BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV

COMPLAINT COMPLAINT AGAINST AND REQUEST FOR INVESTIGATION OF CALCERTS, INC.	Docket No. 12-CAI-01 March 5, 2012

DOCKET
12-CAI-01
DATE MAR 05 2012
RECD. MAR 05 2012

ORDER RE SERVICE OF COMPLAINT AND SCHEDULE

On February 15, 2012, David Haddock filed a *Complaint Against and Request for Investigation of CalCERTS, Inc.* (Complaint) on behalf of his clients, Erik Hoover and Patrick Davis (Petitioners). The Complaint arises out of the California Energy Commission's (Energy Commission's) Home Energy Rating System (HERS) Program, which was adopted in 1999, and establishes criteria for a statewide home energy rating program for residential dwellings. Under the Program, home energy rating system organizations that are approved by the Energy Commission (called "Providers") administer a home energy rating system in conformity with the Energy Commission's HERS regulations. Providers are responsible for training, testing, and certifying "Raters", who perform the tests necessary to establish a HERS rating for a structure. Petitioners were certified by CalCERTS (a HERS Provider) as HERS raters until January 30, 2012, when CalCERTS informed Petitioners that they were decertified.

Petitioners request that the Energy Commission take the following action:

1) Immediately reverse the decision of CalCERTS to decertify Erik Hoover and Patrick Davis.

2) Investigate the way CalCERTS imposes discipline upon HERS raters who are alleged to have made mistakes.

3) Require CalCERTS to adopt a written discipline procedure that complies with the HERS regulations, and with the constitutional requirements of due process.

The Complaint is brought pursuant to Sections 1675 and 1231 of the Energy Commission's regulations. Pursuant to the procedures set forth in Section 1231 et seq., the Committee, or if none has been assigned, the Chair, shall either 1) dismiss the

Proof of Service Revised 3/1/12 Filed with original.
Mailed from Sacramento on 3/5/12 C. Hong

matter upon a determination of insufficiency or lack of merit of the pleadings (specifying whether the dismissal is with or without prejudice), or 2) serve the Complaint upon the respondent, return receipt requested.

1. The Chief Counsel's Office is directed to serve the Complaint on CalCERTS, Inc., return receipt requested.

   Although the Complaint identified "many other individuals who have been unlawfully disciplined by CalCERTS", and states that all current and future certified raters would be affected by the relief requested, Petitioners provide no names or addresses as required by Section 1231(b)(7). Therefore, no service on the individuals identified in that section is required. However, as the regulation further states that "the committee, or if none has been assigned, the chairman, may take additional steps to notify other individuals, organizations, and businesses which the committee or the chairman has reason to believe would be adversely affected by a decision", the Chief Counsel's Office is also directed to serve the Complaint by first class mail on all HERS Providers.

   When serving the complaint, the Chief Counsel's Office shall also provide a copy of the Energy Commission's governing procedure, including a statement that the provisions of the Administrative Procedures Act (Government Code section 11400 et seq.) will be applicable to this proceeding, including the informal hearing procedures in Article 10 of the Administrative Procedures Act (Government Code, §§ 11445.10 through 11445.60). Further procedures will be ordered as necessary by the committee assigned to this proceeding by subsequent order of the Energy Commission, or if none has been assigned, the Chairman.

2. Within twenty-one (21) days after service, CalCERTS, Inc. shall file and serve an Answer to all persons identified on the most current Proof of Service list on file with the Docket Unit.

IT IS SO ORDERED.

Dated: March 5, 2012,
at Sacramento, California.

STATE ENERGY RESOURCES
CONSERVATION AND
DEVELOPMENT COMMISSION

ROBERT B. WEISENMILLER
Chair
California Energy Commission

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DATE FEB 13 2012
RECD. FEB 24 2012

RECEIVED
FEB 15 2012
OFFICE OF CHIEF COUNSEL

February 13, 2012

Dennis L. Beck, Jr.
Senior Staff Counsel
California Energy Commission
1516 9th Street, MS-14
Sacramento, CA 95814

Via Email & U.S. Mail

Re: Complaint Against and Request for Investigation of CalCERTS, Inc.

Dear Mr. Beck,

I write for the purpose of initiating a complaint against, and requesting an investigation of, CalCERTS, Inc., pursuant to California Code of Regulations Title 20 § 1675 and Title 20 § 1230 et seq. I also seek relief for my clients Erik Hoover and Patrick Davis, who were making their livings as HERS raters before being summarily decertified by CalCERTS and barred from continuing to work in their chosen field.

As more fully set forth below, my clients Hoover and Davis complain that CalCERTS has taken the "quality assurance" process described in the HERS regulations and transformed it unlawfully into a system of professional discipline that they administer. CalCERTS employees act as judge, jury, and executioner in terminating the ability of HERS raters to work. They take these drastic steps unfettered by the requirements of the HERS regulations themselves, by the procedural due process rules of the California and United States constitutions that apply to them, or by the basic rules of fairness and decency.

Although the HERS regulations provide the very authority for CalCERTS to act as providers in this industry, CalCERTS has ignored the quality assurance regulation that applies to HERS raters who are alleged to have made mistakes. Rather than simply record a failure in the registry, and perform additional quality assurance review over a period of 12 months, as the HERS regulations require, CalCERTS has imposed an entirely different penalty upon Hoover and Davis, by decertifying them as HERS raters. This is unlawful. Hoover and Davis are entitled to have the HERS regulations apply to their work, rather than the subjective rules of CalCERTS

More egregiously, CalCERTS has imposed this drastic form of discipline in violation of procedural due process rules. Although CalCERTS apparently initiated an investigation of Hoover and Davis because a complaint had been filed against them, CalCERTS did not provide them with a copy of the complaint, or a description of the allegations contained in it. Moreover, CalCERTS did not provide Hoover and Davis any notice of any kind prior to their certification being suspended. According to the e-mail notice they received, their suspension was already effective by the time they received it. Hoover and Davis were provided no meaningful details about the reasons for their suspension. They were not provided with a meaningful opportunity for a hearing. They had no opportunity to challenge or dispute the CalCERTS quality assurance findings, and were in fact not even told what those findings were until after their professional certification had already been terminated. They had no opportunity to confront or cross-examine

witnesses who accuse them. The decision to decertify Hoover and Davis was not made "on the record," so that Hoover and Davis could see the evidence and reasoning of the decision maker. In fact, they were told that if their lone interview with CalCERTS was to be recorded, Hoover and Davis would not be permitted to have a copy of the recording. Hoover and Davis were not notified of any opportunity to appeal the decision of CalCERTS

This method of imposing discipline upon HERS raters is unlawful and must be stopped. Accordingly, Erik Hoover and Patrick Davis respectfully request that the California Energy Commission take the following action:

1. Immediately reverse the decision of CalCERTS to decertify Erik Hoover and Patrick Davis. Hoover and Davis should be permitted to continue working as HERS raters until such time as (a) the HERS regulations have been applied to them as written, and (b) Hoover and Davis have been given due process prior to the removal of their right to work. Hoover and Davis have now been unable to work for nearly two months.

2. Investigate the way CalCERTS imposes discipline upon HERS raters who are alleged to have made mistakes.

3. Require CalCERTS to adopt a written discipline procedure that complies with the HERS regulations, and with the constitutional requirements of due process.

Details of these allegations, including supporting facts and law, are set forth below.

Sincerely,

David Haddock
Attorney for Erik Hoover and Patrick Davis

Erik Hoover and Patrick Davis respectfully submit the following complaint and request for investigation:

I. The name, address, and telephone number of the person filing the complaint (complainant) or request for investigation (petitioner). California Code of Regulations Title 20 § 1231 (b)(1).

The names, addresses, and telephone numbers of the complainants/petitioners are as follows:

Erik Hoover
JaaR Sales, Inc. dba Valley Duct Testing
2272 Sierra Meadows Dr., Suite A
Rocklin, CA 95677
916-624-2092

Patrick Davis
JaaR Sales, Inc. dba Valley Duct Testing
2272 Sierra Meadows Dr., Suite A
Rocklin, CA 95677
916-624-2092

They may also be contacted through their attorney at the following address:

David Haddock
P. O. Box 2501
Citrus Heights, CA 95611
916-420-5802
dave@davidhaddocklegal.com

II. The name, address, and telephone number of the person allegedly violating the statute, regulation, order, or decision (respondent). Title 20 § 1231 (b)(2).

CalCERTS
31 Natoma St Suite 120
Folsom, CA 95630
916-985-3400

III. Statement of the facts upon which the complaint or request for investigation is based.

a. Erik Hoover and Patrick Davis were granted "professional certification" by CalCERTS in 2009, and were authorized to work as HERS raters. *See* Hoover CalCERTS Certified Rater Agreement, attached hereto as Exhibit A, and Davis CalCERTS Certified Rater Agreement, attached hereto as Exhibit B.

b. At some point in time, complaints about Hoover and Davis were allegedly submitted to CalCERTS. *See* Letter of Attorney Andrew L. Collier, February 8, 2012, attached hereto as Exhibit C (exhibits to the letter omitted). Hoover and Davis have never received copies of the complaints.

c. On December 16, 2011, Hoover and Davis were notified by e-mail that they had allegedly failed a quality assurance review, and that they had been suspended for 15 days. *See* Hoover QA Review E-mail, attached hereto as Exhibit D; Davis QA Review E-mail, attached hereto as Exhibit E. The e-mail notices identified addresses where Hoover and Davis had allegedly failed quality assurance inspections, but the notices did not provide any data or describe any details about the alleged failures. *Id.* The notices indicated that if Hoover and Davis did not schedule a meeting with CalCERTS within 15 days they would be decertified, but the notices did not otherwise indicate that Hoover and Davis would be or could be subject to any additional discipline arising out of the alleged failures, other than the 15 day suspension that had already been imposed. *Id.*

d. Hoover and Davis attended interviews with CalCERTS to discuss the alleged quality assurance failures. CalCERTS did not allow Hoover and Davis to create audio recordings of the interviews. CalCERTS told Hoover and Davis that if the interviews were to be recorded, CalCERTS would record them and keep the only copy.

e. At the interviews, CalCERTS did not formally provide Hoover and Davis with any data, or give them any documents. CalCERTS employees rather questioned them about the work they had done without revealing the exact nature of the alleged errors. Hoover and Davis were not given the opportunity to examine any data, question any methods or procedures followed, or examine any witnesses. In fact, no witnesses were present at the interviews except for Hoover and Davis.

f. Following the interviews, Hoover and Davis were asked by e-mail whether they had any questions or comments based upon the interviews. Although Hoover and Davis had been told in their interviews what tests had failed quality assurance, they were not aware of what the specific numerical QA findings were, because the findings had never been revealed to them by CalCERTS. Hoover and Davis asked no questions.

g. On January 30, 2012, CalCERTS notified Hoover and Davis that they had been decertified. *See* Hoover Decertification Letter, attached hereto as Exhibit F; Davis Decertification Letter, attached hereto as Exhibit G. Although CalCERTS' internal quality

assurance procedure specifies that written reports of quality assurance review will be given to the raters, a written report was not provided to Hoover and Davis at this time. *See* CalCERTS Quality Assurance Program at ¶ 4, attached hereto as Exhibit H.

h. Hoover and Davis were not provided with a copy of the written report until their attorney requested it from CalCERTS' attorney. It was provided by CalCERTS' attorney on February 7, 2012. This is the first time Hoover and Davis were provided with any written detail regarding the alleged quality assurance failures, the nature of the charges against them, or the findings of CalCERTS in performing quality assurance review. At the time of this complaint Hoover and Davis still do not know the name of the complainant or the nature of the complaint that initiated this process.

i. The CalCERTS decertification letters relating to Hoover and Davis report that CalCERTS determined that Hoover's and Davis' errors were "egregious, establish a pattern, and are not rectifiable." *See* Hoover Decertification Letter, attached hereto as Exhibit F; Davis Decertification Letter, attached hereto as Exhibit G. However, neither the decertification letters, nor any other document that has been provided by CalCERTS provides any factual support or explanation of these findings.

