

## If You Own or Owned a Home or Other Building With A Cal-Shake Roof,

### You May Benefit From Proposed Class Action Settlements.

Read This Notice Carefully. Your Rights May Be Affected Whether Or Not You Act.

- There are two proposed settlements of a lawsuit about cement composite roofing shakes known as “Cal-Shake” shakes. The proposed settlements affect a “class” or group of people that might include you.
- The Class includes:

All owners of residential and commercial property on which CAL-SHAKE shakes manufactured by Shake Company of California, Inc. (“Old Cal-Shake”) **between January 25, 1980 and January 31, 1986** are, or have been, installed. The class includes property owners who have replaced their CAL-SHAKE shakes.
- **If you own CAL-SHAKE shakes manufactured after January 31, 1986, your claims are covered by a prior settlement agreement and this Notice does not affect your rights.**

Your legal rights and options are explained below. You should read this Notice carefully and make sure that you understand your rights and options.

<b>Your Legal Rights and Options</b>		<b>Due Date</b>
Do Nothing	You will automatically be part of the Class and bound by all Court Orders unless you exclude yourself.	
Exclude Yourself	You can ask to exclude yourself from the Class. If you exclude yourself you can't get benefits from the proposed settlements, but you keep the right to file your own lawsuit. For details on how to exclude yourself, see paragraph 17.	October 10, 2007
Object to the Proposed Settlements	You can write to the Court to explain why you don't like either or both of the proposed settlements. For details on how to object properly, see paragraph 18.	October 10, 2007
Go to the Fairness Hearing	If you file a timely objection to the proposed settlements, you may speak at the Fairness Hearing. See paragraphs 18-20 of this Notice for details on how to speak at the Hearing.	October 31, 2007

- These rights and options — and the deadline for each — are explained in this Notice.
- Although the Court has preliminarily approved the proposed settlements, the Court still has to decide whether to give final approval to the proposed settlements.

## WHAT IS THIS NOTICE ABOUT?

### 1. *Why has this Notice been issued?*

Before the Court decides whether to give final approval to the proposed settlements, you have a right to know about:

- The proposed settlements of this class action, and
- All of your options.

This Notice explains:

- The lawsuit
- The proposed settlements, and
- Your legal rights.

### 2. *What is the lawsuit about?*

The person who brought the case is called the “plaintiff” and the company the plaintiff sues is called the “defendant.” The defendant in this case is Old-Cal Shake. Plaintiff claims that Cal-Shake shakes are defective and that the shakes cause damage for which class members should be paid. The defendant denies these claims and any wrongdoing.

The Court in charge of the case is the Superior Court, State of California, County of Contra Costa. The case is known as *Shake Roof Cases, Judicial Council Coordination Proceeding No. 4208*.

The status of the lawsuit is described in this Notice.

### 3. *What is a class action?*

In a class action, one or more person(s), called the “class representative(s)”, sue on behalf of a group of people who have similar claims and are known as the class members. A court then resolves the issues for all class members, except for those who have excluded themselves from the class.

## THE BACKGROUND OF THE LAWSUIT AND PROPOSED SETTLEMENTS

### 4. *How did the lawsuit begin?*

The plaintiff filed this lawsuit in the Superior Court of Contra Costa County, California. The lawsuit involves the defendant’s manufacture and sale of roofing shakes that are composed of Portland cement and perlite and marketed under the brand name “Cal-Shake.” Old Cal-Shake manufactured the Cal-Shake shakes until January 31, 1986.

On February 18, 2002, the Court entered an Order certifying a class of all California owners of buildings or homes with Cal-Shake roofs. The Court appointed Birka-White Law Offices, Farella Braun & Martel LLP, Berding & Weil, LLP, and Gilman & Pastor to represent the Class (“Class Counsel”). Contact information for Class Counsel is provided in paragraph 18.

The lawsuit originally stated claims against both Old Cal-Shake and Cal-Shake, Inc. (“New Cal-Shake”). New Cal-Shake began manufacturing the Cal-Shake shakes on February 1, 1986 and stopped manufacturing the shakes by March 31, 1995. Claims against New Cal-Shake were settled (the “New Cal-Shake Settlement”) and the litigation proceeded only against defendant Old Cal-Shake. **If you own Cal-Shake shakes manufactured by New Cal-Shake after January 31, 1986 the New Cal-Shake Settlement covers your claims and this Notice does not affect your rights. For more information on that settlement visit: [www.calshakeclassaction.com](http://www.calshakeclassaction.com).**

### **5. *What happened in the lawsuit with Old Cal-Shake?***

The Court said that the lawsuit against Old Cal-Shake would be handled in three phases. Phase IA was used to decide issues common to the Class and 19 sample cases selected from the Class (the “Sample Cases”).

