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Plaintiffs, and Class Members

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

13 Coordination Proceeding  
14 Special Title [Rule 1550(b)]

Judicial Council Coordination  
Proceeding No. 4208

15 **SHAKE ROOF CASES**

Superior Court of Contra Costa County,  
C99-00318

16 **PLAN OF ALLOCATION—YEAR ONE**  
17  
18  
19

20 The Cal-Shake, Inc. **Claims Protocol** is attached hereto and marked **Exhibit A**.

21 The Claims Protocol applies to the Settlement fund established for class members whose  
22 buildings contain or contained roofing products manufactured by Cal-Shake, Inc. The Settlement  
23 fund applies to Class Members as defined in the Settlement Agreement. The purpose of the  
24 **Claims Protocol** is to set forth the procedures for submission, processing and resolution of  
25 **Claims** by members of the Plaintiff Class.  
26

27 A Cal-Shake class member must first submit a written claim form to the **Cal-**  
28 **Shake Administrator** (“**Administrator**”). Upon satisfying the criteria set forth in the Claims

1 Protocols, Class Members will be eligible for a roof inspection. After a Class Member has  
2 received a roof inspection from a **Cal-Shake Inspector** (hereinafter "**Inspector**"), a report will be  
3 submitted to the **Administrator** by the **Inspector** stating the size of the roof in total roofing  
4 squares, (a roofing square consists of ten feet squared) and whether the property is eligible for  
5 payment. If the **Claim** is **Eligible**, the **Administrator** will pay the class member pursuant to the  
6 **Plan of Allocation**.

8 If a Class Member Claim is determined not to be **Eligible**, he/she may request an  
9 additional inspection. Further, inspections may be set at such intervals as the **Administrator**  
10 deems appropriate.

11 If a Class Member has an **Eligible Claim**, then the Class Member is entitled to a  
12 settlement payment. The **Settlement Amount** is based upon the number of **Squares** contained on  
13 the roof as determined by an **Inspector**, times the per **Square** amount.

15 Upon final approval of the Partial Settlement, and continuing throughout the first year of  
16 the Settlement Claims process, class members with Eligible Claims shall be paid at the rate of one  
17 hundred dollars (\$100.00) per square in accordance with the claims protocols.

18 At the conclusion of Year One, Class Counsel shall report back to the Court regarding the  
19 Year One distributions, and present for the Court's approval a Plan of Allocation for the  
20 Settlement fund in subsequent years.

23 November 15, 2005

22 Respectfully Submitted

24 David Birka-White

# **EXHIBIT A**

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

Coordination Proceeding Special Title [Rule 1550(b)]	)	Judicial Council Coordination Proceeding No. 4208
	)	
<b>SHAKE ROOF CASES</b>	)	
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**CLAIMS PROTOCOL FOR NEW CAL-SHAKE SETTLEMENT SUBCLASS**

**I. RECITALS**

- 1.1 The complaint in this matter was filed on February 4, 1999.
- 1.2 The trial commenced in this matter on May 9, 2005.
- 1.3 The Settlement was entered into the record on or about May 12, 2005 and fully executed on or about May 17, 2005.
- 1.4 This Protocol sets forth the procedures for submission, processing, and resolution of claims by members of the New Cal-Shake Litigation Subclass as defined in the Court's Order Certifying New Cal-Shake Settlement Class, etc, dated July 18, 2005.

1.4.1 The purpose of this Protocol is to set forth the procedures to establish (1) whether claimants have Cal-Shake Shakes, (2) whether the properties have experienced qualifying damage, (3) determining the settlement award paid, (4) funding the settlement of qualifying claims, and

1.5 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 Cal-Shake Shakes are or were installed.

2.3 "**Cal-Shake**" refers to the defendant Cal-Shake, Inc.

2.4 "**Cal-Shake Shakes**" means shakes manufactured by Cal-Shake, Inc. after January 31, 1986.

2.5 "**Chief Roofing Inspector**" means the person described in Section 5.2 below.

2.6 “**Claim**” means a written claim submitted by any member of the New Cal-Shake Litigation Subclass to the Administrator regarding Cal-Shake Shakes.

2.7 “**Claimant**” means the owner of a Claim.

2.8 “**Class**” means the New Cal-Shake Settlement Subclass.

2.9 “**Class Counsel**” means Birka-White Law Offices; Farella Braun + Martel, Berding & Weil, and Gilman & Pastor and each of them as the context requires.

2.10 “**Coordinated Actions**” means Judicial Council Coordination Proceeding No. 4208 in the Superior Court of the State of California, County of Contra Costa, and each of the included actions.

2.11 “**Court**” means the Coordination Trial Judge David B. Flinn in the Coordinated Actions or his successor.