IV. Statement indicating the statute, regulation, order, or decision upon which the complaint or request for investigation is based

The Fourteenth Amendment of the United States Constitution; Section 13 of article I of the California Constitution; Cal Public Resources Code § 25942; California Code of Regulations Title 20 § 1230 et seq. and Title 20 § 1675.

V. Action the complainant or petitioner desires the commission to take

As noted above, Erik Hoover and Patrick Davis respectfully request that the California Energy Commission take the following action:

a. Immediately reverse the decision of CalCERTS to decertify Erik Hoover and Patrick Davis. Hoover and Davis should be permitted to continue working as HERS raters until such time as (a) the HERS regulations have been applied to them as written, and (b) Hoover and Davis have been given due process prior to the removal of their right to work. Hoover and Davis have now been unable to work for nearly two months.

b. Investigate the way CalCERTS imposes discipline upon HERS raters who are alleged to have made mistakes.

c. Require CalCERTS to adopt a written quality assurance procedure that complies with the HERS regulations, and with the constitutional requirements of due process.

VI. Authority under which the commission may take the action requested.

a. Regulatory Authority

California Code of Regulations Title 20 § 1675 and Title 20 § 1230 et seq. allow "any person" to file a complaint concerning violations of the HERS regulations found at California Code of Regulations Title 20 §§ 1670-1675, and more broadly, allow "any person" to allege a violation "of a statute, regulation, order, program, or decision adopted, administered, or enforced by the commission."

Hoover and Davis allege that CalCERTS has violated and continues to violate the HERS regulations by the manner in which it imposes discipline on HERS raters. Specifically, Title 20 § 1673 (i)(3)(C) requires that when quality assurance evaluation shows that a HERS rater has failed to meet the standard for truth, accuracy, or completeness, the Provider is required to report the quality assurance failure in the Provider's registry, and conduct additional quality assurance evaluations over a period of 12 months. At least in the case of Hoover and Davis, and perhaps more generally, CalCERTS has ignored this requirement in favor of its own internal policy of immediately suspending the HERS certification, thus preventing Hoover and Davis from working as HERS raters. Hoover and Davis were not provided with an additional 12 months of evaluations as the regulations require.

Given that life, liberty, and property is almost never at risk due to a HERS rater's failure to meet the standard for truth, accuracy, or completeness, such a sudden and dramatic suspension of a right to work is unlikely to ever be justified.

b. Constitutional Authority

The Fourteenth Amendment of the United States Constitution provides in part that no state shall "deprive any person of life, liberty, or property, without due process of law." Section 13 of article I of the California Constitution similarly provides in part that no person shall ". . . be deprived of life, liberty, or property without due process of law . . . ." This provision of the state constitution has been held to be identical in scope and purpose with the Fourteenth Amendment of the Federal Constitution. *Manford v. Singh*, 40 Cal. App. 700 (1919).

While this requirement to provide due process typically only applies to governmental actors, *see Shelley v. Kramer*, 334 U.S. 1 (1948), where sufficient entanglement between government and a private person exists, private persons will also be bound. For example, the United States Supreme Court has explained that "a private party's joint participation with state officials in the seizure of disputed property is sufficient to characterize that party as a 'state actor' for purposes of the Fourteenth Amendment." *Lugar v. Edmondson Oil Co.*, 457 US 922, 942 (1982). Likewise, the California Supreme Court has explained that "private conduct may become so entwined with governmental action as to become subject to the constitutional limitations placed on state action by the Fourteenth Amendment to the United States Constitution and article I, section 13, of the California Constitution." *Adams v. Department of Motor Vehicles*, 11 Cal.3d 146, 152 (1974) (citations omitted).

In this case it is clear that the actions of CalCERTS in administering the HERS program are so entwined with governmental action as to require compliance with due process. All of the functions of CalCERTS are performed pursuant to the HERS regulations, without which

CalCERTS itself would not exist. The HERS program is entirely a creation of the state. It is authorized by statute, created by regulation, and overseen by the California Energy Commission. Though CalCERTS asserts an independent right to contract with HERS raters (*See* Collier Letter at p. 2, attached hereto as Exhibit C), even that right depends upon Title 20 § 1673(c), which requires CalCERTS to make such contracts. CalCERTS in fact makes its contracts with raters subject to the HERS regulations. *See, e.g.* Hoover CalCERTS Certified Rater Agreement at ¶ IV(E), attached hereto as Exhibit A, and Davis CalCERTS Certified Rater Agreement at ¶ IV(E), attached hereto as Exhibit B. When CalCERTS disciplines HERS raters, it claims to be enforcing the HERS regulations. *See* Hoover Decertification Letter, attached hereto as Exhibit F; Davis Decertification Letter, attached hereto as Exhibit G. The effect of such discipline is to limit the ability of HERS raters to submit energy efficiency data to the HERS database, the creation of which is one of the fundamental purposes of the HERS program. *See* Cal Public Resources Code § 25942 (a)(4). Clearly, CalCERTS acts solely as the delegate of the California Energy Commission. It is consequently subject to the demands of due process to the same extent that the CEC itself would be.

CalCERTS cannot have it both ways. If it exercises delegated power when it disciplines HERS raters, it must provide due process, just as the CEC would have to do if it chose to administer the HERS program directly. If CalCERTS exercises its own independent authority as a private contractor when it disciplines HERS raters, it violates the provisions of the HERS regulations by failing to follow the quality assurance procedure as outlined in Title 20 § 1673(i).

c. Requirements of Due Process

At the most fundamental level, procedural due process requires that *before* a person is deprived of a fundamental right, he must be provided with reasonable notice, and a reasonable opportunity for a hearing. *Drummey v. State Board of Funeral Directors*, 13 Cal. 2d 75, 80-81 (1939).

i. Reasonable Notice

> An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.

Mullane v. Central Hanover Bank & Trust Co., 339 US 306, 314 (1950). The notice must be sufficient to enable the recipient to determine what is being proposed and what he must do to prevent the deprivation of his interest. *Goldberg v. Kelly*, 397 U.S. 254, 267-68 (1970).

ii. Reasonable Opportunity for a Hearing

"[S]ome form of hearing is required before an individual is finally deprived of a property [or liberty] interest." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). This right is a "basic aspect of the duty of government to follow a fair process of decision making when it acts to deprive a person of his possessions. The purpose of this requirement is not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment . . . ." *Fuentes v. Shevin*, 407 U.S. 67, 80-81 (1972)

iii. Impartiality and Decision on the Record.

A "decisionmaker's conclusion . . . must rest solely on the legal rules and evidence adduced at the hearing. To demonstrate compliance with this elementary requirement, the decision maker should state the reasons for his determination and indicate the evidence he relied on, though his statement need not amount to a full opinion or even formal findings of fact and conclusions of law. And, of course, an impartial decision maker is essential. *Goldberg v. Kelly*, 397 U.S. 254, 271 (1970) (citations omitted).

iv. Confrontation and Examination

"In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses." *Goldberg v. Kelly*, 397 U.S. 254, 269 (1970)

VII. Statement by the complainant or petitioner specifically listing the names and addresses of any other individuals, organizations, and businesses which the complainant or petitioner knows or has reason to believe would be affected by the relief sought.

Hoover and Davis are not aware of all the names and addresses of the many individuals who have been unlawfully disciplined by CalCERTS. But Hoover and Davis believe that all HERS raters who are now certified, and those who may in the future become certified, would be affected by CalCERTS' adoption, and the CEC's imposition, of quality assurance rules that conform to the constitutional requirements of due process.

VIII. Declaration under penalty of perjury by the complainant or petitioner attesting to the truth and accuracy of any factual allegations contained in the complaint or request for investigation.

Under penalty of perjury, we the undersigned hereby declare that to the best of our knowledge the information contained herein is true and correct.

Erik Hoover	2-13-12 Date
Patrick Davis	2-13-12 Date

Exhibit A

Energy Efficiency Standards, as specified by these regulations represented on a 0 to 100 scale of the annual source energy efficiency of a home, as specified in Section 1672(c).

RATING SYSTEM means the materials, analytical tools, diagnostic tools and procedures to produce home energy ratings, and provide home energy rating and field verification and diagnostic testing services (referred to as "home energy rating services" in Section 25942 of the Public Resources Code).

COMISSION means the State of California Energy Resources Conservation and Development Commission, commonly known as the California Energy Commission.

CalCERTS RATER or CalCERTS Certified Rater is a rater that is trained, tested and certified by CalCERTS. A CalCERTS **RATER** has submitted a Rater Application, completed CalCERTS Rater Training, has completed all required continuing education, and has passed the Rater Certification Test; or the CalCERTS Challenge Test, if already certified by another approved Provider or otherwise approved by CalCERTS to take the challenge test.

I. The Certification Authority's Obligations

A. CalCERTS shall provide a Certificate of completion and a certification to the Commission upon completion of CalCERTS training and testing requirements in effect at the time of the application and upon the payment of applicable certification fees.

B. As a condition of RATER Certification, CalCERTS shall certify to the Commission that a rater applicant has met the requirements of training and certification procedures and entered into the Subscription Agreement. CalCERTS shall maintain a registry of all raters who meet these requirements, provide an electronic copy of the registry to the Commission and make that registry available in printed or electronic form upon written request.

C. Field Checks (Quality Assurance, or QA) of RATER: CalCERTS shall annually evaluate the greater of one home or one percent of the RATER's annual total of homes for which field verification and diagnostic testing services or ratings were provided. CalCERTS may independently repeat the field verification and diagnostic testing to check whether field verification and diagnostic testing was accurately completed by RATER, and determine whether information was completely collected and reported.

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D. CalCERTS shall provide to Rater Training Manuals ("Manuals"); Training Materials ("Materials"); User's Guides ("Guides"), and/or any supporting Proprietary Information under the following terms and conditions:

1. RATER agrees that the Manuals, Materials, Guides, and Proprietary Information are owned exclusively by CalCERTS, and are protected by the copyright laws of the United States.

2. RATER agrees that RATER obtains no rights in the Manuals, Materials, Guides, or Proprietary Information, except to use them specifically in accordance with this Agreement.

3. "Proprietary Information" shall mean CalCERTS's confidential information, trade secrets and know-how embodied in the Manuals, Materials and Guides and verbal information provided by CalCERTS that is not generally known or available to the public, including but not limited to, data communication processes and systems design.

4. The Manuals, Materials, Guides and Proprietary Information may only be used by CalCERTS RATERS who shall keep strictly confidential the Manuals, Materials, Guides and Proprietary Information. RATER acknowledges that the Manuals, Materials, Guides and Proprietary Information constitute valuable property and work product of CalCERTS, and that any breach of the confidentiality obligations hereunder may cause CalCERTS irreparable harm and damage, and that all confidentiality obligations hereunder shall survive any expiration or termination of this Agreement.

5. CalCERTS shall have the right, without prior approval from CalCERTS RATER, to make changes, updates, modifications or enhancements to any of its work product, and such changes, updates, modifications and enhancements shall remain the property of CalCERTS.

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II. The Candidate's Obligations

A. The Candidate Rater hereby warrants and represents that he/she meets the Certification Requirements at the time of certification and will continue to meet the Certification Requirements throughout the time they are certified, in accordance with the Certification Policy of CalCERTS, as periodically amended.

B. RATER shall comply with all CalCERTS policies and procedures. All current policies at the time of signing, and all new and revised policies and procedures shall be sent to RATER via email.