Phase IB was used to decide what relief the Class should get based on the jury’s verdicts in Phase IA. Phase II would decide what individuals who filed claims would get.

Following a six-week trial, the jury in the Phase IA trial decided that Old Cal-Shake’s product was negligently designed, but that only 6 of the 19 plaintiffs in the Sample Cases were entitled to recover damages. The estimate of average damage to the Class based on the jury’s verdicts was about \$60 per square of roofing material (100 square feet). The jury also found that the benefits of the design of Old Cal-Shake outweighed the risk of the design. Counsel for Old Cal-Shake contended that this finding required a judgment in favor of Old Cal-Shake.

After the jury’s verdicts, Old Cal-Shake filed a motion asking that the Court decide that the Class Action could not go forward. This motion argued that the jury had found no liability to the Class. It also argued that because only six of the Sample Cases won damages this showed that the Cal-Shake roofs raised questions which had to be decided individually and not for an entire Class. The Court denied Old Cal-Shake’s motion to decertify the Class by order dated March 25, 2005.

The trial of Phase IB began in June of 2006. The Court decided that roofs replaced before 2004 (the “Replaced Roofs”) could not be included in the damage estimate for the Class because it was not clear that people who replaced them did so because they were defective. This ruling reduced the plaintiff’s damage estimate by almost 50%. After the Court’s ruling on the Replaced Roofs, plaintiff’s statistician reduced the estimate of damages to the Class to about \$3 million at the 95% confidence level.

In its decision about the Replaced Roofs, the Court stated: “The certified class shall therefore not include persons whose roofs were replaced prior to the filing of a claim by such persons.” Plaintiff asked that the Court defer a decision on whether to exclude the owners of the Replaced Roofs from the Old Cal-Shake Litigation Subclass until after Phase I was complete.

The proposed settlements include the owners of Replaced Roofs.

## **6. Why are there Proposed Settlements?**

Old Cal-Shake is no longer in business. It has been dissolved and has minimal assets. The proposed settlements are funded entirely from insurance proceeds from its insurers, Central Mutual Insurance Company (“Central Mutual”) and Allianz Insurance Company (“Allianz”). Class Counsel agreed to settle the lawsuit with the insurers because the proposed settlements provide fair and reasonable compensation to the Class Members.

The Class agreed to settle with Old Cal-Shake’s two insurers for a total of \$2.975 million. Central Mutual agreed to settle for \$1 million, the likely maximum amount of insurance coverage available under that policy. Allianz agreed to settle for \$1.975 million. This created the single Settlement Fund from which you can make a claim for money.

## **7. How do I know if I am a Class Member?**

You are a Class Member if you own or owned residential or commercial property on which Cal-Shake shakes manufactured **between January 25, 1980 and January 31, 1986** are, or have been, installed. The Class includes property owners who have replaced their Cal-Shake shakes.

## **8. How Do I Identify Old Cal-Shake’s Roofing Product?**

The Cal-Shake Shakes are a composite product made from Portland cement and perlite. They were manufactured by Old Cal-Shake between January 1980 and January 1986. Cal-Shake Shakes bear the Cal-Shake trademark on the top half of each shake. To identify whether you have a Cal-Shake roof, you may ask the roofer who installed your roof. You may also visit [www.calshakeclassaction.com](http://www.calshakeclassaction.com) for pictures, or call 1-866-844-0600 for additional assistance in identifying the roofing product.

# **THE PROPOSED SETTLEMENTS**

## **9. What do the Proposed Settlements provide?**

This Notice summarizes the key terms of the proposed settlements. You may obtain a full copy of the Settlement Agreements as explained in paragraph 21. Class Counsel believe that the proposed settlements are fair, adequate, reasonable, and in the best interest of the Class. The Court has preliminarily approved the proposed settlements.

Old Cal-Shake’s insurers will pay a total of \$2,975,000 into a Settlement Fund. Central Mutual will pay \$1 million into the Settlement Fund and Allianz will pay \$1.975 million into the Settlement Fund. If the proposed settlement with either insurer is not approved, the amount that insurer would have paid to the Settlement Fund will not be paid. Members of the Class will be entitled to make claims against the Settlement Fund.

