

JS-6

1 MARC M. SELTZER (54534)
 mseltzer@susmangodfrey.com
 2 SUSMAN GODFREY L.L.P.
 1901 Avenue of the Stars, Suite 950
 Los Angeles, CA 90067-6029
 3 Tel: (310) 789-3100
 Fax: (310) 789-3150
 4

5 SHERRIE R. SAVETT
 (Admitted Pro Hac Vice)
 ssavett@bm.net

6 ARTHUR STOCK
 (Admitted Pro Hac Vice)
 astock@bm.net

7 PHYLLIS M. PARKER
 (Admitted Pro Hac Vice)
 pparker@bm.net

8 BERGER & MONTAGUE, P.C.
 1622 Locust Street
 9 Philadelphia, PA 19103
 10 Tel: (215) 875-3000
 11 Fax: (215) 875-4604

12 *Lead Counsel for Plaintiffs and the Proposed Class*
 (See Signature Page for Name and
 13 Address of Additional Counsel for Plaintiffs)

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

17 MICHAEL B. COADY and ROBERT
 HAKIMIAN, on Behalf of Themselves
 18 and All Others Similarly Situated,

Case No. CV 08-03812-GW(VBKx)

**ORDER AND FINAL JUDGMENT OF
 DISMISSAL WITH PREJUDICE OF
 CLASS ACTION**

19 Plaintiffs,

20 vs.

Date: January 28, 2013
Time: 8:30 a.m.
Place: Hon. George H. Wu
Courtroom 10

21 MICHAEL W. PERRY, A. SCOTT
 22 KEYS, and ERNST & YOUNG LLP,

23 Defendants.

1 This matter having come before the Court for approval of a settlement of the
2 above-captioned action (the “Action”) with Michael W. Perry and A. Scott Keys (the
3 “Settling Defendants”), pursuant to this Court’s August 10, 2012 Order Preliminarily
4 Approving the Settlement, Directing the Issuance of Notice, and Scheduling a
5 Settlement Fairness Hearing (the “Preliminary Approval Order”), and the Court
6 having heard all parties and having considered all papers filed in connection
7 therewith, and good cause appearing, it is **ORDERED, ADJUDGED AND**
8 **DECREED** on this 29TH day of July, 2013:

9 1. Unless otherwise defined herein, all terms that are capitalized herein shall
10 have the meanings ascribed to those terms in the Stipulation of Settlement and Release
11 dated June 29, 2012 (the “Stipulation”).

12 2. This Court has jurisdiction over the subject matter of the Action (and all
13 actions and proceedings consolidated in the Action), and over Lead Plaintiffs, all
14 Settlement Class Members and the Settling Defendants.

15 3. The Court finds and determines that the Action may proceed as a class
16 action pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure,
17 on behalf of a Settlement Class consisting of all persons or entities who purchased or
18 otherwise acquired IndyMac Bancorp, Inc. common stock between March 1, 2007 and
19 May 12, 2008, through and inclusive, and who were damaged thereby. Excluded from
20 the Settlement Class are (i) Defendants, (ii) IndyMac Bancorp, Inc. and/or IndyMac
21 Bank, (iii) the executive officers and directors of either IndyMac Bancorp, Inc. and/or
22 IndyMac Bank, (iv) any entity in which any of the Defendants has or had a controlling
23 interest, (v) members of Defendants’ immediate families, and (vi) the legal
24 representatives, heirs, successors or assigns of any such excluded party. Also
25 excluded from the Settlement Class are persons or entities, if any, who requested
26 exclusion as listed on Exhibit A hereto. The Court further finds and determines,
27 pursuant to Rule 23(a) of the Federal Rules of Civil Procedure, that those persons who
28

1 purchased or otherwise acquired IndyMac Bancorp, Inc. common stock during the
2 Settlement Class Period are so numerous that joinder is impracticable, that there are
3 issues of law or fact common to the Settlement Class, that the claims of the Lead
4 Plaintiffs are typical of the Settlement Class, and that Lead Plaintiffs and their Co-
5 Lead Counsel will fairly and adequately represent the interests of the members of the
6 Settlement Class in enforcing their rights in the Action. The Court also finds that
7 under Rule 23(b)(3) of the Federal Rules of Civil Procedure, questions of law or fact
8 common to the Settlement Class Members predominate over any questions affecting
9 only individual members, and that a class action is superior to other available methods
10 for the fair and efficient adjudication of the subject matter of the Action.