C. RATER shall comply with all CalCERTS Quality Assurance Procedures and Performance Requirements provided to RATER by CalCERTS and will meet the requirements of California Code of Regulations, Title 20 as a minimum standard. Quality Assurance includes field quality assurance, Registry quality assurance and consumer quality assurance, as well as continuing education requirements as may be necessary from time to time.

D. RATER shall comply with all applicable federal, state and local laws and regulations.

E. RATER shall personally complete all required field verification and diagnostic testing; THESE ACTIVITIES MAY NOT BE PERFORMED BY ANYONE ELSE. RATER agrees to provide true, accurate and complete ratings, field verification and diagnostic testing.

1. Rating Site Inspections and Diagnostic Testing: Each rating shall be based on a site inspection of the home, and diagnostic testing as specified by the rating system.

2. Field Verification and Diagnostic Testing: RATER shall provide field verification and diagnostic testing of energy efficiency improvements as a condition for those improvements to qualify for Title 24 or other building energy performance standards' compliance credit, scores, indices or ratings. RATER shall not knowingly provide untrue, inaccurate or incomplete field verification diagnostic testing information or report field verification or test results that were not conducted in compliance with these regulations. RATER shall not knowingly

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accept payment or consideration in exchange for reporting a rating or field verification and diagnostic test result that was not in fact conducted and reported in compliance with *California Code of Regulations*, Title 20 Chapter 4, Article 8, Sections 1670-1675.

F. RATER shall transmit all data to CalCERTS via the CalCERTS online Registry within forty-eight (48) hours after completing the rating, including the field verification, and diagnostic testing. CalCERTS RATER is responsible and liable for all data transmitted hereunder. CalCERTS may also use transmitted data for statistical, evaluation, quality control and archival purposes.

G. RATER shall keep confidential all ratings, field verifications and diagnostic testing results and all information gathered from ratings except for transmission to CalCERTS, the Builder, Homeowner or Utility. All confidentiality obligations hereunder shall survive any expiration or termination of this Agreement.

H. RATER shall be an independent entity from the builder and the subcontractor installer of the energy efficiency improvements being tested and verified, and shall have no financial interest in the installation of the improvements, whether the improvements are existing or proposed. Accordingly, RATER may <u>not</u> rate or perform a field verification or diagnostic test on any home in which RATER has any financial interest, including, but not limited to the following:

1. Property in which RATER has a direct or indirect ownership;

2. Property in which RATER has a financial interest of any kind; or

3. Property for which RATER is making a loan or negotiating a loan, or soliciting a prospective lender to make a loan with the expectation of compensation.

I. RATER shall act hereunder solely as an independent contractor. RATER shall not represent himself/herself to be an employee or agent of CalCERTS.

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III. Termination and Decertification

A. Upon written notice to CalCERTS, RATER may terminate this Agreement at any time effective ten (10) days after receipt of the written notice by CalCERTS. RATER agrees to return all intellectual property and materials including Manuals, Guides and proprietary written materials within ten (10) days of notification of termination or decertification. RATER will also cease the display of any CalCERTS Certificates and cease any representation to the public that RATER is CalCERTS certified.

B. CalCERTS may reprove, suspend for a period not to exceed two years, or PERMANENTLY decertify any RATER who is found to have committed one or more of the following acts:

1. Failure of RATER to comply with any of the terms and conditions of this Agreement, the Subscriber Agreement or any other agreement between RATER and CalCERTS.
2. RATER's conviction of a felony.
3. Disciplinary action of RATER by the Contractors State License Board or any like authority.
4. Willful failure of RATER to provide a true, accurate and complete rating, field verification or diagnostic testing.
5. Pattern of failure of RATER to provide a true, accurate and complete rating, field verification, diagnostic testing or data entry, whether willful or not.
6. Two or more complaints about RATER from ratings customers, or potential customers.
7. RATER's failure to promptly pay any amounts due CalCERTS.
8. Misrepresentation of CalCERTS RATER's relationship with CalCERTS, or
9. Any act or failure to act which, in CalCERTS's opinion, harms its name or reputation.

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C. The certification of Rater and this agreement shall automatically terminate upon the occurrence of any of the following events:

1. RATER or CalCERTS RATER's business is adjudged bankrupt;
2. RATER or CalCERTS RATER's business is placed in the hands of a receiver;
3. RATER or CalCERTS RATER's business makes an assignment for the benefit of creditors;
4. RATER or CalCERTS RATER's business takes the benefit of any insolvency act; or
5. RATER or CalCERTS RATER's business is liquidated or dissolved.

D. RATER shall return to CalCERTS all material received from CalCERTS within ten (10) days of the date of the first to occur of any of the above-described events or any termination notice.

E. TERMINATION OF THIS AGREEMENT RESULTS IN DECERTIFICATION OF RATER,THEREBY TERMINATING RATER'S ABILITY TO RATE, TEST, INSPECT OR VERIFY ENERGY EFFICIENCY INSTALLATIONS. DECERTIFICATION WILL CANCEL THE RATER'S ABILITY TO REGISTER RATINGS RESULTS VIA THE CalCERTS ONLINE DATABASE SERVICE. ALL DATA PREVIOUSLY ENTERED BY THE RATER REMAINS THE EXCLUSIVE PROPERTY OF CALCERTS.

F. Decertification Procedures: CalCERTS may, upon the verified complaint in writing of any person, investigate the actions of RATER and may temporarily suspend or permanently revoke, the certification of RATER who is guilty of, or commits one or more of the acts or omissions constituting grounds for disciplinary action under the conditions of certification.

IV. Miscellaneous Provisions

A. RATER may not do the following:

1. Make copies of the Manuals and other proprietary material;
2. Alter, remove or conceal any copyright or trademark notice on the Manual; or
3. Assign or transfer any rights to use the Manual, Guides or Proprietary Information except as set forth in this Agreement and the Subscription Agreement.

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4. Use any of the trademarks, copyrighted works or intellectual property without an express written license agreement with CalCERTS, Inc. However, RATER may indicate that RATER is a CalCERTS CERTIFIED RATER. RATER shall use CalCERTS's trademarks and copyrighted works in good faith and solely for purposes of marketing Rating services under this Agreement and shall take no action that would diminish the goodwill associated with the trademarks.

B. RATER shall indemnify and hold harmless CalCERTS, its officers, directors, agents, and employees from and against all claims of all kinds arising from or in connection with performance of CalCERTS services including, but not limited to, ratings or any other services for rating customers; or performance of ratings for other rating firms; including all expenses, costs, settlements, judgments, awards, and legal fees incurred by CalCERTS in defense or settlement of such claims.

C. This Agreement does not confer any right which can or may be transferred, assigned, or otherwise disposed of by Rater and any attempt at transferring, assigning, sublicensing, or otherwise disposing of any interest in this Agreement shall be null and void and a breach of this Agreement. The CalCERTS certification may not be transferred to any third party by RATER.

D. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

E. RATER acknowledges that RATER has read California Code of Regulations, Title 20, Chapter 4, Article 8, Sections 1670-1675 ("Regulations"), a copy of which is attached and incorporated herein by reference.

F. RATER understands the Regulations and agrees to provide home energy ratings, field verification services and diagnostic testing services in compliance with the Regulations, laws and requirements of the State of California.

G. This instrument contains the entire and only agreement between the Parties and supersedes all preexisting agreements between them respecting its subject matter. Any representation, promise, or condition in connection with such subject matter that is not incorporated in this Agreement shall not be binding on either Party. No modification, renewal, extension, or waiver of this Agreement or any of its provisions, shall be binding on the Party against whom enforcement of such modification, renewal, extension, or waiver is sought, unless made in writing and signed on behalf of such Party. Each Party to this Agreement acknowledges that no representations, inducements, promises, or agreements have been

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made by or on behalf of any Party except those covenants and agreements embodied in this Agreement.

H. RATER acknowledges that RATER has read this Agreement, understands it and agrees to be bound by its terms and conditions.

SUBSCRIBER:	CalCERTS, Inc.:
Signature	Signature
Erik Hoover	Michael E. Bachand
Print Name	Print Name
	President
Title	Title
12/12/2009	
Date	Date

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Exhibit B

CalCERTS Certified Rater Agreement

PLEASE READ THE FOLLOWING TERMS CAREFULLY UNDER WHICH CALCERTS, INC. GRANTS PROFESSIONAL CERTIFICATION TO YOU. CALCERTS, INC PROVIDES THIS CERTIFICATION TO YOU ONLY IF YOU ACCEPT THE TERMS OF THIS AGREEMENT. THE RIGHTS GRANTED UNDER THIS AGREEMENT SHALL NOT BE EFFECTIVE UNTIL THE CANDIDATE HAS SUCCESSFULLY COMPLETED THE CALCERTS RATER CERTIFICATION TEST, OR THE CALCERTS CHALLENGE TEST IF YOU ARE ALREADY CERTIFIED BY ANOTHER PROVIDER, OR OTHERWISE APPROVED BY CALCERTS TO TAKE THE CHALLENGE TEST.

This Certification Agreement ("Agreement") is made and entered into by and between CalCERTS®, Inc., a California Home Energy Ratings System(HERS) rater training and certification provider ("CalCERTS"), and You as an individual Certification Program Candidate (the "Candidate" or "Rater" as defined below), and sets forth the terms and conditions that govern your rater certification.

As used herein, the term **RATER** means a person performing the site inspection and data collection required to produce a home energy rating or the field verification and diagnostic testing required for demonstrating compliance with the Title 24 Energy Efficiency Standards, who is listed on a registry in compliance with California Code of Regulations Title 20 Chapter 4, Article 8, Section 1673(c).

RATER also means a person who has been trained, tested, and certified by a provider to perform one or more of the functions or procedures used to develop a California Whole□House Home Energy Rating, a California Home Energy Audit, performing the site inspection and data collection required to produce a home energy rating or the field verification and diagnostic testing required for demonstrating compliance with the Title 24, Part 6, Building Energy Efficiency performance Standards, and who is listed on a provider's registry in compliance with Section 1673(c).

RATING means a California Whole House Home Energy Rating, a California Home Energy Audit, or the Field Verification and Diagnostic Testing required for verifying compliance with the Title 24, Part 6, Building

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Energy Efficiency Standards, as specified by these regulations represented on a 0 to 100 scale of the annual source energy efficiency of a home, as specified in Section 1672(c).

RATING SYSTEM means the materials, analytical tools, diagnostic tools and procedures to produce home energy ratings, and provide home energy rating and field verification and diagnostic testing services (referred to as "home energy rating services" in Section 25942 of the Public Resources Code).

COMISSION means the State of California Energy Resources Conservation and Development Commission, commonly known as the California Energy Commission.

CalCERTS RATER or CalCERTS Certified Rater is a rater that is trained, tested and certified by CalCERTS. A CalCERTS **RATER** has submitted a Rater Application, completed CalCERTS Rater Training, has completed all required continuing education, and has passed the Rater Certification Test; or the CalCERTS Challenge Test, if already certified by another approved Provider or otherwise approved by CalCERTS to take the challenge test.

I. <u>The Certification Authority's Obligations</u>

A. CalCERTS shall provide a Certificate of completion and a certification to the Commission upon completion of CalCERTS training and testing requirements in effect at the time of the application and upon the payment of applicable certification fees.

B. As a condition of RATER Certification, CalCERTS shall certify to the Commission that a rater applicant has met the requirements of training and certification procedures and entered into the Subscription Agreement. CalCERTS shall maintain a registry of all raters who meet these requirements, provide an electronic copy of the registry to the Commission and make that registry available in printed or electronic form upon written request.

C. Field Checks (Quality Assurance, or QA) of RATER: CalCERTS shall annually evaluate the greater of one home or one percent of the RATER's annual total of homes for which field verification and diagnostic testing services or ratings were provided. CalCERTS may independently repeat the field verification and diagnostic testing to check whether field verification and diagnostic testing was accurately completed by RATER, and determine whether information was completely collected and reported.