The cost of Class Notice, Claims Administration, Plaintiff's attorneys' fees and a \$10,000 stipend to the Plaintiff for his services as a Class Representative (if approved by the Court) will be paid out of the Settlement Fund.

**10. How will I know if I Can get Money from the Settlement Fund?**

Class Counsel has submitted to the Court a Plan of Distribution. Under the Plan of Distribution, each Class Member will receive a payment based upon the size of the Class Member's roof.

It does not matter if you had replaced your roof or still have your roof. You can get a copy of the Plan of Distribution as explained in Paragraph 21 below.

The total amount you can get depends on how many people make a claim.

**11. Am I giving anything up in the Proposed Settlements?**

If the proposed settlements are approved, you will release all claims, except personal injury claims, against Old Cal-Shake and its insurers.

**12. What happens if I do not exclude myself from the Class and the Court does not approve the Proposed Settlements?**

If you exclude yourself from the Class you will receive no benefits from either of the proposed settlements. See paragraph 17 for a full explanation of what happens if you exclude yourself from the class.

If you do not exclude yourself from the Class and neither of the proposed settlements is approved, the Class and Old Cal-Shake and its insurers will be restored to the position they were in before the relevant settlement agreement was signed. You will be bound by any subsequent judgment or settlement approved by the court.

If you do not exclude yourself from the Class and only one of the proposed settlements is approved, you will have the right to make a claim against the Settlement Fund created by the insurer whose settlement was approved. The Class and the insurer whose settlement was not approved will be restored to the position they were in before the relevant settlement agreement was signed. You will be bound by any subsequent judgment or settlement approved by the court.

## THE LAWYERS REPRESENTING YOU

### **13. Do I have a lawyer in this case?**

Class Counsel represent the class in this litigation. You will not be charged for the services of these attorneys in litigating this case and negotiating these proposed settlements. Contact information is provided in paragraph 18 below.

You can hire your own attorney if you wish. However, you will be responsible for those costs.

### **14. How will the lawyers be paid?**

Class Counsel has applied to the Court for an award of attorneys' fees of \$812,096, 35% of the Settlement Fund after reimbursement of costs. They will also request reimbursement of costs in the amount of \$654,727 that were advanced in connection with the pursuit of the lawsuit and proposed settlements. Class members are not personally liable for any fees and costs.

To date, Class Counsel have not received any payment for their services in conducting the litigation on behalf of the class. Nor have Class Counsel been reimbursed for their costs in the lawsuit. The fee requested by Class Counsel would compensate them for their efforts in achieving the proposed settlements and for their risk in undertaking this representation on a contingent-fee basis. If approved by the Court, the fee requested would be within the range of fees awarded to plaintiffs' counsel under similar circumstances

## APPROVING THE PROPOSED SETTLEMENTS

### **15. When and where will the Court decide whether to approve the Proposed Settlements and attorneys' fees?**

A final approval hearing will be held at 9:00 a.m. October 31, 2007 before the Honorable David B. Flinn, Judge of the Contra Costa County Superior Court, Department 6, A. F. Bray Building, 1020 Ward St., Martinez, California ("the Hearing"). At that time, the Court will determine (1) whether each of the proposed settlements is fair, just, reasonable, adequate, and in the best interest of the class; (2) whether and in what amount Class Counsel's request for attorneys' fees and costs should be paid from the Settlement Fund; and (3) whether the Plaintiff should receive a stipend of \$10,000 for his services as a representative of the class. The Court may adjourn or continue the Hearing without further notice to the class.

## MAKING A CLAIM

### **16. How do I Make a Claim?**

If either or both of the proposed settlements are approved, you will have the opportunity to submit a Claim Form to request a payment from the Fund. Claim Forms will be available after final approval of the proposed settlements. To request a Claim Form, you may visit the Web site ([www.CalShakeClassAction.com](http://www.CalShakeClassAction.com)) or call 1-866-844-0600.

## EXCLUSION FROM THE SETTLEMENTS

### **17. How do I exclude myself from the Class?**

You can exclude yourself from the Class. If you exclude yourself, you get no benefits from the proposed settlements, but you keep the right to file your own lawsuit. Because the defendants lack significant assets other than their rights under their insurance policies and the insurers have contested coverage of claims against the defendants, if you pursue individual litigation of your claim you might also need to file a second lawsuit against the insurance companies for Old Cal-Shake to collect on any judgment you obtain.

