

## **SETTLEMENT AGREEMENT**

THIS AGREEMENT is entered by and between Plaintiff in this Action, for himself and on behalf of the Settling Subclass (as hereinafter defined); and Shake Company of California, Inc., a.k.a. Alescorp Holding, Inc., Ale Ventures, Inc., and Dura Trend Industries, Inc. ("Old Cal-Shake") and Allianz Insurance Company ("Allianz"), insurer for Old Cal-Shake, hereinafter collectively referred to as "the Parties," with respect to *The Shake Roof Cases*, Judicial Council Coordination Proceeding No. 4208; *Melvin Weiner et al. v. Shake Company of California, Inc., et al.*, Contra Costa Superior Court (the "Court"), Case No. C99-00318; *Portello v. Shake Company of California, Inc., et al.*, Los Angeles Superior Court, Case No. BC 243964 (collectively, the "Action").

### **CLASS DEFINITION**

1. "Settling Subclass" means the Old Cal-Shake Litigation Subclass as defined in the Order Certifying Settlement Class; Preliminarily Approving Partial Class Action Settlement; And Approving Notice Plan And Form Of Notice entered by the Court on July 18, 2005.

### **SETTLEMENT AMOUNT**

2. Allianz will pay to the Settling Subclass a total of \$1.975 million (the "Settlement Fund"), to be paid as set forth in Paragraphs 8 and 10 of this Agreement. All notice costs, attorneys fees and costs and stipends to Class representatives paid in connection with this Agreement shall be paid exclusively from the Settlement Fund.

### **RELEASES**

3. Plaintiff and the Settling Subclass on the one hand, and Allianz and Old Cal-Shake on the other hand, hereby mutually release and forever discharge each other, and all parents, subsidiaries, affiliates, predecessors, successors, agents, attorneys, insurers, directors,

shareholders, officers, and employees of each other, from any claim that is, has been, or could have been asserted in the Action, regardless of legal theory, and regardless of the type or amount of relief or damages claimed, that arises out of, relates to or concerns Cal-Shake Shakes, any claims related to defense costs, insurance coverage or claims handling, including claims for defense, supplementary payments, indemnity and breach of the covenant of good faith and fair dealing or extra-contractual liability related thereto, and any claims related to this litigation or the conduct of the litigation or costs therein (the "Settled Claims"). Notwithstanding the foregoing or any other provision of this Agreement, the Settled Claims shall not include claims for personal injury by Class members or claims by homeowners who purchased product which was installed outside of the State of California.

(a) Old Cal-Shake and Allianz release any claim, demand action or cause of action they have or might have against The Central Mutual Insurance Company ("Central Mutual") for indemnity or contribution relating to facts and circumstances alleged in the Action. Except as expressly provided in this sub-paragraph (a), Old Cal-Shake and Allianz retain all other claims they have or might have against Central Mutual including claims for reimbursement or reallocation of defense costs.

4. The Parties acknowledge that they are familiar with the provisions of Section 1542 of the California Civil Code as set forth below and expressly waive any rights or benefits under Section 1542, as well as under any other law of similar effect. California Civil Code Section 1542 states:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.**

The Parties acknowledge that they may hereafter discover facts different from, or in addition to, those that they now know or believe to be true with respect to the Settled Claims. The Parties nevertheless acknowledge that this Agreement has been negotiated and agreed upon in light of this realization and, being fully aware of the situation, hereby expressly agree that the releases contained herein shall be given full force and effect even as to unknown and unsuspected Settled Claims.

### SETTLEMENT APPROVAL

5. The effectiveness of this Agreement is conditioned on:
  - i. The entry of an order or orders by the Court (collectively, the "Final Approval Order") after notice to the Settling Subclass, (a) approving this Agreement in accordance with CCP § 382 and Rule 3.769 of the California Rules of Court ("Rule 3.769") and making such other findings and determinations as the Court deems necessary and appropriate to effectuate the terms of this Agreement; (b) approving the plan proposed by Class Counsel for the distribution of proceeds of the Agreement to class members (the "Plan of Allocation"), including a stipend of \$10,000 to Class Representative William Milano; (c) reserving the continuing and exclusive jurisdiction of the Court over the Parties to this Agreement to administer, supervise, construe and enforce this Agreement in accordance with its terms for the mutual benefit of the Parties; and (d) containing such other provisions as may be necessary or appropriate to effectuate this Agreement.
6. The Parties shall submit the Agreement to the Court for preliminary approval and shall move the Court for one or more orders (the "Preliminary Approval Order") which by their terms shall:

- A. Grant preliminary approval to this Agreement;
- B. Determine and approve the form, content and method of dissemination of the Class Notice;
- C. Schedule appropriate deadlines for exclusion from the Class, objections to the settlement and other settlement-related dates;
- D. Schedule the fairness hearing to review comments or objections regarding this Agreement, to consider its fairness, reasonableness and adequacy under CCP § 382 and Rule 3.769, and to enter the Final Approval Order.