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D. CalCERTS shall provide to Rater Training Manuals ("Manuals"); Training Materials ("Materials"); User's Guides ("Guides"), and/or any supporting Proprietary Information under the following terms and conditions:

1. RATER agrees that the Manuals, Materials, Guides, and Proprietary Information are owned exclusively by CalCERTS, and are protected by the copyright laws of the United States.

2. RATER agrees that RATER obtains no rights in the Manuals, Materials, Guides, or Proprietary Information, except to use them specifically in accordance with this Agreement.

3. "Proprietary Information" shall mean CalCERTS's confidential information, trade secrets and know-how embodied in the Manuals, Materials and Guides and verbal information provided by CalCERTS that is not generally known or available to the public, including but not limited to, data communication processes and systems design.

4. The Manuals, Materials, Guides and Proprietary Information may only be used by CalCERTS RATERS who shall keep strictly confidential the Manuals, Materials, Guides and Proprietary Information. RATER acknowledges that the Manuals, Materials, Guides and Proprietary Information constitute valuable property and work product of CalCERTS, and that any breach of the confidentiality obligations hereunder may cause CalCERTS irreparable harm and damage, and that all confidentiality obligations hereunder shall survive any expiration or termination of this Agreement.

5. CalCERTS shall have the right, without prior approval from CalCERTS RATER, to make changes, updates, modifications or enhancements to any of its work product, and such changes, updates, modifications and enhancements shall remain the property of CalCERTS.

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II. The Candidate's Obligations

A. The Candidate Rater hereby warrants and represents that he/she meets the Certification Requirements at the time of certification and will continue to meet the Certification Requirements throughout the time they are certified, in accordance with the Certification Policy of CalCERTS, as periodically amended.

B. RATER shall comply with all CalCERTS policies and procedures. All current policies at the time of signing, and all new and revised policies and procedures shall be sent to RATER via email.

C. RATER shall comply with all CalCERTS Quality Assurance Procedures and Performance Requirements provided to RATER by CalCERTS and will meet the requirements of California Code of Regulations, Title 20 as a minimum standard. Quality Assurance includes field quality assurance, Registry quality assurance and consumer quality assurance, as well as continuing education requirements as may be necessary from time to time.

D. RATER shall comply with all applicable federal, state and local laws and regulations.

E. RATER shall personally complete all required field verification and diagnostic testing; THESE ACTIVITIES MAY NOT BE PERFORMED BY ANYONE ELSE. RATER agrees to provide true, accurate and complete ratings, field verification and diagnostic testing.

1. Rating Site Inspections and Diagnostic Testing: Each rating shall be based on a site inspection of the home, and diagnostic testing as specified by the rating system.

2. Field Verification and Diagnostic Testing: RATER shall provide field verification and diagnostic testing of energy efficiency improvements as a condition for those improvements to qualify for Title 24 or other building energy performance standards' compliance credit, scores, indices or ratings. RATER shall not knowingly provide untrue, inaccurate or incomplete field verification diagnostic testing information or report field verification or test results that were not conducted in compliance with these regulations. RATER shall not knowingly

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accept payment or consideration in exchange for reporting a rating or field verification and diagnostic test result that was not in fact conducted and reported in compliance with *California Code of Regulations*, Title 20 Chapter 4, Article 8, Sections 1670-1675.

F. RATER shall transmit all data to CalCERTS via the CalCERTS online Registry within forty-eight (48) hours after completing the rating, including the field verification, and diagnostic testing. CalCERTS RATER is responsible and liable for all data transmitted hereunder. CalCERTS may also use transmitted data for statistical, evaluation, quality control and archival purposes.

G. RATER shall keep confidential all ratings, field verifications and diagnostic testing results and all information gathered from ratings except for transmission to CalCERTS, the Builder, Homeowner or Utility. All confidentiality obligations hereunder shall survive any expiration or termination of this Agreement.

H. RATER shall be an independent entity from the builder and the subcontractor installer of the energy efficiency improvements being tested and verified, and shall have no financial interest in the installation of the improvements, whether the improvements are existing or proposed. Accordingly, RATER may <u>not</u> rate or perform a field verification or diagnostic test on any home in which RATER has any financial interest, including, but not limited to the following:

1. Property in which RATER has a direct or indirect ownership;

2. Property in which RATER has a financial interest of any kind; or

3. Property for which RATER is making a loan or negotiating a loan, or soliciting a prospective lender to make a loan with the expectation of compensation.

I. RATER shall act hereunder solely as an independent contractor. RATER shall not represent himself/herself to be an employee or agent of CalCERTS.

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III. Termination and Decertification

A. Upon written notice to CalCERTS, RATER may terminate this Agreement at any time effective ten (10) days after receipt of the written notice by CalCERTS. RATER agrees to return all intellectual property and materials including Manuals, Guides and proprietary written materials within ten (10) days of notification of termination or decertification. RATER will also cease the display of any CalCERTS Certificates and cease any representation to the public that RATER is CalCERTS certified.

B. CalCERTS may reprove, suspend for a period not to exceed two years, or PERMANENTLY decertify any RATER who is found to have committed one or more of the following acts:

1. Failure of RATER to comply with any of the terms and conditions of this Agreement, the Subscriber Agreement or any other agreement between RATER and CalCERTS.
2. RATER's conviction of a felony.
3. Disciplinary action of RATER by the Contractors State License Board or any like authority.
4. Willful failure of RATER to provide a true, accurate and complete rating, field verification or diagnostic testing.
5. Pattern of failure of RATER to provide a true, accurate and complete rating, field verification, diagnostic testing or data entry, whether willful or not.
6. Two or more complaints about RATER from ratings customers, or potential customers.
7. RATER's failure to promptly pay any amounts due CalCERTS.
8. Misrepresentation of CalCERTS RATER's relationship with CalCERTS, or
9. Any act or failure to act which, in CalCERTS's opinion, harms its name or reputation.

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C. The certification of Rater and this agreement shall automatically terminate upon the occurrence of any of the following events:

1. RATER or CalCERTS RATER's business is adjudged bankrupt;
2. RATER or CalCERTS RATER's business is placed in the hands of a receiver;
3. RATER or CalCERTS RATER's business makes an assignment for the benefit of creditors;
4. RATER or CalCERTS RATER's business takes the benefit of any insolvency act; or
5. RATER or CalCERTS RATER's business is liquidated or dissolved.

D. RATER shall return to CalCERTS all material received from CalCERTS within ten (10) days of the date of the first to occur of any of the above-described events or any termination notice.

E. TERMINATION OF THIS AGREEMENT RESULTS IN DECERTIFICATION OF RATER,THEREBY TERMINATING RATER'S ABILITY TO RATE, TEST, INSPECT OR VERIFY ENERGY EFFICIENCY INSTALLATIONS. DECERTIFICATION WILL CANCEL THE RATER'S ABILITY TO REGISTER RATINGS RESULTS VIA THE CalCERTS ONLINE DATABASE SERVICE. ALL DATA PREVIOUSLY ENTERED BY THE RATER REMAINS THE EXCLUSIVE PROPERTY OF CALCERTS.

F. Decertification Procedures: CalCERTS may, upon the verified complaint in writing of any person, investigate the actions of RATER and may temporarily suspend or permanently revoke, the certification of RATER who is guilty of, or commits one or more of the acts or omissions constituting grounds for disciplinary action under the conditions of certification.

IV. Miscellaneous Provisions

A. RATER may not do the following:

1. Make copies of the Manuals and other proprietary material;
2. Alter, remove or conceal any copyright or trademark notice on the Manual; or
3. Assign or transfer any rights to use the Manual, Guides or Proprietary Information except as set forth in this Agreement and the Subscription Agreement.

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4. Use any of the trademarks, copyrighted works or intellectual property without an express written license agreement with CalCERTS, Inc. However, RATER may indicate that RATER is a CalCERTS CERTIFIED RATER. RATER shall use CalCERTS's trademarks and copyrighted works in good faith and solely for purposes of marketing Rating services under this Agreement and shall take no action that would diminish the goodwill associated with the trademarks.

B. RATER shall indemnify and hold harmless CalCERTS, its officers, directors, agents, and employees from and against all claims of all kinds arising from or in connection with performance of CalCERTS services including, but not limited to, ratings or any other services for rating customers; or performance of ratings for other rating firms; including all expenses, costs, settlements, judgments, awards, and legal fees incurred by CalCERTS in defense or settlement of such claims.

C. This Agreement does not confer any right which can or may be transferred, assigned, or otherwise disposed of by Rater and any attempt at transferring, assigning, sublicensing, or otherwise disposing of any interest in this Agreement shall be null and void and a breach of this Agreement. The CalCERTS certification may not be transferred to any third party by RATER.

D. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

E. RATER acknowledges that RATER has read California Code of Regulations, Title 20, Chapter 4, Article 8, Sections 1670-1675 ("Regulations"), a copy of which is attached and incorporated herein by reference.

F. RATER understands the Regulations and agrees to provide home energy ratings, field verification services and diagnostic testing services in compliance with the Regulations, laws and requirements of the State of California.

G. This instrument contains the entire and only agreement between the Parties and supersedes all preexisting agreements between them respecting its subject matter. Any representation, promise, or condition in connection with such subject matter that is not incorporated in this Agreement shall not be binding on either Party. No modification, renewal, extension, or waiver of this Agreement or any of its provisions, shall be binding on the Party against whom enforcement of such modification, renewal, extension, or waiver is sought, unless made in writing and signed on behalf of such Party. Each Party to this Agreement acknowledges that no representations, inducements, promises, or agreements have been

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made by or on behalf of any Party except those covenants and agreements embodied in this Agreement.

H. RATER acknowledges that RATER has read this Agreement, understands it and agrees to be bound by its terms and conditions.

SUBSCRIBER:	CalCERTS, Inc.:
Signature	Signature
Patrick Davis	Michael E. Bachand
Print Name	Print Name
RATER	President
Title	Title
12/02/09	
Date	Date

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Exhibit C

DOWNEY | BRAND
ATTORNEYS LLP

Andrew L. Collier
acollier@downeybrand.com
916/520-5244 Direct
916/520-5644 Fax

621 Capitol Mall, 18th Floor
Sacramento, CA 95814
916/444-1000 Main
916/444-2100 Fax
downeybrand.com

February 8, 2012

VIA U.S. MAIL AND ELECTRONIC MAIL

David Haddock
P.O. Box 2501
Citrus Heights, CA 95611
dave@davidhaddocklegal.com

Re: Valley Duct Testing Raters Mr. Hoover & Mr. Davis

Dear Mr. Haddock,

This letter is in response to your letters of January 20, 2012 and February 2, 2012.

The Public Resources Code and HERS Regulations

California Public Resources Code section 25942 empowered the California Energy Commission ("CEC") to establish criteria for adopting a statewide home energy rating program for residential dwellings. Those criteria were specifically to include "training and certification procedures for home raters and quality assurance procedures to *promote accurate ratings and protect consumers*." Pub. Resources Code § 25942(a)(3) (emphasis added). The program criteria are embodied in Title 20, Chapter 4, Article 8, sections 1670-1675 of the California Code of Regulations (the "HERS Regulations").

CalCERTS, Inc. is a private corporation that has been certified by the CEC to administer home energy rating systems in compliance with the HERS Regulations. 20 Cal. Code of Regs. §§ 1671, 1674.

As a certified Provider, CalCERTS is required to, and does, have a quality assurance program. 20 Cal. Code of Regs. § 1673(i). Related, CalCERTS is also required to, and does, have a complaint response system. 20 Cal. Code of Regs. § 1673(i)(5). The quality assurance program and the complaint response system are critical to the statutory mandate of "promoting accurate ratings and protecting consumers." Pub. Resources Code § 25942(a)(3).

