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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF CONTRA COSTA
13

14 *Shake Roof Cases, J.C.C.P. 4208*

15 **PLAN OF DISTRIBUTION FOR "OLD" CAL-**
16 **SHAKE CLASS ACTION SETTLEMENT**

17 The **Claims Protocol** is attached hereto and marked **Exhibit A**. The Claims Protocol
18 applies to the Settlement fund established for class members whose buildings contain or
19 contained roofing products manufactured by Shake Company of California, Inc., "Old" Cal-
20 Shake. The Settlement fund applies to Class Members as defined in the Settlement Agreement.
21 The purpose of the **Claims Protocol** is to set forth the procedures for submission, processing and
22 resolution of **Claims** by members of the Plaintiff Class.

23 All "Old" Cal-Shake Class members must first submit a written **Claim Form** to the
24 **"Old" Cal-Shake Administrator ("Administrator")**. The "Old" Cal-Shake **Claim Form** is
25 attached hereto as **Exhibit B**. Upon sufficient proof of the existence of a "Old" Cal-Shake roof,
26 and of either: (1) the size of the roof in total roofing squares, or (2) sufficient facts from which
27 the Administrator can determine the number of roofing squares, such as the size of the building in
28 total square feet or photographic or video documentation of the building, the Administrator will

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1 determine the eligibility of the claim. (A roofing square consists of a space equal to ten feet
2 square.)

3 The Administrator, through the Chief Roofing Inspector, will from time to time conduct
4 inspections of class member properties to verify the accuracy of the claim and confirm the size of
5 the roof.

6 The claims period will remain open until July 1, 2008. In order to qualify for payment,
7 class members will have to submit adequate evidence to prove 1) that their home has or had an
8 "Old" Cal-Shake roof; and 2) the number of roofing squares on their home. The formula for
9 payment will be calculated as follows:

10 After deducting the anticipated final costs of administration, the Administrator shall
11 divide the sum of all roofing squares of the "Old" Cal-Shake qualifying claimants into the balance
12 of the Settlement Fund. The result will be the per roofing square amount. That amount will be
13 multiplied by the number of roofing squares on the home of each claimant. The total of that
14 calculation will be the settlement sum for each claimant. The Administrator will then pay the
15 settlement sum to all qualifying claimants consistent with the above described formula. The date
16 on which the roof suffered injury or the actual replacement cost will not be taken into
17 consideration. The Plan of Distribution does not distinguish between claimants with Replaced
18 Roofs and those who still have their roof.

19 When the Settlement Funds are fully distributed, Class Counsel shall provide to the Court
20 a written report setting forth all distributions pursuant to the Plan of Distribution.

21 Respectfully Submitted

22
23 August 9, 2007

24 
25 David Birka-White
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Exhibit A

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA

Shake Roof Cases)
) *Superior Court, County of Contra Costa*
) *J.C.C.P. 4208*
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CLAIMS PROTOCOL FOR THE “OLD” CAL-SHAKE SETTLEMENT SUBCLASSES

I. RECITALS

- 1.1 The complaint in this matter was filed on October 24, 2001.
- 1.2 Class certification was granted on February 8, 2002.
- 1.3 The jury trial known as Phase IA commenced on May 18, 2005. Phase 1B of the trial commenced on June 26, 2006.
- 1.4 The Settlement was fully executed on or about July 16, 2007.
- 1.5 This Protocol sets forth the procedures for submission, processing, and resolution of claims by members of the “Old” Cal-Shake Subclass as defined in Order Granting Preliminary Approval of the “Old” Cal-Shake Settlement.

1.5.1 The purpose of this Protocol is to set forth the procedures to establish (1) whether claimants have “Old” Cal-Shake shakes on their property, (2) determining the approximate size of the claimants’ roofs; (3) determining the settlement award amount, (4) funding the settlement award.

1.6 The claims process described in this Protocol will commence after the “Effective Date” as defined hereinafter.

II. DEFINITIONS

As used in this Protocol and in the Exhibits attached hereto, the following terms shall have the meanings set forth below:

2.1 “Administrator” means the person appointed to administer this Protocol as described in Section 5.1 below.

2.2 “Buildings” means any structure, including homes, townhomes, condominiums, apartments, commercial buildings and other types of buildings or structures on which “Old” Cal-Shake shakes are or were installed.