7. The Parties shall undertake all actions reasonably necessary to obtain the Preliminary Approval Order and to comply therewith on the schedule set by the Court.

8. Within ten (10) days of the entry of the Preliminary Approval Order, Allianz shall deposit \$150,000 to be used to defray the cost of notice to the class ("Class Notice") into a notice account. When the full cost of Class Notice has been deposited into the notice account by Allianz and Central Mutual, Class Counsel shall cause Class Notice to be provided to members of the Settling Subclass as the Court may direct.

9. The Class Notice shall provide that members of the Settling Subclass shall have the right to exclude themselves from the Class and this Settlement (the "Opt-out Right") no later than the last date specified in the Class Notice (the "Opt-out Date"). Old Cal-Shake and Allianz shall have the right to terminate the settlement in their sole discretion by written notice to Class Counsel if more than the number of class members specified in a side letter between Plaintiff and Old Cal-Shake exercise the Opt-out Right. After the passing of the Opt-out Date, Old Cal-Shake and Allianz shall exercise the right to terminate this Agreement, if at all, no later than 10

calendar days after receiving notice of the identity and total number of class members who elect to exercise the Opt -out Right.

10. The amount of the Settlement Fund after the cost of Class Notice shall be paid by Allianz within 5 days of entry of the Final Approval Order and deposited by Class Counsel or any Claims administrator appointed by the Court in a federally-insured interest bearing settlement account(s) to be designated by Class Counsel.

11. Class Counsel's attorneys' fees and litigation costs and any stipends awarded to William Milano shall be disbursed from the Settlement Fund in accordance with the orders of the Court upon entry of each such order. Old Cal-Shake and Allianz shall not object to Class Counsel's fee petition or the stipend to William Milano. In the event the Final Approval Order is reversed on appeal in a way which materially affects this Agreement (as determined by the agreement of the Parties or an order of the Court), the attorneys' fees and costs paid to Class Counsel shall be returned to the Settlement Fund by Class Counsel within ten (10) business days of the agreement or order requiring their return.

A. The balance of the Settlement Fund, after deduction of notice costs and attorneys' fees and costs, shall be disbursed when the Final Approval Order becomes final and shall be disbursed only in accordance with the terms of this Agreement, the Plan of Allocation or orders of the Court.

12. The condition that any order referred to by this Agreement become final shall be satisfied when either (1) the time to appeal from the order has passed and no appeal has been taken therefrom, or (2) such an appeal having been timely filed, (a) the appeal is dismissed or otherwise withdrawn or (b) the order is affirmed on appeal without substantial modification.

13. Unless the Parties otherwise agree in writing, this Agreement shall terminate if the Court declines to enter the Preliminary Approval Order or the Final Approval Order, or if the Final Approval Order is reversed or modified on appeal in any material way and the reversal or modification becomes final. In the event that this Agreement is terminated under Paragraph 9 or this Paragraph, and notwithstanding any other provision of this Agreement, (1) all Parties shall, to the extent practicable, be restored to their respective positions, on October 3, 2006; and (2) all statutes of limitation and/or repose for all claims asserted in such cases shall be deemed to have been tolled from October 3, 2006 until the conclusion of the subsequent trial of the matter. Notwithstanding the generality of the foregoing, Allianz shall have no right to recover the cost of Class Notice actually expended in giving notice to the Settling Subclass from Plaintiff or Class Counsel.

#### **GENERAL PROVISIONS**

14. This Agreement shall constitute the entire agreement among the Parties and supersedes any previous agreements, representations, communications and understandings among the Parties. This Agreement may not be changed, modified, or amended except in writing signed by all Parties and approved by the Court.

15. The Plan of Allocation shall be determined by Class Counsel, subject to the approval of the Court. Neither Old Cal-Shake nor Allianz will contest the Plan of Allocation.

16. This Agreement shall be construed under and governed by the laws of the State of California, applied without regard to laws applicable to choice of law.

17. The Parties agree that they will execute all documents and do all other things necessary to effectuate this Agreement.

18. This Agreement may be executed by the Parties in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Signatures by facsimile shall be as effective as original signatures.

19. All individuals signing this Agreement on behalf of any person or entity represent and warrant that they have full authority to do so.