Raters Legal and Contractual Obligations to Comply with HERS Regulations

As certified Raters, Mr. Hoover and Mr. Davis (collectively, the "Raters") were under an obligation to "not knowingly provide untrue, inaccurate, or incomplete rating information or report rating results that were not conducted in compliance with" the HERS Regulations. 20 Cal. Code of Regs. §1672(m).

As a Provider, CalCERTS is required to have an agreement with each certified Rater which, among other things, obligates the Rater to provide home energy rating and field verification and diagnostic services in compliance with the HERS Regulations and, specifically, to "provide true, accurate, and complete data collection, analysis, ratings, and field verifications." 20 Cal. Code of Regs. § 1673(b)(2).

CalCERTS has such an agreement—a CalCERTS Certified Rater Agreement—with both Mr. Hoover and Mr. Davis (respectively, the "Hoover Rater Agreement" and the "Davis Rater Agreement," and collectively, the "Rater Agreements). Copies of the Rater Agreements are enclosed as **Exhibits A** and **B**.

The Rater Agreements obligate the Raters to comply with the HERS Regulations including, without limitation, section 1672(m). *See* Rater Agreements at § II(C), (E)(2), etc.

Consistent with section 1672(m) of the HERS Regulations, the Rater Agreements provide that CalCERTS may reprove, suspend for a period not to exceed two years, or permanently decertify any Rater who willfully fails to provide true, accurate, and complete rating, field verification, diagnostic testing or data entry in compliance with the HERS Regulations. *See* Rater Agreements at § III.B, F.

The Rater Agreements further provide that in the event of termination of the agreement, the Rater shall be decertified.

The Raters Violated HERS Regulations and Breached the Rater Agreements

In September 2011 CalCERTS received a complaint about Mr. Hoover and Mr. Davis. As required by the HERS Regulations CalCERTS investigated the complaint which included CalCERTS' quality assurance reviewers conducting field investigations. Through these investigations it became apparent that Mr. Hoover and Mr. Davis were in violation of the HERS Regulations and in breach of the Rater Agreements.

Mr. Hoover violated the HERS Regulations and breached the Hoover Rating Agreement. Specifically, Mr. Hoover *repeatedly* failed to accurately measure and report duct leakage and failed to accurately determine the duct leakage target. Mr. Hoover *repeatedly* certified homes as compliant with Title 24 of the California Code of Regulations based on refrigerant charge verifications that were either never conducted or falsified. The details for the refrigerant charge verifications are outlined in the decertification letter, enclosed as **Exhibit C**. Mr. Hoover also

failed to accurately determine and measure insulation depth, density, and density target. Mr. Hoover recorded holes for the static pressure probes as present when upon inspection none were identified. A copy of a Quality Assurance Disposition Report for Mr. Hoover is enclosed as **Exhibit D.**

Mr. Davis likewise violated the HERS Regulations and breached the Davis Rating Agreement. Specifically, Mr. Davis *repeatedly* failed to accurately measure duct leakage, failed to accurately determine the duct leakage target, and failed to verify sealing of all accessible leaks and visual verification when required. Mr. Davis *repeatedly* certified homes as compliant with Title 24 of the California Code of Regulations based on refrigerant charge verifications that were either never conducted or falsified. The details for the refrigerant charge verifications are outlined in the decertification letter, enclosed as **Attachment E.** A copy of a Quality Assurance Disposition Report for Mr. Davis is enclosed as **Exhibit F.**

Both Mr. Hoover and Mr. Davis, *under penalty of perjury*, repeatedly submitted home energy ratings that were unquestionably inaccurate and thus harmful to the homeowners.

The Decertifications Were Proper

As noted above, CalCERTS has a contractual right to decertify the Raters pursuant to the Rater Agreements, as approved by the CEC. *See* Raters Agreements at section III, IV. Neither of your letters address your clients' contractual obligations and CalCERTS contractual rights in the event of breach and/or termination of the Rater Agreements.

Additionally, CalCERTS has authority to decertify the Raters in order to maintain the integrity of the HERS program and to protect consumers consistent with the express purpose of Public Resources Code section 25942(3), and the HERS Regulations.

Your claim of a violation of due process is inconsistent with the express provisions of the Rater Agreements. It is also inconsistent with the fact that CalCERTS is a private corporation and thus not subject to the due process requirements attendant with state action. Neither of your letters contain any legal authority on this subject, but we would be pleased to review any case law that you believe supports your position.

Nonetheless, Mr. Hoover and Mr. Davis were in fact afforded a fundamentally fair procedure. In accordance with CalCERTS' internal quality assurance protocol and disciplinary procedures, CalCERTS told Mr. Hoover and Mr. Davis which homes failed the quality assurance reviews, and afforded Mr. Hoover and Mr. Davis the opportunity to respond. CalCERTS diligently investigated all reasonable explanations for the quality assurance failures. CalCERTS has devoted extensive resources to the investigations of Mr. Hoover and Mr. Davis.

Erik Hoover

On December 16, 2011, Mr. Hoover was contacted by CalCERTS and informed that he had failed a quality assurance review initiated in response to a complaint. This letter notified Mr. Hoover that he would be on temporary suspension pending a meeting to determine why Mr. Hoover was failing to accurately report ratings. The letter identified four homes rated by Mr. Hoover that failed the quality assurance reviews. *See* **Exhibit G.**

Mr. Hoover scheduled his meeting with CalCERTS on January 6, 2012. During this meeting, Mr. Hoover was given the opportunity to explain the discrepancies between his ratings and those conducted by CalCERTS' quality assurance reviewers. This meeting lasted approximately two hours. Mr. Hoover was unable to explain the discrepancies.

After the January 6, 2012, meeting CalCERTS conducted an additional review of Mr. Hoover's work and rating data. After this additional review the CalCERTS quality assurance team met and determined based on the evidence that Mr. Hoover's quality assurance failures were egregious and established a pattern of conduct that could not be rectified by additional training or probation.

On January 18, 2012, CalCERTS offered Mr. Hoover an opportunity to submit any additional questions or comments upon which to base their review. *See* **Exhibit H**. Mr. Hoover did not submit any additional questions or comments.

On January 30, 2012, CalCERTS notified Mr. Hoover of its decision to decertify Mr. Hoover, effectively terminating the Hoover Rater Agreement. *See* **Exhibit C**. As required by the HERS Regulations, CalCERTS must notify the CEC of Mr. Hoover's decertification and the details of the investigation.

Patrick Davis

On December 16, 2011, Mr. Davis was contacted by CalCERTS and informed that he had failed a quality assurance review initiated in response to a complaint. This letter notified Mr. Davis that he would be on temporary suspension pending a meeting to determine why Mr. Davis was failing to accurately report ratings. The letter identified three homes rated by Mr. Davis that failed the quality assurance reviews. *See* **Exhibit I.**

Mr. Davis scheduled his meeting with CalCERTS on January 4, 2012. During this meeting, Mr. Davis was given the opportunity to explain the discrepancies between his ratings and those conducted by CalCERTS' quality assurance reviewers. This meeting lasted approximately three hours. Mr. Davis was unable to explain the discrepancies.

After the January 4, 2012, meeting CalCERTS conducted an additional review of Mr. Davis's work and rating data. After this additional review the CalCERTS quality assurance team met and

determined based on the evidence that Mr. Davis' quality assurance failures were egregious and established a pattern of conduct that could not be rectified by additional training or probation.

On January 17, 2012, CalCERTS offered Mr. Davis an opportunity to submit any additional questions or comments upon which to base their review. *See* **Exhibit J.** Mr. Davis did not submit any additional questions or comments.

On January 30, 2012, CalCERTS notified Mr. Davis of their decision to decertify Mr. Davis, effectively terminating the Davis Rater Agreement. *See* **Exhibit D.** As required by the HERS Regulations, CalCERTS must notify the CEC of Mr. Davis' decertification and the details of the investigation.

Publication of Decertification

Our review of the HERS Regulations suggests that there is no appeal process relative to the decertification process. However, any person is entitled to bring a complaint regarding a violation of the HERS Regulations as provided in section 1230, et seq. of Title 20 of the California Code of Regulations. 20 Cal. Code of Regs. §1675(b).

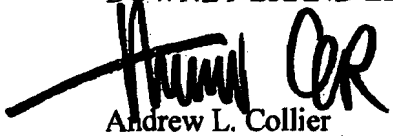
Additionally, and as noted in the CEC's correspondence of January 11th, if your clients believe that it would be appropriate to add or change the HERS Regulations, including those provisions that relate to complaint response systems, quality assurance, or appeals, that may be initiated pursuant to the rulemaking process available under the Administrative Procedures Act.

CalCERTS is willing to refrain from publishing the decertifications pending our receipt and review of any additional information or documents that you believe are material to the Raters decertifications. Please provide this to us no later than February 15, 2012. At this point, the Rater Agreements remain terminated and Mr. Hoover and Mr. Davis will remain suspended and may not operate using the CalCERTS' Rater Certification based on their violations of the HERS Regulations.

Please call with any questions.

Very truly yours,

DOWNEY BRAND LLP



Andrew L. Collier

cc: Dennis Beck (via electronic mail)
Michael Bachand (via electronic mail)
Jane Luckhardt, Shelby Gatlin (Firm)

Exhibit D

From: Charlie Bachand
Sent: Friday, December 16, 2011 3:33 PM
To: 'ehoover79@yahoo.com'; Mark Wiese
Subject: QA Review

Erik Hoover,

This letter is to inform you that you failed a QA review. As a result you have been placed on a 15 day suspension. Please contact CalCERTS within this 15 day period to schedule a meeting to discuss this matter. Failure to contact CalCERTS within this timeframe will result in decertification.

You failed QA inspections at the following addresses:

334 Malbec Ct, Stockton, CA

15987 Crescent Pk, Lathrop, CA

800 Ferry Launch, Lathrop, CA

9531 Richdale, Orangevale, CA

You will be given the opportunity to present your records and documentation when meeting with CalCERTS.

Sincerely,

Charlie Bachand
Senior Analyst
CalCERTS, Inc.
Email: charlie@calcerts.com
Office: 916-985-3400
Fax: 916-985-3402

Exhibit E

From: Charlie Bachand
Sent: Friday, December 16, 2011 3:49 PM
To: 'prdavis@liberty.edu'; Mark Wiese
Subject: QA Review

Patrick Davis,

This letter is to inform you that you failed a QA review. As a result you have been placed on a 15 day suspension. Please contact CalCERTS within this 15 day period to schedule a meeting to discuss this matter. Failure to contact CalCERTS within this timeframe will result in decertification.

You failed QA inspections at the following addresses:

346 Malbec Ct, Stockton, CA

519 Merlot, Stockton, CA

425 Merle, Stockton, CA

In addition, we will need to discuss all of your rating activity on 4/20/2011.

You will be given the opportunity to present your records and documentation when meeting with CalCERTS.

Sincerely,

Charlie Bachand
Senior Analyst
CalCERTS, Inc.
Email: charlie@calcerts.com
Office: 916-985-3400
Fax: 916-985-3402

Exhibit F

January 30, 2012

Erik Hoover
7245 Mountainside Drive
Citrus Heights, CA 95621

Dear Mr. Hoover,

A Quality Assurance investigation by CalCERTS, Inc. has determined that your actions as a California HERS Rater are in violation of Title 24 and/or Title 20. Therefore CalCERTS, Inc. is decertifying you as a rater, effective immediately. This will not prevent you from accessing the registry as an installer if you are also an installer.