11 4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court
12 hereby finally certifies for purposes of settlement only Lead Plaintiffs Michael B.
13 Coady and Robert Hakimian as Settlement Class Representatives and appoints Berger
14 & Montague, P.C. and Susman Godfrey L.L.P., as Co-Lead Counsel for the
15 Settlement Class.

16 5. Based upon the evidence submitted by Co-Lead Counsel, this Court finds
17 that the method of dissemination of both the published and the individual notices, as
18 previously approved by the Court, to all Settlement Class Members who could be
19 identified through reasonable effort, was adequate and reasonable and constituted the
20 best notice practicable under the circumstances.

21 6. The Court also finds that the Notice, as given, complied with the
22 requirements of Rule 23 of the Federal Rules of Civil Procedure, satisfied the
23 requirements of due process, Section 21D(a)(7) of the Securities Exchange Act of
24 1934, 15 U.S.C. §78u-4(a)(7), as amended by the Private Securities Litigation Reform
25 Act of 1995 (“PSLRA”), and the Class Action Fairness Act of 2005, 28 U.S.C. §
26 1715(b), and constituted due and sufficient notice of the matters set forth therein.

1 7. The proposed Settlement of the Action pursuant to the Stipulation is, in
2 all respects, approved as fair, reasonable and adequate, meets the requirements of due
3 process, and is in the best interests of the Settlement Class, especially in light of the
4 complexity, expense and probable duration of further litigation, the risks of
5 establishing liability and damages, the intensive arm's length negotiation of
6 experienced counsel, and the reasonableness of the recovery herein considering the
7 range of possible recovery and the attendant risks of litigation. The Lead Plaintiffs
8 and the Settling Defendants are directed to consummate the Settlement in accordance
9 with the terms and provisions of the Stipulation.

10 8. The proposed Settlement of the Action pursuant to the Stipulation is in
11 good faith under Sections 877 and 877.6 of the California Code of Civil Procedure,
12 such that the Settling Defendants are discharged from liability for any contribution or
13 indemnity to any other parties.

14 9. The method for distribution of the Net Settlement Fund, as set forth in the
15 Plan of Allocation in the Notice, is approved as fair and reasonable. Co-Lead Counsel
16 and the Claims Administrator are directed to administer the Plan of Allocation in
17 accordance with its terms and provisions. No Settling Defendant or any other
18 Released Party (or their respective counsel), shall have any liability, obligation or
19 responsibility whatsoever for the administration of the Settlement or the Plan of
20 Allocation or disbursement of the Net Settlement Fund. The Court further declares
21 that any appeal of the approval of the Plan of Allocation shall not prevent the
22 Settlement from becoming effective.

23 10. If any funds remain in the Net Settlement Fund by reason of uncashed
24 checks, or otherwise, after the Claims Administrator has made reasonable and diligent
25 efforts to have Authorized Claimants who are entitled to participate in the distribution
26 of the Net Settlement Fund cash their distribution checks, then any balance over
27 \$100,000 remaining in the Net Settlement Fund six (6) months after the initial
28

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

14 11. If after six (6) months following such second distribution, if undertaken,
15 or if such second distribution is not undertaken, any funds remain in the Net
16 Settlement Fund after the Claims Administrator has made reasonable and diligent
17 efforts to have Authorized Claimants who are entitled to participate in this Settlement
18 cash their checks, these funds shall be donated to a 503(c) charity selected by Lead
19 Counsel and approved by the Court.

20 12. This Court hereby dismisses the Complaint and the Action (and all
21 actions consolidated into the Action) with prejudice and in their entirety, as against the
22 Settling Defendants, without costs (except as provided in the Stipulation), such
23 dismissal to be binding on Lead Plaintiffs and all Settlement Class Members. This
24 Court specifically finds that all Settlement Class Members are bound by the
25 Settlement and this Order and Final Judgment.