Dated: July 11/2007

OLD CAL-SHAKE

Name: David P. Ord  
Title: Attorney

Dated: \_\_\_\_\_

ALLIANZ INSURANCE COMPANY

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
WILLIAM MILANO,  
Individually and as representative of the Old Cal-  
Shake Litigation Subclass

APPROVED AS TO FORM AND  
CONTENT:

LAW OFFICES OF DAVID M. BIRKA-WHITE

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
David M. Birka-White  
Attorneys for Plaintiff

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Dated: \_\_\_\_\_

OLD CAL-SHAKE

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: 7-2-07

ALLIANZ INSURANCE COMPANY

Name: *PA Duffy*

Title: *Claims Specialist*

Dated: \_\_\_\_\_

\_\_\_\_\_  
WILLIAM MILANO,  
Individually and as representative of the Old Cal-Shake Litigation Subclass

APPROVED AS TO FORM AND CONTENT:

LAW OFFICES OF DAVID M. BIRKA-WHITE

Dated: \_\_\_\_\_

By: \_\_\_\_\_

David M. Birka-White  
Attorneys for Plaintiff

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Dated: July 11/2007

OLD CAL-SHAKE

Name: David P. Ord  
Title: Attorney

Dated: \_\_\_\_\_

ALLIANZ INSURANCE COMPANY

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: July 12/07

William Milano  
WILLIAM MILANO,  
individually and as representative of the Old Cal-Shake Litigation Subclass

APPROVED AS TO FORM AND CONTENT:

LAW OFFICES OF DAVID M. BIRKA-WHITE

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
David M. Birka-White  
Attorneys for Plaintiff

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Dated: \_\_\_\_\_

OLD CAL-SHAKE

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Dated: 7-2-07

ALLIANZ INSURANCE COMPANY

Name: [Signature]  
Title: Claims Specialist

Dated: \_\_\_\_\_

\_\_\_\_\_  
WILLIAM MILANO,  
Individually and as representative of the Old Cal-Shake Litigation Subclass

APPROVED AS TO FORM AND CONTENT:

Dated: 7-12-07


LAW OFFICES OF DAVID M. BIRKA-WHITE

By: [Signature]  
David M. Birka-White  
Attorneys for Plaintiff

APPROVED AS TO FORM AND  
CONTENT:

Dated: \_\_\_\_\_

FARELLA BRAUN + MARTEL LLP

By:   
John D. Green  
Attorneys for Plaintiff

APPROVED AS TO FORM AND  
CONTENT:

Dated: \_\_\_\_\_


BERDING & WEIL LLP

By: \_\_\_\_\_  
Jeffrey B. Cereghino  
Attorneys for Plaintiff

APPROVED AS TO FORM AND  
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Dated: \_\_\_\_\_

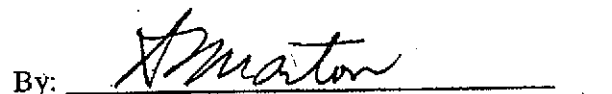
GILMAN & PASTOR, LLP

By:   
John Martland  
Attorneys for Plaintiff

APPROVED AS TO FORM AND  
CONTENT:

Dated: 7/5/07

MILLARD, HOLWEGER, CHILD & MARTON

By:   
Andrew J. Marton  
Attorneys for Alescorp Holding, Inc., Ale  
Ventures, Inc., Duratrend Industries, Inc.,  
Shake Company of California

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Dated: \_\_\_\_\_

CESARI, WERNER & MORIARTY

By: \_\_\_\_\_  
Kristina L. Velarde  
Attorneys for Alescorp Holding, Inc., Ale  
Ventures, Inc., Duratrend Industries, Inc.,  
Shake Company of California

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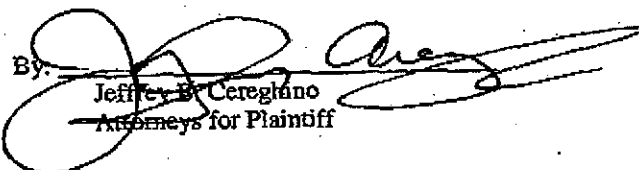
FARELLA BRAUN + MARTEL LLP

By: \_\_\_\_\_  
John D. Green  
Attorneys for Plaintiff

APPROVED AS TO FORM AND CONTENT:

Dated: 7-16-07

BERDING & WEIL LLP

By:   
Jeffrey B. Cereghino  
Attorneys for Plaintiff

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Dated: \_\_\_\_\_


GILMAN & PASTOR, LLP

By: \_\_\_\_\_  
John Martland  
Attorneys for Plaintiff

APPROVED AS TO FORM AND CONTENT:

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MILLARD, HOLWEGGER, CHILD & MARTON

By:   
Andrew J. Marton  
Attorneys for Alescorp Holding, Inc., Ale  
Ventures, Inc., Duratrend Industries, Inc.,  
Shake Company of California

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CESARI, WERNER & MORIARTY

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Kristina L. Velarde  
Attorneys for Alescorp Holding, Inc., Ale  
Ventures, Inc., Duratrend Industries, Inc.,  
Shake Company of California

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FARELLA BRAUN + MARTEL LLP

By: \_\_\_\_\_  
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BERDING & WEIL LLP

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Attorneys for Plaintiff

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John Martland  
Attorneys for Plaintiff

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FARELLA BRAUN + MARTEL LLP

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Attorneys for Plaintiff

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GILMAN & PASTOR, LLP

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John Martland  
Attorneys for Plaintiff

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MILLARD, HOLWEGER, CHILD & MARTON

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