Our QA process found multiple failures at multiple addresses concerning verification of Duct Leakage and Refrigerant Charge. Failures include:

1. Duct Leakage Verification – multiple failures
    a. Failure to correctly measure Duct Leakage.
    b. Failure to correctly determine Duct Leakage target.
2. Refrigerant Charge verification – multiple failures.
    a. You incorrectly certified homes as compliant with Title 24 by verifying the presence of TMAHs. Our QA Rater was able to determine that, in some cases, the TMAHs you certified as present were, in fact, not there.
    b. You verified airflow using Temperature Split when no TMAHs were present to do so.
    c. Failure to correctly verify functioning TXV.
3. QII
    a. Failure to correctly determine insulation depth and density target.
    b. Failure to correctly measure insulation depth and density.
4. Cooling Coil Airflow
    a. Recorded HSPPs as present when none were.

We have determined that these failures are egregious, establish a pattern, and are not rectifiable. As required by Title 20, CalCERTS, Inc will also notify the California Energy Commission that you have been decertified, along with the details of our investigation.

Regards,

Charlie Bachand
Senior Analyst
CalCERTS, Inc

Exhibit G

January 30, 2012

Patrick Davis
6345 Rainier Ave
Rocklin, CA 95677

Dear Mr. Davis,

A Quality Assurance investigation by CalCERTS, Inc. has determined that your actions as a California HERS Rater are in violation of Title 24 and/or Title 20. Therefore CalCERTS, Inc. is decertifying you as a rater, effective immediately. This will not prevent you from accessing the registry as an installer if you are also an installer.

Our QA process found multiple failures at multiple addresses concerning verification of Duct Leakage and Refrigerant Charge. Failures include:

1. Duct Leakage Verification – multiple failures
    a. Failure to correctly measure Duct Leakage.
    b. Failure to correctly determine Duct Leakage target.
    c. Failure to verify Sealing of All Accessible Leaks and Visual Verification when required.
2. Refrigerant Charge verification – multiple failures.
    a. You incorrectly certified homes as compliant with Title 24 by verifying the presence of TMAHs. Our QA Rater was able to determine that, in some cases, the TMAHs you certified as present were, in fact, not there.
    b. Stickers were placed indicating TMAHs where none were drilled.
    c. You verified airflow using Temperature Split when no TMAHs were present to do so. Our QA Rater determined that there was inadequate airflow using a flow hood.
    d. Failure to correctly verify functioning TXV.

We have determined that these failures are egregious, establish a pattern, and are not rectifiable.

As required by Title 20, CalCERTS, Inc. will also notify the California Energy Commission that you have been decertified, along with the details of our investigation.

Regards,

Charlie Bachand
Senior Analyst
CalCERTS, Inc.

Exhibit H

Cal Certified Energy Rating & Testing Services™

Title 24 HERS Provider
CEC Approved
ENERGY STAR® Provider
Department of Energy Approved
CalCERTS®

EMAIL: office@calcerts.com
PHONE: 916.985.3400
FAX: 916.985.3402
11 Natoma St. Ste. 140
Folsom, CA 95630

Quality Assurance Program

CalCERTS™ New Construction Training and Certification Program
All individuals trained by CalCERTS™ to provide Title-24 field verification services for the Alternative Calculation Method of the 2001 Energy Efficiency Standards must successfully complete an approved Title-24 Residential New Construction Training and Certification Program. Their performance will be continuously monitored through this Quality Assurance Program. The Quality Assurance Program has three components:

- Initial Rater QA
- Documentation QA
- Onsite Field QA

Note: The CEC requires that Raters, even if already certified by another approved Provider must be monitored in the same way as the Initial Rater.

Quality Assurance Procedures

1. Initial Rater QA For New Raters

All Raters that successfully complete the CalCERTS™ Title-24/Residential New Construction Training, and then subsequently activate their certification are required to:

- Notify CalCERTS™ in writing before conducting their first field verification and diagnostic test.
- Have a CalCERTS™ QA representative accompany them on two field tests within the first six months of becoming certified. This requirement is part of the training and certification process.
- Have their first five data sets reviewed and analyzed by a CalCERTS™ QA representative. This requirement is part of the QA process.

The CalCERTS™ QA representative will complete a written report detailing the results of this QA review, will provide a copy to the Rater, and will submit a copy to be included in the Rater's permanent file.

2. Document Review

This type of QA involves the review of the CF-4R and other related documents reviewed or completed by the Rater, and all other data collected while conducting the onsite field verification and diagnostic test. This type of analysis will be completed on a random and as needed basis for experienced Raters.

All Raters are required to provide the CalCERTS™ QA representative with all data collection forms and field notes within 72 hours of written request.

The CalCERTS™ QA representative will complete a written report detailing the results of this QA review, will provide a copy to the Rater, and will submit a copy to be included in the Rater's permanent file.

3. **Onsite Field QA Inspections**

   The QA onsite inspection represents the main component of the CalCERTS™ QA program. The Onsite Field QA consists of the CalCERTS™ QA representative visiting the site and observing the Rater perform the onsite field verification and diagnostic testing. The purpose of this type of QA is to insure that the correct procedures are being followed in the verification and testing process, and to provide instant feedback to the Rater.

   When a Rater is due for this type of QA, CalCERTS™ will notify the Rater and require them to provide their verification and diagnostic testing schedule within a specified period of time. The CalCERTS™ QA representative will meet the Rater onsite to:

   - Observe the onsite verification and diagnostic test
   - Independently verify the test results for accuracy

4. **Frequency of Field QA Inspections**

   A CalCERTS™ QA representative will field verify one home rating annually, or 1% of the homes tested by the rater annually. It is anticipated that this would be done within 10 days of the 100th tested home registration in the CalCERTS™ Registry.

   The CalCERTS™ QA representative will complete a written report detailing the results of this QA review. A copy will be provided to the Rater, and will be included in the Rater's permanent file.

5. **Customer Complaints:**

   A CalCERTS™ QA representative will respond to all customer and builder complaints, and decide on the proper disposition of the complaint. All records: concerning complaints received by CalCERTS™ will be retained and included in the Rater's permanent file. The CalCERTS™ QA representative will respond to the complaint within 24 hours. The QA response will vary depending on not only the type of complaint, but possibly the number of similar complaints, or other circumstances that reflect on the Rater's work product. The QA response may result in retraining, continuing education or even decertification of the Rater.

6. **Update Training and Re-Certification**

   Raters that have not performed field verification *and* diagnostic testing for a period of one year will be required to re-certify by completing updated training and examination. The Rater must be re-certified before providing field verification and diagnostic testing services. Re-certification may be done by taking the challenge test. The Initial QA Review will also be conducted as stated above.

RATER hereby acknowledges that RATER has read this Agreement, understands it, and agrees to comply with its procedures in accordance with Section 5, paragraphs A, B, and C, of the Rater Addendum.

RATER:_____DATE:_____

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California Code of Regulations

Title 20 Re Public Utilities and Energy
Article 1. Construction of Regulations
(Sections 1001 – 1217)

§ 1001. Interpretation.

The regulations in this chapter supplement the Warren-Alquist State Energy Resources Conservation and Development Act (Division 15 of the Public Resources Code).

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25213, Public Resources Code.

§ 1002. Service on the Commission.

Service of process may be made on the commission by personal service on the chairman, the executive director, or chief counsel, or as otherwise provided by law addressed as follows:

Energy Resources Conservation and Development Commission
1516 Ninth Street
Sacramento, CA 95814
Attn: Chief Counsel

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25218(c), Public Resources Code.

§ 1003. Computation of Time.

The time in which any act provided by these regulations is to be done is computed by excluding the first day and including the last, unless the last day is a Sunday or holiday as defined in Sections 10 and 12 of the Code of Civil Procedure and then such day is also excluded.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Sections 10 and 12, Code of Civil Procedure.

§ 1101. Scope.

This article only applies to meetings conducted under Public Resources Code Section 25214.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25214, Public Resources Code.

§ 1102. Meetings -Scheduling.

(a) The commission shall meet at least once every month.

(b) The time and place of meetings may be set by resolution of the commission, by written petition of a majority of the members, or by written call of the chairman. The chairman may, for good cause, change the starting time or place, reschedule, or cancel any meeting.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25214, Public Resources Code.

§ 1103. Notice and Agenda.

(a) Time and Distribution. Notices shall be given to all members, ex officio members, the public adviser, to all parties to proceedings on the agenda, and to all persons who request in writing such notice.

(b) Agenda. The agenda shall be prepared by the executive director and shall include any item proposed by any member, the public adviser or the executive director.

(c) Emergencies. In all public emergency cases, every member and ex officio member and the public adviser shall be notified in person, by telephone, or by telegram.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Sections 25214 and 25217(a), Public Resources Code; and Section 11125, Government Code.

§ 1104. Meetings.

(a) Presiding Member. The chairman shall preside over all meetings of the commission at which he is present. In his or her absence, the vice chairman shall preside. If neither the chairman nor the vice chairman is in attendance, the member present who has the greatest seniority on the Commission shall preside. The presiding member may yield the chair.

(b) Robert's Rules of Order. Except as otherwise provided by this article and except when all the members present indicate otherwise, meetings of the commission shall be conducted pursuant to the latest edition of Robert's Rules of Order. Failure to comply with this subsection shall not invalidate any action of the commission.

(c) Order of Agenda. The presiding member may determine the order in which agenda items shall be considered.

(d) Consent Calendar. The agenda may include an item designated “the consent calendar.”

(1) The consent calendar shall include only those matters for which there appears to be no controversy. The consent calendar shall contain any such matter specified for

inclusion by the person proposing the agenda item. A brief description of each matter on the consent calendar shall be included in the agenda.

(2) At the request of any member, any matter shall be removed from the consent calendar and may be considered at the same meeting as a separate item of business.

(3) After an opportunity for the requests to remove matters from the consent calendar has been given, a vote shall be taken on the consent calendar. If three members vote to approve the consent calendar, each matter on the consent calendar shall be approved and shall have the same force and effect as it would have if approved as a separate agenda item.

(e) Public Comments. Any person may submit comments in writing on any agenda item. Any person submitting such comments shall, if possible, provide the commission with either twelve paper copies of such comments, or one paper copy and electronic copies in the number, media and format specified in Section 1209.5 in advance of the meeting at which it is to be considered.

Any person present and so desiring shall be given an opportunity to make oral comments on any agenda item; provided however, that the presiding members may limit or preclude such comments as necessary for the orderly conduct of business.

Note: Authority cited: Section 25218, Public Resources Code. Reference: Section 25214, Public Resources Code.

§ 1200. Scope.

Except as otherwise specifically indicated, the provisions of this article shall apply to all proceedings and hearings held before the commission or a committee thereof.

Note: Authority cited: Sections 25218(e) and 25218(f), Public Resources Code. Reference: Section 25214, Public Resources Code.

§ 1201. Definitions.

The following definitions shall apply unless otherwise indicated:

(a) “Staff” means the staff of the State Energy Resources Conservation and Development Commission.

(b) “Respondent” means any person named in a complaint, pursuant to Section 1231 of these regulations, and alleged to be in violation of any regulation, order, decision, or statute adopted, administered, or enforced by the commission, and any person who is

the subject of a complaint proceeding pursuant to Sections 1230 and 1231 of these regulations.

(c) “Complainant” means any person who files a complaint, pursuant to section 1231 of these regulations, alleging the violation of any regulation, order, decision, or statute adopted, administered, or enforced by the commission.

(d) “Intervenor” means any person who has been granted leave to intervene pursuant to these regulations.

(e) “Party” means any applicant, respondent, complainant, or intervenor, and the staff of the commission.

(f) “Presiding member” means the chairman of the commission or any member of the commission designated to preside over any proceeding pursuant to Section 1204 of these regulations.

(g) “Comment” means any oral or written statement made by any person, not under oath, in any proceeding before the commission.

(h) “Testimony” means any oral or written statement made under oath in any proceeding before the commission.

(i) “Witness” means any person who offers testimony in any proceeding before the commission.

(j) “Docket Unit” means the Docket Unit of the Energy Resources Conservation and Development Commission.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25214, Public Resources Code.