26 13. The Lead Plaintiffs and all Settlement Class Members, and their
27 respective heirs, executors, administrators, personal representatives, successors,
28

1 assigns, guardians, conservators, attorneys-in-fact, or other agents who purchased
2 shares of IndyMac Bancorp, Inc. common stock during the Settlement Class Period in
3 such capacity for and in consideration of the Settlement and other good and sufficient
4 consideration, are hereby permanently barred and permanently enjoined from
5 instituting, maintaining, prosecuting or participating in, either directly or indirectly,
6 any action or other proceeding relating in any way to, or otherwise asserting, any of
7 the Settled Claims, including all Unknown Claims, against any of the Settling
8 Defendants or the Released Parties, and shall conclusively be deemed to have released
9 and forever discharged as by an instrument under seal, any and all Settled Claims
10 whatsoever, including all Unknown Claims, against the Settling Defendants and the
11 other Released Parties. Lead Plaintiffs, and all other Settlement Class Members who
12 have not properly excluded themselves from the Settlement Class, shall further and
13 conclusively be deemed to have waived the rights afforded by California Civil Code
14 Section 1542 and any other statute or law, or principle of common law, of any other
15 jurisdiction which is similar, comparable, or equivalent to Cal. Civ. Code § 1542.

16 14. The Settling Defendants and all the Released Parties are hereby barred
17 and permanently enjoined from prosecuting against any Lead Plaintiff or Settlement
18 Class Member, and their respective heirs, executors, administrators, personal
19 representatives, successors, assigns, guardians, conservators, attorneys-in-fact, or
20 other agents who purchased shares of IndyMac Bancorp, Inc. common stock during
21 the Settlement Class Period in such capacity, and Plaintiffs' Counsel, and each of
22 them, any claim arising out of or relating to the institution, prosecution, assertion or
23 resolution of the Action, except against any Lead Plaintiff, Settlement Class Member
24 or Plaintiffs' Counsel who or which commences an action or other proceeding in
25 violation of this Order and Final Judgment; provided, however, that nothing herein
26 shall be deemed to bar or enjoin the Settling Defendants from obtaining insurance
27 coverage for the Settlement Amount.

1 15. The Court hereby enters a bar order, pursuant to Section 21D of the
2 Securities Exchange Act of 1934, 15 U.S.C. §78u-4(f)(7)(A), barring and enjoining
3 the prosecution of all claims for contribution or indemnification by the Non-Settling
4 Defendant and all other persons (including any additional defendants who may in the
5 future be joined in the Action) against the Settling Defendants arising from the Action,
6 any claim asserted in the Action, or any claim based, in whole or in part, upon the
7 subject matter of any of the Settled Claims (the “Bar Order”). Any judgment that may
8 be entered against the Non-Settling Defendant (or any party joined in the future as a
9 defendant) in this Action shall be reduced in accordance with 15 U.S.C. §78u-
10 4(f)(7)(B).

11 16. Without in any way affecting the finality of this Order and Final
12 Judgment, this Court shall retain continuing exclusive jurisdiction over all matters
13 relating to the Action and the Settlement, including but not limited to matters relating
14 to the administration, interpretation, effectuation or enforcement of the Settlement and
15 related papers hereby approved, enforcement of this Order and Final Judgment, as
16 well as matters relating to applications for fees and expenses incurred relating to the
17 Action.

18 17. 2 request(s) for exclusion pursuant to the requirements set forth in the
19 Notice having been received, 2 person(s) who is/are a member of the Settlement
20 Class is/are excluded from the Settlement Class. All requests for exclusion are listed
21 in Exhibit A hereto.¹

22 18. 0 objection(s) has/have been received from members of the Settlement
23 Class.

24
25
26
27 _____
28 ¹ Exhibit A is a list of those persons who excluded themselves from the Settlement
Class pursuant to the requirements set forth in the Notice.

1 19. 8,484 claims have been received through January 15, 2013. The Claims
2 Administrator will provide a list of claimants after all claims are received and
3 processed, in connection with the motion for distribution of the Net Settlement Fund.

4 20. Neither the Settlement, nor this Order and Final Judgment, nor the
5 Stipulation, nor any other papers relating to the Settlement, nor any negotiations,
6 discussions or proceedings in connection herewith shall be:

7 (a) offered or received against any Settling Defendant as
8 evidence of or construed as or deemed to be evidence of any presumption, concession,
9 or admission by any Settling Defendant of the truth of any fact alleged by Lead
10 Plaintiffs or the validity of any Claim that has been or could have been asserted in the
11 Action or in any other proceeding, or the deficiency of any defense that has been or
12 could have been asserted in the Action or in any other proceeding, or of any alleged
13 liability, negligence, fault, or wrongdoing of the Settling Defendants;

