

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

Coordination Proceeding
Special Title [Rule 1550(b)]

SHAKE ROOF CASES

Judicial Council Coordination
Proceeding No. 4208

Superior Court of Contra Costa County,
C99-00318

**ORDER: (1) GRANTING PRELIMINARY
APPROVAL OF SETTLEMENTS OF
CLAIMS OF OLD CAL-SHAKE
LITIGATION SUBCLASS, (2) SETTING
FINAL APPROVAL HEARING AND; (3)
APPROVING FORM AND MANNER OF
NOTICE TO CLASS**

Date: July 19, 2007
Time: 9:00 am
Dept: 6
Judge: Hon. David B. Flinn

1 Plaintiff having moved the Court for preliminary approval of two settlement agreements
2 (the "Proposed Settlements") between the Old Cal-Shake Litigation Subclass (the "Class") and
3 Defendant Shake Company of California, Inc. ("Old Cal-Shake") and its insurers, Allianz
4 Insurance Company ("Allianz") and Central Mutual Insurance Company (Central Mutual")
5 (collectively, the "Settling Insurers"), and the Court having reviewed the pleadings filed by
6 Plaintiff in connection with the motion to approve the Proposed Settlements, and good cause
7 appearing therefor, the Court now finds and orders as follows:

8 **FINDINGS**

9 **I. PRELIMINARY APPROVAL OF PROPOSED SETTLEMENTS**

10 1. The Proposed Settlements appear to the Court to be fair, reasonable and adequate
11 and appear to be the product of arm's-length, serious and informed negotiations.

12 2. A hearing is appropriate for consideration of final approval of the Proposed
13 Settlements, at which the Court will hear all evidence and argument necessary to evaluate the
14 Proposed Settlements and Class Counsel's request for attorneys' fees and costs. The hearing (the
15 "Final Hearing") shall be held at on **October 31, 2007 at 9:00 a.m.**

16 **II. APPROVAL OF FORM AND MANNER OF NOTICE**

17 1. The forms of notice and opt-out request attached to the Novak Declaration as
18 Exhibits C (the "Long Form Notice") and D (the "Publication Notice") (collectively, the "Notice
19 Documents") contain a fair and adequate explanation of the Proposed Settlements and the
20 procedures for class members to follow in filing written objections to them and in arranging to
21 appear at the Final Hearing.

22 2. The Notice Plan attached to the Novak Declaration as Exhibit B (the "Notice
23 Plan") provides for direct mail notices to all class member addresses that can reasonably be
24 ascertained and provides an effective means of reaching other class members by published
25 notification in newspapers and magazines and by other means of dissemination of such
26 information. Such notice is the best practicable notice under the circumstances of this case.

27
28

1 **GOOD CAUSE APPEARING THEREFOR,**

2 **IT IS HEREBY ORDERED:**

3 1. The Notice Documents and the Notice Plan are approved. Notice shall be
4 disseminated substantially in the form the Notice Documents and in the manner set forth in the
5 Notice Plan. By August 13, 2007, the Long Form Notice shall be sent to Class members through
6 a direct mailing to the addresses compiled from available sources. Publication of the Publication
7 Notice in various publications across the country shall be completed by September 10, 2007.

8 2. Confirmation of the dissemination of the Notice Documents shall be provided by
9 Class Counsel by October 24, 2007. The expense of Notice shall be paid out of sums by the
10 Settling Insurers in accordance with the terms of the Proposed Settlements.

11 3. Class Counsel's application for attorneys' fees and costs shall be heard at the final
12 approval hearing.

13 4. Any member of the Class may request to be excluded from the Class. To be
14 excluded, the Class member must inform Class Counsel by written notice addressed to the Law
15 Offices of David M. Birka-White, 744 Montgomery Street, 4th Floor, San Francisco, California,
16 94111, Attention: Cal-Shake Settlement, postmarked on or before October 10, 2007. Class
17 members who submit a request for exclusion may rescind their opt-out request so long as written
18 notice of such rescission is submitted to the same address to which the exclusion was submitted,
19 and is postmarked on or before October 10, 2007. Any member who chooses to be excluded will
20 not be bound by any judgment entered in connection with the Proposed Settlements. Such Class
21 members who do not elect to be excluded will be bound by the terms of any of the Proposed
22 Settlements finally approved by the Court.

23 5. Any member of the Settlement Class who does not elect to be excluded from the
24 Class may, but need not, enter an appearance through the Class member's own attorney. Class
25 members who do not enter an appearance personally or through their own attorneys will be
26 represented by Class Counsel, whose fees and costs will be paid out of the Settlement Fund if and
27 to the extent approve at the Final Hearing.

28

1 6. The Final Hearing will be held on October 31, 2007, at 9:00 am in the Superior
2 Court of the State of California, Contra Costa County, 725 Court Street, Department 6, Martinez,
3 California 95202: (1) to determine whether the Proposed Settlements should be finally approved
4 by the Court; and (2) to consider Class Counsels' application for an award of attorneys' fees and
5 costs.

6 7. Any member of the Class who has not timely requested exclusion may appear at
7 the hearing and show cause why the Court should not approve the proposed Settlement or object
8 to Class Counsels' application for attorneys' fees and costs. For a member of the Class to have
9 any objections considered at the hearing, the Class member must file a written objection (the
10 "Objection") with the Clerk of the Court of the Contra Costa County Superior Court, 725 Court
11 Street, Department 6, Martinez, California, indicating briefly the nature of the Class member's
12 objection and stating that the Class member is the owner of a building on which Cal-Shake
13 Shakes manufactured by Old Cal-Shake were installed. The Objection must be filed with the
14 Court no later than October 10, 2007, and a copy must be mailed and postmarked on or before the
15 same date to Law Offices of David M. Birka-White, 744 Montgomery Street, 4th Floor, San
16 Francisco, California, 94111, Attention: Cal-Shake Claims. Copies of any objections received by
17 Class Counsel pursuant to this paragraph shall be provided to counsel for the Settling Insurers
18 upon request. The filing of any Objection shall not extend the time within which a Class member
19 may file a request for exclusion from the Class.

20
21
22 DATED: July 19, 2007



THE HONORABLE DAVID B. FLINN
Judge of the Superior Court