§ 1202. Right of Any Person to Comment.

(a) Any person present and so desiring shall be given an opportunity to make oral comments on the subject matter of a proceeding; provided, however, that the presiding member may limit such comments as necessary for the orderly conduct of business. Except as otherwise provided, persons desiring to make oral comments are encouraged to notify the presiding member or the public adviser at least two (2) days prior to the hearing at which such comments are to be made.

(b) Any person desiring to submit written comments to the commission concerning the subject matter of a proceeding shall submit copies of such comments pursuant to Section 1209 of these regulations. Persons are encouraged to submit such comments

at least five (5) days prior to the hearing, unless otherwise provided by order. Written comments shall be filed with the Docket Unit of the Energy Resources Conservation and Development Commission; provided, however, that during the actual conduct of a hearing, written comments may be filed with the presiding member.

COMMENT: The right to comment is not the limit of public participation in commission proceedings. For example, Section 1226 of these regulations provides the opportunity for persons to submit sworn testimony on specified issues in rulemaking and informational hearings, while Section 1227 provides a mechanism whereby persons interested in a proceeding may be permitted to ask or answer additional questions either orally or in writing. In addition, in those proceedings requiring greater formality, and in all adjudicatory proceedings, the commission permits intervention in the proceeding.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25214, Public Resources Code.

§ 1203. Powers of the Chairman.

In addition to all other powers conferred by this article, the chairman or presiding member designated pursuant to Section 1204 shall have the power to:

(a) Request and secure such information as is relevant and necessary in carrying out the purposes of the proceeding.

(b) Issue subpoenas and subpoenas duces tecum at the direction of the commission, on his motion or upon application of any party. The application of a party shall be supported by a declaration of good cause.

(c) Regulate the conduct of the proceedings and hearings, including, but not limited to, disposing of procedural requests, admitting or excluding evidence, receiving exhibits, designating the order of appearance of persons making oral comments or testimony, and continuing the hearings.

(d) Set the time and place of hearings.

(e) Cancel a scheduled hearing or meeting. To the extent feasible, notice shall be given of any cancellation and the staff in consultation with the public adviser shall inform known interested participants by the most expeditious means possible.

(f) For good cause shown, and upon proper notice, shorten or lengthen the time required for compliance with any provision of these regulations.

Note: Authority cited: Sections 25213 and 25539, Public Resources Code. Reference: Section 25210, Public Resources Code.

§ 1204. Designation of Committees and Presiding Member; Quorum.

(a) Committees shall be designated in accordance with Public Resources Section 25211. During committee proceedings a presiding member shall exercise the powers and duties conferred on the chairman by this article.

(b) A quorum of a committee is one member.

(c) The commission may at any time withdraw any matter from a committee to allow consideration of the matter by the full commission.

(d) If a presiding member is unavailable during any portion of the proceedings, he may delegate his responsibilities to the second member of the committee.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25211, Public Resources Code.

§ 1205. Designation of Hearing Officer; Responsibilities.

The chairman may designate a hearing officer to assist a committee in the conduct of any proceeding held pursuant to this Division.

The Commission may authorize a hearing officer to preside over proceedings held pursuant to this Division, except for site certification proceedings pursuant to Chapter 5, Articles 1 through 5 of these regulations, Biennial Report proceedings, and rulemaking proceedings. In site certification proceedings pursuant to Chapter 5, Articles 1 through 5, of these regulations, a hearing officer may take evidence in the temporary absence of a Commission member as provided in Public Resources Code section 25211.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Sections 25211 and 25217, Public Resources Code.

§ 1206. Representatives.

Any person may designate any other person, except those prohibited by Section 25205(d), Public Resources Code, to represent him or her for any purpose under this subchapter.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25205(d), Public Resources Code.

§ 1207. Intervenors.

(a) Any person may file with the Docket Unit or the presiding committee member a petition to intervene in any proceeding. The petition shall set forth the grounds for the intervention, the position and interest of the petitioner in the proceeding, the extent to which the petitioner desires to participate in the proceedings, and the name, address, and telephone number of the petitioner.

(b) In a power plant siting case, the petition shall be filed no later than the Prehearing Conference or 30 days prior to the first hearing held pursuant to sections 1725, 1748, or 1944 of this Chapter, whichever is earlier, subject to the exception in subsection (c) below. The petitioner shall also serve the petition upon the Applicant.

(c) The presiding member may grant leave to intervene to any petitioner to the extent he deems reasonable and relevant, but may grant a petition to intervene filed after the deadline provided in subdivision (b) only upon a showing of good cause by the petitioner. Any person whose petition is granted by the presiding member shall have all the rights and duties of a party under these regulations.

(d) Any petitioner who has been denied leave to intervene by the presiding member may appeal the decision to the full commission within fifteen (15) days of the denial. Failure to file a timely appeal will result in the presiding member's denial becoming the final action on the matter.

(e) Any petitioner may withdraw from any proceeding by filing a notice to such effect with the Docket Unit or presiding committee member.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Section 25214, Public Resources Code.

§ 1208. Conferences; Purpose; Notice; Order.

The presiding member or hearing officer may hold a conference with the parties, the public adviser, the chief counsel, and any other persons interested in the proceeding, at any time he deems necessary, for the purpose of formulating the issues, organizing the questioning of witnesses, determining the number of witnesses, providing for the exchange of exhibits or prepared statements, and such other matters as may expedite the orderly conduct of the proceedings. The public adviser may, upon request, present the views submitted by persons interested in the proceeding who are unable to attend.

(a) The conference shall be publicly noticed and the notice served in person or by mail on all parties at least ten (10) days before the conference.

(b) The presiding member may enter an order which specifies issues or states any other matter to aid in the orderly conduct of the hearing, and may, upon agreement of all the parties, accept stipulations of law or fact.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25214, Public Resources Code.

§ 1209. Form of Submissions.

(a) Except for drawings, photographs, maps, diagrams, charts, graphs, or similar documents and exhibits, all formal paper filings and accompanying materials submitted to the commission pursuant to these regulations shall be typewritten or printed on paper eight and one-half (81/2) inches wide and eleven (11) inches long. To the extent possible, all attachments thereto, including drawings, photographs, maps, diagrams, charts, graphs, and similar documents, and all other exhibits, shall be folded to the same size. To the extent possible, no document should be larger than eleven (11) inches wide and seventeen (17) inches long unfolded. Documents should be printed on both sides of the page. Clear, permanently legible copies made by any reproduction process may be submitted. Pages shall be bound securely and shall be consecutively numbered. Formal filings may also be submitted electronically. Electronic copies shall be in the number, media, and format specified in Section 1209.5.

(b) All filings and accompanying materials, including exhibits not attached to other materials, shall show the following on a title page or cover:

(1) the title of the proceedings before the commission;

(2) the docket number, if any, assigned by the commission;

(3) the nature of the material;

(4) the name, address, and telephone number of the person submitting the material.

(c) Unless otherwise specified in these regulations or required by the commission or the executive director, any person submitting written materials in connection with a proceeding before the commission shall provide twelve (12) paper copies thereof, including one original paper copy. The Docket Unit shall photocopy and distribute submitted material in the normal course. Alternatively, a person may provide one original paper copy and electronic copies in the number, media and format specified in Section 1209.5.

(d) Unless otherwise specified in these regulations all materials filed with the commission shall be filed with the Docket Unit. The executive director shall assure the

proper distribution of such materials and shall assure that all materials submitted to the commission shall be made available at the Docket Unit to the public in accordance with provisions of the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7, Title 1 of the Government Code, and commission regulations.

(e) Unless otherwise stated in these regulations, in other applicable law, or by order of the commission or a committee thereof, a document is filed, received, or similarly submitted when it is delivered in paper or electronic format to the Docket Unit.

(f) Filing pursuant to this section does not satisfy the requirement that a party serve a copy of its documents on every other party in a proceeding, contained in section 1210.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25223, Public Resources Code.

§ 1210. Filing by Parties.

(a) Unless otherwise provided by the presiding member, a paper copy of all written material filed by any party in a proceeding shall be served in person or by first class mail, or other equivalent delivery service, with postage prepaid, on every other party to the proceeding, except where a party requests an electronic copy when available. Any party so requesting shall be served with an electronic copy in a manner pursuant to section 1209.5 regarding electronic filings.

(b) The Docket Unit shall promulgate and make available a list which shall include the names and addresses of all parties to a proceeding.

(c) Any filing by a party shall include a proof of service in compliance with subsection (a) of this section.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25210, Public Resources Code.

§ 1211. Submission of Exhibits; Filing.

Any exhibits, including charts, graphs, maps, and other documents relevant to testimony or comments may be submitted to the presiding member at any hearing, or, subject to the discretion of the presiding member, filed with the Docket Unit at any time before the close of the proceeding.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25210, Public Resources Code.

§ 1212. Rules of Evidence.

The following rules of evidence shall apply to any adjudicatory proceeding of the commission and in such other proceedings as the commission may determine by order.

(a) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant noncumulative evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.

(b) Oral or written testimony offered by any party shall be under oath.

(c) Subject to the exercise of the lawful discretion of the presiding committee member as set forth in Section 1203(c), each party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matters relevant to the issues in the proceeding, and to rebut evidence against such party. Questions of relevance shall be decided by the presiding committee member.

(d) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objections in civil actions.

The presiding member may establish such additional rules as necessary for the orderly conduct of the proceeding.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25210, Public Resources Code.

§ 1213. Official Notice.

During a proceeding the commission may take official notice of any generally accepted matter within the commission's field of competence, and of any fact which may be judicially noticed by the courts of this state. Parties to a proceeding shall be informed of the matters to be noticed, and those matters shall be noted in the record, or attached thereto. Any party shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of authority.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25210, Public Resources Code.

§ 1214. Record and Transcript.

The presiding member shall cause a formal record of the proceedings to be made. The record shall consist of the official minutes or a transcript of each hearing or conference

held during the proceedings, all pleadings, written testimony, and briefs submitted by any party, any order entered pursuant to Section 1208(b), all questions and answers of witnesses submitted pursuant to Section 1225, any exhibits accepted into the record pursuant to Section 1211, any written comments submitted pursuant to Section 1202(b), and the record of all ex parte contacts filed pursuant to Section 1216 of these regulations, together with such other items as the presiding member may direct. The presiding member may cause a transcript of any conference held pursuant to Section 1208 to be made and entered into the record.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25210, Public Resources Code.

§ 1215. Interlocutory Orders and Appeals.

(a) During proceedings before a committee, a party may request that a ruling of the committee or presiding member be issued in the form of a written order. Any such request shall be made no later than five calendar days following the ruling.

(b) Any party may petition the full commission to review any order prepared pursuant to subsection (a) of this section. Any such petition shall be filed within ten days of the date of the order being issued; provided, however, that rulings of the presiding member or committee may not be appealed during the course of hearings or conferences except in extraordinary circumstances where prompt decision by the commission is necessary to prevent detriment to the public interest. In such instances, the matter shall be referred forthwith by the presiding member to the commission for determination.

(c) Unless the commission acts upon questions referred by the presiding member to the commission or upon a petition to review an order of the presiding member or committee within thirty (30) days after the referral or filing of the petition, whichever is later, such referrals or petitions shall be deemed to have been denied. The commission may act by formally denying the petition or by vacating or amending the committee order.

Note: Authority cited: Section 25218(e), Public Resources Code. Reference: Section 25210, Public Resources Code.

§ 1216. Ex Parte Contacts.

(a) The ex parte provisions of Article 7 of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code (sections 11430.10 et seq.) apply to all adjudicative proceedings conducted by the commission. For purposes of this section “presiding officer” means all commissioners and all hearing advisors.

(b) An adviser to a commissioner or any other member of a commissioner's own staff shall not be used in any manner that would circumvent the purposes and intent of this section.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Sections 11430.10-11430.80, Government Code; and Section 25210, Public Resources Code.