2.12 “**Effective Date**” means the date after the expiration of any appeal period from the Order approving this Protocol.

2.13 “**Eligible Claim**” means a claim approved for payment by the Administrator or Special Master. A claim is eligible if, during an inspection of **Cal-Shake Shakes** by an **Inspector**, any one of the following conditions is found to be present:

a. The roof is leaking water beyond the felt underlayment as a result of the condition of the **Cal-Shake Shakes**; or

b. More than two **Cal-Shake Shakes per Square** are visibly cracked or broken. This calculation shall be made by determining the total number of visible cracks or breaks divided by the total number of **Squares** on the roof, the result of which must be more than two; or

c. Five percent (5%) or more of any roof plane, consisting of at least twenty-five percent (25%) of the roof of the house, containing **Cal-Shake Shakes** that have cracks, breakage, crumbling or lifting.

2.14 “**New Cal-Shake**” refers to the defendant Cal-Shake, Inc.

2.15 “**Parties**” means Cal-Shake and the Class.

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

2.17 “**Termination Date**” means the date after which no further Claims can be submitted. This date will be established by Class Counsel, subject to approval by the Court.

2.18 “**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. Onni Management, which administers the toll-free line, shall maintain records 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.

**5.2.1 Replacement.** With or without good cause, Cal-Shake 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.

**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, Cal-Shake 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 Class 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 Cal-Shake roofs; and (2) Claims for reimbursement of the cost of replacing an Cal-Shake roof which has been replaced.

Claims described in subsection (1) of this Section is referred to herein as "Existing Roof Claims." Claims described in subsections (2) of this Section is referred to herein as "Replaced Roof Claims." Claims described in subsection (1) are referred to as "Prospective 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 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 was a Cal-Shake roof and the date on which it was installed.

**6.4.4.2** A copy of the permit for installation of the Cal-Shake roof.

**6.4.4.3** A copy of the original contract to install the Cal-Shake roof.

**6.4.4.4** A copy of a completed Cal-Shake warranty card.

**6.4.4.5** Photographic or videotape evidence taken when roof was installed.

**6.4.4.6** Photographic or videotape evidence showing to satisfaction of the Chief Roofing Inspector that the roof is a Cal-Shake product.

- 6.4.5** If Applicable: (1) A statement that there is evidence of water having passed through to any surface visible from underneath the **Cal-Shake** installation, including without limitation, porches, attics, crawl spaces or interior living spaces (“Water Intrusion”); or, (2) if the Claim is a Replaced Roof Claim, a statement that evidence of Water Intrusion existed prior to replacement of the **Cal-Shake** roof and that the roof was replaced, in whole or in part, as a result of Water Intrusion.
- 6.4.6** If the Claim is a Current Roof Claim, one or more photographs showing evidence of Water Intrusion and any property damages claimed to be caused by the Cal-Shake Shakes. If the Claim is a Replaced Roof Claim, then such photographs shall be submitted with the Claim Form if they are in existence.
- 6.4.7** A statement that, to the best of the claimant’s knowledge, Water Intrusion was not caused by conditions relating to chimneys, skylights, sheet metal flashing, air conditioners, swamp coolers, solar panels or an act of nature or other casualty such as an earthquake or subsidence.

**6.4.8** 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 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 substantially in the form of **Exhibit 1** hereto. If the Administrator determines that the Claim is not an Eligible Claim, the Administrator shall send to the Claimant a written notice in the form of **Exhibit 2** hereto, 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 or warranty claim.

**6.7 Submission of Current Roof Claim to Chief Roofing Inspector.** If the Administrator determines that a Claim might be an Eligible Claim, the Administrator 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.** All roof inspections shall include at a minimum the following:

- (i) The **Inspector** must walk the roof and generally survey its condition;
- (ii) The **Inspector** must determine the size of the roof and number of Squares of **Cal-Shake Shakes** installed on the roof; and
- (iii) The **Inspector** must determine whether the roof is an **Eligible Claim** as defined in Paragraph 2.13.

**6.8 Report By Chief Roofing Inspector.** After the Building is inspected, the Chief Roofing Inspector will recommend to the Administrator whether the Claim should be allowed and, if so, provide to the Administrator a report (the "Inspector's Report") containing the information specified below.

**6.9 Information Required If Claim Allowed.** If Chief Roofing Inspector recommends that the Claim be allowed, the Report shall include the following:

**6.9.1** A written certification: (1) that the roof on the Claimant's Building is a Cal-Shake roof; (2) that the roof qualifies as an **Eligible Claim** as defined by Paragraph 2.13. The Report shall state which of the provisions in Paragraph 2.13 establishes the Claimant's Eligibility.