2.3 “OCS” refers to the defendant Shake Company of California, Inc. who manufactured Cal-Shake shakes from January 25, 1980 to January 31, 1986.

2.4 “Chief Roofing Inspector” means the person described in Section 5.2 below.

2.5 “Claim” means a written claim submitted by any member of the Old Cal-Shake Subclass to the Administrator regarding “Old” Cal-Shake shakes.

2.6 “Claimant” means the owner of a Claim.

2.7 “Class” means the “Old” Cal-Shake Settlement Subclass.

2.8 “Class Counsel” means Birka-White Law Offices, Farella Braun + Martel, Berding & Weil and Gilman & Pastor.

2.9 “Court” means the Honorable David B. Flinn, Judge of the Superior Court, County of Contra Costa.

2.10 “Effective Date” means the date after the expiration of any appeal period from the Final Order approving the Old Cal-Shake Settlement.

2.11 “Eligible Claim” means a claim approved for payment by the Administrator or Special Master. A claim is eligible if the following conditions are found to be present:

a. The roof is determined to be an “Old” Cal-Shake roof;

b. The total amount of the roofing squares on the claimant’s roof is established to the satisfaction of the Administrator, and, if necessary, with the assistance of the Chief Roofing Inspector.

2.12 “Parties” means “Old” Cal-Shake and the respective subclasses.

2.13 “Person” means any individual, proprietorship, corporation, partnership, association, trustee, unincorporated association, or any other type of legal entity.

2.14 “Termination Date” means the date after which no further Claims can be submitted. The termination date is projected to be January 1, 2009.

2.15 “Special Master” means the person appointed to resolve disputes concerning Claims as described in Section 5.3 below.

III JURISDICTION

3.1 Continuing Jurisdiction. The Court has, and shall continue to have, jurisdiction to make any orders necessary or appropriate to effectuate, consummate and enforce the terms of this Protocol and to supervise the administration of and the distribution of money to the holders of Eligible Claims.

IV CLASS NOTICE PROCEDURES

4.1 Telephone Information. Class Counsel has established a toll-free telephone number capable of: (a) receiving requests for materials relating to the Protocol and (b) providing information concerning the submission and processing of Claims. Records will be maintained of all telephone requests for information and/or mailings and the name and address of all persons to whom mailings are sent pursuant to telephone requests.

V. ADMINISTRATOR, CHIEF ROOFING INSPECTOR, SPECIAL MASTER

5.1 Administrator. The Administrator shall have the sole authority to administer and process Claims and to disburse sums to the holders of Eligible Claims and shall carry out his or her duties in strict accordance with the procedures set forth in this Protocol. Any Party may move the Court to compel the Administrator to carry out his or her duties.

5.1.1 Replacement. With or without good cause, Class Counsel may move the Court to replace the Administrator. The Court may on its own motion replace the Administrator at any time with cause.

5.2 Chief Roofing Inspector. The Chief Roofing Inspector shall be responsible for supervision of all inspections of Buildings pursuant to this Protocol. Following a review of their qualifications, and prior to their performing any services pursuant to this Protocol, the Chief Roofing Inspector shall select qualified roofing inspectors (“Inspectors”) to perform inspections of the Buildings in a reasonable and timely manner. Employees or independent contractors of the Inspectors may not perform inspections without the express written authorization of the Chief Roofing Inspector. The Chief Roofing Inspector, and all authorized Inspectors, shall be required to maintain comprehensive general liability coverage, with limits not less than One Million Dollars (\$1,000,000.00) per occurrence. All Inspectors must provide to the Administrator a copy of each such policy of insurance before commencing work pursuant to this Protocol. The Chief Roofing Inspector shall be Arnold Rodio.

5.2.1 Replacement. With or without good cause, Class Counsel may move the Court to replace the Chief Roofing Inspector. The Court may on its own motion replace the Special Master at any time with cause.

5.3 Special Master. The Special Master shall have authority, to resolve any disputes regarding the operation and/or administration of this Protocol and the processing of Claims, subject to review by the Court as provided herein.

5.3.1 Replacement. With or without good cause, Class Counsel may move the Court to replace the Special Master. The Court may

on its own motion replace the Special Master at any time with cause.

VI. SUBMISSION OF CLAIMS

6.1 Submission of Claims. At any time between the Effective Date and the Termination Date any member of the “Old” Cal-Shake subclasses may submit a Claim to the Administrator.