If you wish to be excluded from the Class, please fill out and return the attached Request for Exclusion postmarked no later than October 10, 2007.

## OBJECTING TO THE SETTLEMENTS

### **18. How do I tell the Court if I don't like the Proposed Settlements?**

If you are a Class Member, you can tell the Court you don't like either proposed settlement or some part of it. This is called objecting to the proposed settlements. (For example, you can say you don't think a proposed settlement is fair or adequate, or that you object to the amount of the attorneys' fees, costs or expenses.) The Court will consider your views even if you do not attend the Hearing.

To object, you or your lawyer must send a letter that includes all of the following:

- The name and title of the lawsuit, *Shake Roof Cases, Judicial Council Coordination Proceeding No. 4208*;
- A statement of each objection you have and a summary of the basis for the objections;
- A description of any law or case supporting the objections;
- A statement of whether or not you or your lawyer will ask to appear at the Fairness Hearing to talk about your objections, and, if so, how long you will need to present your objections;
- Copies of any documents you or your lawyer will present at the Fairness Hearing.

Your objection letter and other materials must be filed with the Court by **October 10, 2007**, and show proof of service on the parties at the following addresses:

## Class Counsel:

BIRKA-WHITE LAW OFFICES David M. Birka-White Esq. 744 Montgomery Street, 4th Fl. San Francisco, CA 94111-3339 Telephone: (415) 616-9999	FARELLA BRAUN + MARTEL LLP William R. Friedrich, Esq. John D. Green, Esq. 235 Montgomery Street San Francisco, CA 94104 Telephone: (415) 954-4400	BERDING & WEIL, LLP Jeffrey B. Cereghino, Esq. Daniel L. Rottinghaus, Esq. 3240 Stone Valley Road West Alamo, CA 94507 Telephone: (925) 838-2090	GILMAN & PASTOR 225 Franklin Street, 16th Floor, Boston, MA 02110 Telephone: (617) 742-9700
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## Old Cal-Shake:

LAW OFFICES MILLARD, HOLWEGER, CHILD & MARTON Andrew J. Marton, Esq. 700 S. Flower Street, Suite 3050 Los Angeles, CA 90017 Telephone: (213) 627-3113	CESARI, WERNER & MORIARTY Dennis F. Moriarty, Esq. Kristina L. Velarde, Esq. 360 Post Street, Fifth Floor San Francisco, CA 94108 Telephone: (415) 391-1113
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Unless otherwise ordered by the Court, if you do not make your objection or opposition in the manner provided, you will waive all such objections.

### **19. Do I have to come to the Fairness Hearing?**

No. Class Counsel will answer any questions the Court may have. However, you may come, at your own expense. If you send a written objection, you do not have to come to Court to talk about it. As long as you properly and timely submit your written objection, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

### **20. May I speak at the Fairness Hearing?**

You will not be heard unless you have submitted your comments or objections as provided in paragraph 18. You must state in your submission that you wish to be heard.

## GETTING MORE INFORMATION

### **21. How do I get more information about the Proposed Settlements?**

This Notice contains only a summary of the terms of the proposed settlements. For a more detailed statement of the matters involved in this case, you can read the pleadings, Settlement Agreements, Plan of Distribution and to other papers filed in this action. They can be inspected at the Office of the Clerk of the Superior Court of Contra Costa County, 725 Court Street, Martinez, California 94553.

**Please do not call or write to the Court or the Clerk of the Court as neither can answer any questions or provide legal advice regarding the proposed settlements or your rights there under.**

Dated: August 13, 2007  
Superior Court for Contra Costa County, California

## EXCLUSION REQUEST

**Read the enclosed legal notice carefully before filling out this form**

The undersigned has read the Notice of Class Action Settlement, dated August 13, 2007, and does **NOT** wish to remain a member of the Plaintiff Class certified in the Shake Roof Cases, Judicial Council Coordination Proceeding No. 4208, in the Superior Court of the State of California, In and For the County of Contra Costa.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Typed or Printed name: \_\_\_\_\_

If you want to exclude yourself from the Class, you must complete and return this form by mailing before **October 10, 2007** to:

Class Counsel  
Cal-Shake Roof Class Action Litigation  
P.O. Box 38309  
Sacramento, CA 95838

A separate request for exclusion should be completed and timely mailed for each person or entity electing to be excluded from the Class.