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

**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.

**6.10.1** If it is determined by the **Inspector** that the roof contains **Cal-Shake Shakes**, but is not an **Eligible Claim**, then the **Claimant** shall be entitled to further inspections on a reasonable basis by request to the **Administrator**.

**6.11 Administrator's Final Evaluation of Claims.** Promptly upon receipt of the Inspectors Report, 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 Allocation.

**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, substantially in the form of **Exhibit 3** hereto regarding the disposition of the Claim.

**6.13 Objections To The Proposed Payment and Request for Inspections.**

The Claimant shall have five (5) days 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 the 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 Allocation.

**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, Cal-Shake, Inc. or Class Counsel or their designees upon reasonable request and at reasonable times. The Administrator shall prepare and provide to Class Counsel semi-annual 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 Cal-Shake Settlement Exclusions.** As noted hereinabove, the **Cal-Shake Settlement Fund** 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; and
- d. Insurance subrogation claims.
- 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. Said release will not preclude a **Claimant** from submitting another **Claim** within the term of the settlement, the **Administrator** decides in conjunction with Class Counsel that additional proceeds will be dispersed to claimants who have already received a payment from the **Settlement Fund**. This additional allocation would take place in the event that there was remaining money in the **Settlement Fund** after all claimants herein have been paid pursuant to the Plan of Allocation.

6.19 Settlement Class Counsel, in conjunction with the **Administrator**, shall submit an **Annual Report** to the Court summarizing the work performed by the **New Cal-Shake Settlement SubClass** 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 Fund. No attorney fees or costs shall be paid from the Settlement Fund other than pursuant to fee application to the Court and pursuant to Court Order thereon.

# Exhibit 1

NEW CAL SHAKE SETTLEMENT ADMINISTRATOR  
4153 Northgate Blvd., Suite 6  
Sacramento, CA 95834

September 27, 2005

Arnold Rodio  
C.L.A.S.S.  
43141 Business Center Parkway, Suite 112  
Lancaster, CA 93535

Arnie@4class.com

Re: **Claim #00000**  
Ralph Bistecco  
123 Santa Ynez Ave  
Citrus Heights, CA 95610

Dear Mr. Rodio:

Upon review of the enclosed claim, there is sufficient evidence that this property is eligible for inspection under the New Cal-Shake Protocols.

Enclosed is my letter to Mr. Bistecco and the Bistecco Inspection Eligibility Form. Please return a signed, completed copy of the form to my office.

If you have any questions, please call me or Susan Wayland at 916-929-6780.

Sincerely,

Stephen J. Lehtonen  
New Cal-Shake Settlement Administrator

Enc.

## **Exhibit 2**

NEW CAL SHAKE SETTLEMENT ADMINISTRATOR  
4153 Northgate Blvd., Suite 6  
Sacramento, CA 95834

September 27, 2005

Ralph Bistecco  
123 Santa Ynez Ave  
Citrus Heights, CA 95610

Re: **NOTICE OF DECISION**  
**CLAIM # 00000**

Dear Mr. Bistecco:

Upon review of the claim you recently submitted regarding your Cal-Shake roof, I find no portion of the claim to be eligible under the New Cal-Shake Protocols. Your claim is, therefore, denied for the reason(s) explained below:

The property at 123 Santa Ynez Ave., Citrus Heights, CA 95610 is included in an existing claim (#11111) filed by Mr. George Dubois. Mr. Dubois is the former owner of the property, and has submitted documentation showing replacement of the Cal-Shake roof at his cost prior to your ownership.

If you have any questions, or disagree with the facts, please write to New Cal-Shake Settlement Administrator, P.O. Box 38309, Sacramento, CA 95838.

Sincerely,

Stephen J. Lehtonen  
New Cal-Shake Settlement Administrator

## **Exhibit 3**



NEW CAL SHAKE SETTLEMENT ADMINISTRATOR  
4153 Northgate Blvd., Suite 6  
Sacramento, CA 95834

September 27, 2005

Ralph Bistecco  
123 Santa Ynez Ave  
Citrus Heights, CA 95610

Re: **Notice of Decision**  
**CLAIM #00000**

Dear Mr. Bistecco:

I am pleased to inform you that your claim has been approved for a settlement payment of \$\_\_\_\_\_, based upon \_\_\_ roofing squares multiplied by \$\_\_\_.

Enclosed is the New Cal-Shake Settlement Fund release, for your records, and a settlement check in the amount of \$\_\_\_\_\_.

If you have any questions, please call me at 866-844-0600.

Sincerely,

Patrice Feci  
New Cal-Shake Settlement Fund

Enc.