6.2 Categories of Claims. There are two categories of Claims: (1) Claims for the prospective replacement of existing “Old” Cal-Shake roofs; and (2) Claims for reimbursement of the cost of replacing “Old” Cal-Shake roofs which have been replaced. Claims described in subsection (1) of this Section are referred to herein as “Existing Roof Claims” and/or “Prospective Claims.” Claims described in subsections (2) of this Section are referred to herein as “Replaced Roof Claims.”

6.3 Claim Forms. With the assistance of Class Counsel, the Administrator will provide forms (the “Claim Forms”) for the submission of both categories of Claims described in Section 6.2 above. After soliciting input from counsel for Class Counsel, the Administrator may periodically modify the Claim Forms.

6.4 Information Required for All Claims. Each Claim must be written, signed under penalty of perjury, dated and contain at a minimum the following information:

6.4.1 The name, mailing address, and telephone number of the owner of the Building, and the current resident of the Building, if different from the owner;

6.4.2 The name, mailing address, and telephone number of the Claimant, if the Claimant is neither the current resident or the owner of the Building;

6.4.3 The address of the Building;

6.4.4 To the extent possible, the age of “Old” Cal-Shake roof, established by one or more of the following:

6.4.4.1 A signed statement from the owner confirming that the roof is/was a “Old” Cal-Shake roof and the date on which it was installed.

6.4.4.2 A copy of the permit for installation of the “Old” Cal-Shake roof.

6.4.4.3 A copy of the original contract to install the “Old” Cal-Shake roof.

6.4.4.4 A copy of a completed “Old” Cal-Shake warranty card.

6.4.4.5 Photographic or videotape evidence taken when the “Old” Cal-Shake roof was installed.

6.4.4.6 Photographic or videotape evidence showing to satisfaction of the Administrator that the roof is a “Old” Cal-Shake product.

6.4.5 A statement that the Claim was not settled, adjudicated, dismissed with prejudice, released or assigned in connection with a prior lawsuit or warranty claim.

6.5 Additional Information Required For Reimbursement Claims. Each Reimbursement Claim must also contain at least the following information:

6.5.1 If reasonably available, evidence of the amount of all labor charges and the out of pocket cost of the materials used to replace the “Old” Cal-Shake shakes including, without limitation, copies of invoices.

6.5.2 If reasonably available, proof of the amount of payment by the Claimant of the labor and materials for such replacement, such as cancelled checks.

6.6 Administrator’s Preliminary Evaluation of Claims. Promptly following receipt of a Claim, the Administrator shall determine whether the Claim Form contains at least the information required by Sections 6.4 through 6.5.

6.6.1 If not, the Administrator shall advise the Claimant of any deficiency in the Claim Form. The Claimant will then have the opportunity to cure any deficiency.

6.6.2 If and when the Claim Form is complete, the Administrator shall then make a prompt determination as to whether the Claim is eligible for payment. If the Administrator determines that the Claim might be an Eligible Claim, the Administrator shall send to the Claimant a written notice so stating. If the Administrator determines that the Claim is not an Eligible Claim, the Administrator shall send to the Claimant a written notice, which shall contain an explanation by the Administrator for the denial of the Claim. The Administrator shall disallow all Claims which were settled, adjudicated, dismissed with prejudice, or assigned in connection with a prior lawsuit against the settling parties or warranty claim.

6.7 Submission of Current Roof Claim to Chief Roofing Inspector. The Chief Roofing Inspector will not inspect all claimant homes. For the purpose of verifying and spot checking the accuracy of class member submissions, the Administrator, from time to time, will forward the Claim and any relevant supporting documents to the Chief Roofing Inspector. The Chief Roofing Inspector will then designate an Inspector to: 1) contact the Claimant; 2) schedule an appointment with Claimant and; 3) inspect the Building.

6.7.1 Scope of Inspection. The **Inspector** must, 1) confirm the preserve of the “Old” Cal-Shake shakes, and 2) determine the

approximate number of Squares of “Old” Cal-Shake shakes installed on the roof.

6.8 Report By Chief Roofing Inspector. After the Building is inspected, the Chief Roofing Inspector will provide to the Administrator a report (the “Inspector’s Report”) containing the information specified below.

