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11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**

14 SECURITIES AND EXCHANGE  
15 COMMISSION,

16 Plaintiff,

17 v.

18 JAMESON L. THOTTAM,

19 Defendant.

Case No. CV 05-6584 R (RCx)

**COMPLAINT FOR VIOLATIONS  
OF THE FEDERAL SECURITIES  
LAWS**

21  
22 Plaintiff Securities and Exchange Commission (“Commission”) alleges as  
23 follows:

24 **JURISDICTION AND VENUE**

25 1. This Court has jurisdiction over this action pursuant to Sections  
26 21(d)(1), 21(e), 21A(a)(1), and 27 of the Securities Exchange Act of 1934  
27 (“Exchange Act”), 15 U.S.C. §§ 78u(d)(1), 78u(e), 78u-1(a)(1) & 78aa. Defendant  
28 has, directly or indirectly, made use of the means or instrumentalities of interstate

1 commerce, of the mails, or of the facilities of a national securities exchange in  
2 connection with the acts, practices, and courses of business alleged in this  
3 complaint.

4 2. Venue is proper in this district pursuant to Section 27 of the  
5 Exchange Act, 15 U.S.C. § 78aa, because certain of the acts, practices, and courses  
6 of business constituting violations of the federal securities laws occurred within  
7 this district.

### 8 SUMMARY

9 3. This matter involves unlawful insider trading in the securities of  
10 IndyMac Bancorp, Inc. (“IndyMac”) by defendant Jameson L. Thottam  
11 (“Thottam”). In July 2004, Thottam, in the course of his duties as a vice president  
12 of IndyMac’s corporate strategic planning department, became aware that  
13 IndyMac’s pro forma earnings in the second quarter of 2004 were significantly  
14 above the company’s projections. While aware of this non-public information,  
15 Thottam purchased 200 call options in IndyMac common stock and sold the  
16 options shortly after IndyMac announced record pro forma earnings for the second  
17 quarter of 2004, thereby receiving a profit of \$40,258.

18 4. By engaging in the conduct described in this complaint, Thottam,  
19 directly and indirectly, engaged in acts, practices, and courses of business in  
20 violation of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule  
21 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

22 5. The Commission brings this action for an order permanently  
23 restraining and enjoining Thottam against future violations of the federal securities  
24 laws, ordering disgorgement of unlawful profits and prejudgment interest thereon,  
25 and imposing a civil penalty.

### 26 THE DEFENDANT

27 6. Thottam, age 33, is a resident of Houston, Texas. He was employed  
28 in various capacities at IndyMac’s offices in Pasadena, California from February

1 2003 until September 2004, when he was terminated as a vice president of  
2 IndyMac's corporate strategic planning department.

### 3 **RELATED ENTITY**

4 7. IndyMac is a Delaware corporation headquartered in Pasadena,  
5 California. IndyMac's primary operating subsidiary is IndyMac Bank, F.S.B., the  
6 largest savings and loan in Los Angeles County and the tenth largest nationwide,  
7 based on assets. IndyMac's common stock is registered with the Commission and  
8 trades on the New York Stock Exchange.

### 9 **THE DEFENDANT'S IMPROPER CONDUCT**

10 8. In July 2004, Thottam worked on a quarterly report on IndyMac's  
11 financial performance for the second quarter of 2004 (known as the Quarterly  
12 Management and Accountability Reporting Package) ("Accountability Package")  
13 for presentation to IndyMac's board of directors. The Accountability Package  
14 contained detailed financial data, including actual versus projected pro forma  
15 balance sheet and income statement information. IndyMac had not yet announced  
16 its results for the second quarter of 2004, and the Accountability Package  
17 contained non-public information that Thottam received during the course of his  
18 duties as a vice president of IndyMac's corporate strategic planning department.

19 9. Specifically, with respect to pro forma earnings for the second quarter  
20 of 2004, the Accountability Package reported that actual earnings per share were  
21 \$0.90, a 23% improvement over the company's target of \$0.73. Thottam also  
22 knew, or was reckless in not knowing, what analysts' expectations were for  
23 IndyMac's second quarter of 2004 because Thottam's duties at IndyMac required  
24 that he read analysts' reports on the company and its competitors.

25 10. IndyMac's Code of Business Conduct and Ethics ("Code of  
26 Conduct") is distributed to and signed by all IndyMac employees. In April 2004,  
27 Thottam signed a form certifying that he had read the Code of Conduct, which  
28 states in pertinent part:

1 Employees who have access to or knowledge of  
2 confidential information are not permitted to use or share  
3 that information for stock trading purposes, or for any  
4 purpose other than the conduct of our business. All non-  
5 public information about [IndyMac] should be  
6 considered confidential information. To use non-public  
7 information for personal financial benefit or to “tip”  
8 others who might make an investment decision on the  
9 basis of this information not only is unethical but may  
10 also be illegal.

11 11. Thottam knew, or was reckless in not knowing, that the information  
12 regarding IndyMac’s second quarter 2004 pro forma earnings was material non-  
13 public information and that he owed a duty of trust and confidence to IndyMac  
14 and its shareholders.

15 12. Thottam knew, or was reckless in not knowing, that he should have  
16 kept the information regarding IndyMac’s second quarter 2004 pro forma earnings  
17 confidential and that he could not use or take advantage of the information.

18 13. On July 23, 2004, Thottam purchased 200 August 30 IndyMac call  
19 options on a national securities exchange for \$39,370. Thottam purchased  
20 IndyMac call options in breach of his duty of trust and confidence to IndyMac. By  
21 purchasing IndyMac call options for his own benefit while aware of the positive  
22 earnings information before it became public, Thottam violated Section 10(b) of  
23 the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R.  
24 § 240.10b-5.

25 14. Before the stock market opened on July 30, 2004, IndyMac publicly  
26 announced record pro forma earnings of \$54.6 million, or \$0.90 per share, for the  
27 second quarter of 2004. IndyMac earnings per share for that quarter exceeded  
28 analysts’ expectations of \$0.84 per share. On July 30, 2004, IndyMac’s common  
stock price closed at \$33.22 per share, an increase of 3.5% from the prior trading  
day, on trading volume of 986,200 shares, a 272% increase from the previous  
trading day.



