusion must state: (1) the name, address, and telephone number of the Person
21 requesting exclusion; (2) the Person’s purchases and/or acquisitions of IndyMac
22 common stock during the Class Period and any sales thereof, including the dates, the
23 number of shares and price(s) paid and received for each such purchase, acquisition
24 and sale; and (3) that the Person wishes to be excluded from the Class. All Persons
25 who submit valid and timely Requests for Exclusion in the manner set forth in this
26 paragraph and the Notice shall have no rights under the Stipulation and shall not
27 share in the distribution of the Net Settlement Fund. The Claims Administrator shall
28 provide copies of all Requests for Exclusion to Lead Counsel and Defendant’s
Counsel within seven (7) days of receipt and no later than fourteen (14) days prior to
the date of the Settlement Approval Hearing.

1 16. Any Class Member who wishes to participate in the Net Settlement Fund
2 must timely submit a valid Proof of Claim to the Claims Administrator, at the Post
3 Office Box indicated in the Notice, postmarked not later than one hundred and twenty
4 (120) calendar days following the Notice Date. Such deadline may be extended
5 further by Court order. A Proof of Claim shall be deemed to have been submitted
6 when postmarked, if mailed by first class, or registered or certified mail, postage
7 prepaid, addressed in accordance with the instructions given in the Proof of Claim.
8 All other Proofs of Claim shall be deemed to have been submitted at the time they are
9 actually received by the Claims Administrator. To be valid, a Proof of Claim must:
10 (i) be completed in a manner that permits the Claims Administrator to determine the
11 eligibility of the claim as set forth in the Proof of Claim; (ii) include the release by
12 the claimant of all Released Parties as set forth in the Stipulation; and (iii) be signed
13 with an affirmation that the information is true and correct. As part of the Proof of
14 Claim, each Class Member shall submit to the jurisdiction of the Court with respect
15 to the claim submitted, and shall (subject to the effectuation of the Settlement
16 reflected in the Stipulation) agree and enter into the release as provided in the
17 Stipulation. All Class Members who do not submit a valid and timely Proof of Claim
18 shall be barred forever from receiving any payments from the Net Settlement Fund,
19 but will, in all other respects, be subject to and bound by the provisions of the
20 Stipulation and the Order and Final Judgment, if entered, whether favorable or
21 unfavorable and whether or not they submit a Proof of Claim, unless such Persons
22 request exclusion from the Class in a timely and proper manner, as provided herein.

23 17. If the Settlement, including any amendment made in accordance with the
24 Stipulation, is not approved by the Court or shall not become effective for any reason
25 whatsoever, the Settlement (including any modification thereof) made with the
26 consent of the Parties as provided for in the Stipulation, and any actions taken or to
27 be taken in connection therewith (including this Order and any judgment entered
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1 herein), shall be terminated and shall become void and of no further force and effect
2 except as set forth in the Stipulation.

3 18. All proceedings in the Action, other than such proceedings as may be
4 necessary to carry out the terms and conditions of the Settlement, are hereby stayed
5 and suspended until further order of this Court. Pending final determination whether
6 the Settlement should be approved, Lead Plaintiff and all members of the Class are
7 barred and enjoined from commencing, prosecuting, continuing, or asserting any
8 action with regards to any of the Released Claims against the Released Parties as
9 defined in the Stipulation.

10 19. The contents of the Settlement Fund held by the Escrow Agent shall be
11 deemed and considered to be in *custodia legis* of the Court, and shall remain subject
12 to the jurisdiction of the Court, until such time as the contents of those funds shall be
13 distributed pursuant to the Stipulation and/or further order(s) of the Court.

14 20. Nothing in the Stipulation, the MOU, or any related negotiations or
15 discussions, shall (a) constitute an admission of liability, fault, or wrongdoing by any
16 Party or an admission concerning the scope of damages sustained by any Party, or (b)
17 be offered or received in evidence or otherwise introduced or invoked in the Action
18 or any other civil, criminal or administrative proceedings for any purpose other than
19 enforcing the terms of the Settlement, defending against claims released by the
20 Settlement, or (in the case of the Stipulation only) litigating any appeal relating to the
21 Court's approval or rejection of the Settlement.

22 21. All motions and papers in support of the Settlement, the Plan of
23 Allocation, any application by Lead Counsel for an award of attorneys' fees and
24 reimbursement of expenses and any application by the Lead Plaintiff for
25 reimbursement of costs and expenses, shall be filed and served no later than thirty-
26 five (35) calendar days before the date scheduled for the Settlement Fairness Hearing,
27 and all reply briefs in support of said motions shall be filed and served no later than
28 seven (7) calendar days prior to the Settlement Fairness Hearing.

1 22. The Court authorizes payment out of the Settlement Fund of notice and
2 administration expenses in accordance with the Stipulation.

3 23. The Court further retains jurisdiction over this Action to consider all
4 further matters arising out of or connected with the Settlement reflected in the
5 Stipulation, including enforcement of the releases provided for in the Stipulation.

6 24. The passage of title and ownership of the Settlement Fund to the Escrow
7 Agent in accordance with the terms of the Stipulation is approved. No Person that is
8 not a Class Member shall have any right to any portion of, or in the distribution of,
9 the Net Settlement Fund unless otherwise ordered by the Court or otherwise provided
10 in the Stipulation.

11 25. The Court may, for good cause, extend any of the deadlines set forth in
12 this Order without further notice to Class Members.

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14 IT IS SO ORDERED.

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16 Dated: _____

17 The Honorable George H. Wu
18 United States District Judge
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