6.9 The Report shall include the following:

6.9.1 A written certification: (1) that the roof on the Claimant’s Building is “Old” Cal-Shake roof; and (2) the report will state the total number of roofing squares on the roof.

6.9.2 Both Reimbursement and Prospective Claims will be paid in accordance with the then current Plan of Distribution.

6.10 Information Required If Claim Disallowed. If the Chief Roofing Inspector determines that the Claim should be disallowed, the Chief Roofing Inspector shall submit to the Administrator a Statement stating the reason(s) why the Claim should be disallowed.

6.11 Administrator’s Final Evaluation of Claims. The Administrator shall determine whether and in what amount the Claim is an **Eligible Claim**. If the Claim is an **Eligible Claim**, the **Administrator** shall pay to the claimant the per square amount as set forth by the Plan of Distribution.

6.12 Notification to Claimant and Parties of Proposed Allowance or Disallowance of Claim. Promptly after the Administrator determines whether and in what amount a Claim is an Eligible Claim, the Administrator shall provide

to the Claimant written notice (“Notice of Decision”) to allow or disallow the claim.

6.13 Objections To The Proposed Payment and Request for Inspections.

The Claimant shall have five (5) business days from the mailing of the Notice of Decision to notify the Administrator in writing of any objections to the allowance or disallowance of the Claim and the reason(s) therefor (the “Objection”). The Administrator shall provide copies of the Objection to Class Counsel.

6.14 Resolutions of Objections. Within ten (10) days of receipt of an Objection, the Administrator will: (1) attempt to resolve the objection between the parties; or (2) if the Objection cannot be resolved, submit the Objection to the Special Master for resolution. Promptly after submission of the Objection to the Special master, the Special Master shall conduct such hearings as he or she deems appropriate but not to exceed two hours total hearing time and, within five (5) days thereafter, rule on the Objection in writing. The Special Master’s ruling shall be final and not subject to reversal or adjustment by the Court, absent a finding of abuse of discretion.

6.15 Payment Of Claims. If no timely Objection is made, the Administrator shall promptly pay to the Claimant the allowed amount of the Claim. Claims which are the subject of an Objection shall be paid consistent with the Administrator’s Amended Notice of Allowance of Claim or the ruling of the Special Master. If a **Claim** is found to be an **Eligible Claim** by either the

Administrator or the Special Master, the **Claim** must be paid pursuant to the Plan of Distribution.

6.16 Maintenance Of Records. The Administrator and Chief Roofing Inspector shall maintain complete and accurate records regarding the administration of this Protocol including: any Claim submitted and any evidence submitted in connection with the Claim, all Statements, Notices of Decision, Objections and other documents specified in the Protocol or the Exhibits thereto, the resolution of any Objections and the dates and amounts of payments to Claimants. The Administrator shall make such records available to Claimants, Defendants or Class Counsel or their designees upon reasonable request and at reasonable times. The Administrator shall prepare and provide to Class Counsel periodic accountings showing all receipts and disbursements. The Administrator shall maintain all records for a period of not less than five (5) years following the date of the last payment of an Eligible Claim.

6.17 “Old” Cal-Shake Settlement Exclusions. As noted hereinabove, the **“Old” Cal-Shake Settlement Funds** will not pay for the following:

- a. **Reimbursement Claims** for prior repairs;
- b. **Reimbursement Claims** for personal property;
- c. **Claims** relating to mold or fungus abatement;
- d. Insurance subrogation claims; and
- e. Personal Injury.

6.18 Simultaneously or in advance of receiving any payments pursuant to a **Claim** against these **Protocols**, a **Claimant** must execute a release as is hereafter required by the **Administrator** or Class Counsel.

6.19 Settlement Class Counsel, in conjunction with the **Administrator**, shall submit an **Annual Report** to the Court summarizing the work performed on behalf of **“Old” Cal-Shake Settlement SubClasses** including a report of all amounts paid during the prior year.

6.20 Payment of Costs of Administration. All reasonable and necessary cost and expenses of the Administrator, the Chief Roofing Inspector and the Special Master (the “Claim Professionals”) as they are incurred from time to time shall be paid out of the Settlement Funds. No attorney fees shall be paid from the Settlement Fund other than pursuant to fee application to the Court and pursuant to Court Order thereon.

Exhibit B

The Claim Form will be available after the Final Approval Hearing on October 31, 2007.