14 (b) offered or received against any Settling Defendant as
15 evidence of a presumption, concession, or admission of any fault, misrepresentation or
16 omission with respect to any statement or written document approved or made by any
17 Settling Defendant, or against Lead Plaintiffs and the Settlement Class as evidence of
18 any infirmity in the claims of Lead Plaintiffs and the Settlement Class;

19 (c) offered or received against any Settling Defendant as
20 evidence of a presumption, concession, or admission of any alleged liability,
21 negligence, fault or wrongdoing, or in any way referred to for any other reason as
22 against any of the parties to the Stipulation, in any other civil, criminal or
23 administrative action or other proceeding, other than such proceedings as may be
24 necessary to effectuate the provisions of the Stipulation; provided, however, that if the
25 Stipulation is approved by the Court, the Settling Defendants may refer to it to
26 effectuate the liability protection granted them hereunder or to enforce the terms of the
27 Settlement;

1 (d) construed against any Settling Defendant or Lead Plaintiffs
2 and the Settlement Class as an admission or concession that the consideration to be
3 given hereunder represents the amount which could be or would have been recovered
4 after trial; and

5 (e) construed as or received in evidence as an admission,
6 concession or presumption against Lead Plaintiffs or the Settlement Class or their
7 counsel or any of them that any of the Claims asserted in this Action are without merit
8 or that damages recoverable under the Complaint would not have exceeded the Net
9 Settlement Fund.

10 21. Neither the Settlement, nor this Order and Final Judgment, nor the
11 Stipulation, nor any other papers relating to the Settlement, nor any negotiations,
12 discussions or proceedings in connection herewith shall be construed as an admission
13 by any person or entity with regard to the merit or lack of merit of their Claims in the
14 Action.


15 22. Pursuant to 15 U.S.C. § 78u-4(c)(1), the Court finds that each party to the
16 Stipulation and each attorney representing such party in the Action complied with the
17 requirements of Rule 11 of the Federal Rules of Civil Procedure as to any complaint,
18 responsive pleading, or dispositive motion.

19 23. The provisions of this Order and Final Judgment constitute a full and
20 complete adjudication of the matters considered and adjudged herein, and the Court
21 determines that there is no just reason for delay in the entry of judgment pursuant to
22 Rule 54(b) of the Federal Rules of Civil Procedure. The Clerk is hereby directed to
23 enter judgment in accordance with this Order and Final Judgment as a final judgment
24 with respect to all matters ordered, judged and decreed.

25 24. Entry of final judgment and final approval of the Settlement settles and
26 disposes of and discharges all Claims that have been asserted or could have been
27 asserted in the Action against the Settling Defendants and the Released Parties.

1 25. Plaintiffs' Counsel in the Action are hereby awarded attorneys' fees in
2 the amount of \$1,625,000.00, amounting to 25% of the Settlement Fund, plus interest
3 on such amount at the same rate as earned by the Settlement Fund from the date
4 hereof to the date they are actually paid to Co-Lead Counsel. Plaintiffs' Counsel are
5 further awarded reimbursement of expenses (including experts' fees and expenses) in
6 the amount of \$352,507.17, plus interest on such expenses at the same rate as earned
7 by the Settlement Fund from the date hereof to the date they are actually paid to Co-
8 Lead Counsel. The foregoing awards of fees and expenses shall be paid out of, and
9 shall not be in addition to, the Settlement Fund at the time and in the manner provided
10 in the Stipulation, and shall be paid to Co-Lead Counsel as provided in the
11 Stipulation. Any and all allocations of attorneys' fees and expenses shall be allocated
12 among Plaintiffs' Counsel at the direction of Co-Lead Counsel at its discretion, who
13 shall apportion the fees and expenses based upon its assessment, in its sole discretion,
14 of the respective contributions to the litigation made by each counsel. The Court
15 further declares that any appeal of the award of attorneys' fees and reimbursement of
16 expenses shall not prevent the Settlement from becoming effective.

17
18
19 Dated: July 29, 2013



Hon. George H. Wu
UNITED STATES DISTRICT JUDGE

20
21
22 KAL5608038

EXHIBIT A

List of Persons Excluded From the Settlement Class

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 1. Todd Arkava
Brentwood, TN
Purchased 7.09 shares

- 2. Jeff Mather
Tucson, AZ
Purchased 20,842 shares
Sold 6,360 shares