§ 1217. Informal Hearings.

The commission may choose to implement the informal hearing procedures identified in Article 10 of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code (sections 11445.10 et seq.) when conducting an adjudicative proceeding.

Note: Authority cited: Section 25213, Public Resources Code. Reference: Sections 11445.10-11455.60, Government Code; and Section 25210, Public Resources Code.

California Code of Regulations

Title 20 Re Public Utilities and Energy
Article 4. Complaints and Investigations
(Sections 1230 – 1237)

§ 1230. Scope.

(a) Complaint proceedings shall include any adjudicatory proceeding in which the commission determines whether to sanction, or take other appropriate action against, a person for an alleged violation of any statute, order, decision, or regulation adopted, administered, or enforced by the commission, including but not limited to a proceeding pursuant to Public Resources Code section 25534.1. Investigation proceedings shall include any adjudicatory proceeding in which the commission determines the applicability of any statute, order, decision, or regulation adopted, administered, or enforced by the commission. A single proceeding may involve both a complaint and an investigation.

(b) Standing committees to exercise the complaint or investigatory functions of the commission may be established pursuant to Section 1204(a). The order establishing a committee shall designate the area of commission jurisdiction over which a committee shall exercise the complaint or investigatory function.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25900, 25967 and 25983, Public Resources Code.

§ 1231. Complaints and Requests for Investigation; Filing.

Any person, including but not limited to the commission staff or the owner or operator of a powerplant or transmission line, may file a complaint alleging a violation of a statute, regulation, order, program, or decision adopted, administered, or enforced by the commission. Any complaints alleging noncompliance with a commission decision adopted pursuant to Public Resources Code section 25500 et seq. must be filed solely in accordance with section 1237. Any person may also file a request for investigation, including a request for a jurisdictional determination regarding a proposed or existing site and related facilities.

(a) A complaint or request for investigation shall be filed with the Chief Counsel of the commission.

(b) The complaint or request for investigation shall include:

(1) the name, address, and telephone number of the person filing the complaint (complainant) or request for investigation (petitioner);

(2) the name, address, and telephone number of the person allegedly violating the statute, regulation, order, or decision (respondent) or, in the case of a request for a jurisdictional investigation, the name, address, and telephone number of the person

owning or operating, or proposing to own or operate, the project which is the subject of the request for investigation (respondent);

(3) a statement of the facts upon which the complaint or request for investigation is based;

(4) a statement indicating the statute, regulation, order, or decision upon which the complaint or request for investigation is based;

(5) the action the complainant or petitioner desires the commission to take;

(6) the authority under which the commission may take the action requested;

(7) a statement by the complainant or petitioner specifically listing the names and addresses of any other individuals, organizations, and businesses which the complainant or petitioner knows or has reason to believe would be affected by the relief sought; and

(8) a declaration under penalty of perjury by the complainant or petitioner attesting to the truth and accuracy of any factual allegations contained in the complaint or request for investigation. If any of the applicants are corporations or business associations, the declaration shall be dated, signed, and attested to by an officer thereof. Where a declaration is filed on behalf of a joint venture or proposed joint venture, all members of the joint venture or proposed joint venture shall date, sign, and attest to the declaration.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25900, 25967 and 25983, Public Resources Code.

§ 1232. Complaints and Requests for Investigation; Commission Response.

(a) Within 30 days after the receipt by the Chief Counsel of a complaint or request for investigation, the committee, or if none has been assigned, the chairman, shall:

(1) dismiss the matter upon a determination of insufficiency or lack of merit of the pleadings, specifying whether the dismissal is with or without prejudice; or

(2) serve the complaint or request for investigation by certified mail, return receipt requested, upon the respondent. All other persons identified in Section 1231(b)(7) shall be served by first class mail. In addition, the committee, or if none has been assigned, the chairman, may take additional steps to notify other individuals, organizations, and businesses which the committee or the chairman has reason to believe would be adversely affected by a decision. When serving the complaint, the committee, or if none

has been assigned, the chairman, shall also provide a copy of the commission's governing procedure, including a statement whether the provisions of Government Code section 11400 et seq. are applicable to the proceeding.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25900, 25967 and 25983, Public Resources Code.

§ 1233. Answers to Complaints and Requests for Investigation.

(a) The respondent shall file and serve an answer with the complainant or petitioner, the commission, and all persons identified in Sections 1231(b)(7) and 1232(a)(2) within 21 days after service of the complaint or request for investigation pursuant to Section 1232(a)(2).

(b) The answer shall include:

(1) an admission or denial of each material allegation;

(2) an explanation of any defenses raised by the respondent; and

(3) a declaration as provided in Section 1231(b)(8).

(c) Where the petitioner seeks clarification of the jurisdictional status of its own project, no answer shall be required.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25900, 25967 and 25983, Public Resources Code.

§ 1234. Notice and Hearing.

(a) The hearing shall be scheduled to commence no sooner than 21 days after receipt of the answer and no later than 90 days after the receipt by the General Counsel of the complaint or request for investigation. The hearing may be scheduled before the full commission, a committee designated by the commission, or a hearing officer assigned by the chairman at the request of the committee as provided in Section 1205.

(b) The commission shall provide written notice by first class mail to all petitioners, respondents and persons identified in Sections 1231(b)(7) and 1232(a)(2) no fewer than 14 days before the first hearing on the matter. The notice shall contain:

(1) the names and addresses of all named complainants, petitioners, and respondents;

(2) a statement concerning the nature of the complaint or request for investigation, with an identification of the statute, regulation, order, or decision at issue;

(3) an explanation of the action the commission may take;

(4) the date, place, and time of any hearing in the matter; and

(5) a statement concerning the availability of the public adviser.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25967 and 25983, Public Resources Code.

§ 1235. Proposed Decision.

If the matter is heard before an assigned committee or hearing officer, appointed pursuant to Section 1205, the committee or hearing officer shall make its recommendation to the full commission in the form of a written proposed decision within 21 days following the close of hearings held pursuant to Section 1234.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25967 and 25983, Public Resources Code.

§ 1236. Commission Decision.

(a) Upon consideration of a proposed decision from a committee or hearing officer, the commission shall, to the extent reasonably possible, prepare a decision within 21 days of the filing of the proposed decision that:

(1) adopts, modify, or reject the proposed decision; or

(2) remands the matter to the committee or hearing officer for further hearings; or

(3) reopens the evidentiary record and itself conduct further hearings.

(b) When considering a proposed decision from a committee or hearing officer, the commission may limit presentations by all participants to written and oral submissions based upon the existing evidentiary record.

(c) In cases where the commission, rather than a committee or hearing officer hears the case, to the extent reasonably possible, the commission shall make a decision within 21 days following the close of hearings.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25967 and 25983, Public Resources Code.

§ 1236.5. Public Participation and Intervention.

To the extent deemed relevant by the presiding member, any person may testify or comment during a complaint or investigatory hearing. A person may request to become a formal party by intervening by following the procedures identified in Section 1207.

Note: Authority cited: Sections 25213 and 25218(e), Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25321, 25362, 25967 and 25983, Public Resources Code.

§ 1237. Post-Certification Complaints.

(a) Any person must file any complaint alleging noncompliance with a commission decision adopted pursuant to Public Resources Code section 25500 and following solely in accordance with this section. All such complaints shall be filed with the Docket Unit and submitted to the designated compliance project manager for investigation and shall include the following information:

(1) the name, address, and telephone number of the person filing the complaint (complainant);

(2) the name, address, and telephone number of the person owning or operating, or proposing to own or operate, the project which is the subject of the complaint;

(3) a statement of facts upon which the complaint is based;

(4) a statement indicating the statute, regulation, order, decision, or condition of certification upon which the complaint is based;

(5) the action the complainant desires the commission to take;

(6) the authority under which the commission may take the action requested, if known; and

(7) a declaration under penalty of perjury by the complainant attesting to the truth and accuracy of the statement of facts upon which the complaint is based.

(b) Upon completion of the investigation of the alleged noncompliance, the commission staff shall file a report with the Docket Unit and with the committee assigned pursuant to section 1204 to hear such complaints, or the chairman if none has been assigned,

setting forth the staff's conclusions. The report shall be filed no later than 30 days after the receipt by the designated compliance project manager of the complaint and shall be provided to the complainant, project developer, and other interested persons.

(c) If the commission staff is the complainant, it shall file a report with the Docket Unit and with the appropriate committee, detailing the noncompliance and explaining any steps taken to attempt to remedy the noncompliance. The committee shall act on the report in accordance with subsection (e).

(d) Any person may submit written comments on the complaint or staff report within 14 days after issuance of the staff report.

(e) Within 30 days after issuance of the staff report, the committee shall:

(1) dismiss the complaint upon a determination of insufficiency of the complaint or lack of merit;

(2) issue a written decision presenting its findings, conclusions or order(s) after considering the complaint, staff report, and any submitted comments; or

(3) conduct hearings to further investigate the matter and then issue a written decision.

(f) If either the project owner or the complainant is not satisfied with the committee decision, they may appeal to the full commission within 14 days after issuance of the decision. The commission, within 30 days of receipt of the appeal and at a noticed business meeting or hearing, shall issue an order sustaining the committee's determination, modifying it, overturning it, or remanding the matter to the committee for further hearings.

Note: Authority cited: Sections 25213, 25218(e) and 25539, Public Resources Code. Reference: Section 11180, Government Code; and Sections 25210, 25362(b), 25500, 25534, 25534.1, 25900 and 25967, Public Resources Code.

California Code of Regulations

Title 20 Re Public Utilities and Energy
Article 8. California Home Energy Rating System Program
(Section 1675)

§ 1675. Review by the Energy Commission.

(a) Annual Review. The Energy Commission may annually review the performance of Providers certified under Section 1674 to determine whether the Providers comply with the requirements of these regulations. This review may include interviewing recipients of ratings and field verification and diagnostic testing services and reports on a voluntary basis.

(b) Complaint Proceedings. Any person or entity may file a complaint concerning any violation of these regulations as provided for in Section 1230 et. seq. of Title 20 of the California Code of Regulations. The Energy Commission may, for good cause, conduct an investigation and, if necessary, hearing, under the procedures established in Section 1230 et. seq. of Title 20 of the California Code of Regulations.

Each Provider shall provide all information requested by the Energy Commission regarding any annual review or complaint proceeding.

(c) Energy Commission Determination. If the Energy Commission determines there is a violation of these regulations or that a Provider is no longer providing rating, field verification and diagnostic testing services, the Energy Commission may revoke the certification of the Provider pursuant to Section 1230 et. seq. of Title 20 of the California Code of Regulations.

Note: Authority cited: Sections 25213 and 25942, Public Resources Code. Reference: Section 25942, Public Resources Code.

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV

COMPLAINT	DOCKET NO. 12-CAI-01
COMPLAINT AGAINST AND REQUEST FOR INVESTIGATION OF CALCERTS, INC.	*Original: March 1, 2012*

DECLARATION OF SERVICE

I am a citizen of the United States, over the age of 18 years, and not a party to or interested in this case. My business address is 1516 Ninth Street, Sacramento, California 95814. On or before this date, March 5, 2012, I served the following three documents:

1) **Order Re Service of Complaint and Schedule;**
2) **Complaint Against and Request for Investigation of CalCERTS, Inc., dated February 13, 2012;**
3) **California Code of Regulations sections constituting the Commission's governing procedure for this proceeding (Sections 1001 – 1217, 1230 – 1237 and 1675)**

__X__ Served by Certified U.S. Mail return receipt requested, on:

Respondent

Mike Bachand
CalCERTS, Inc.
31 Natoma St., Suite 120
Folsom, CA. 95630
mike@calcerts.com

__X__ I also served one paper copy of the above-mentioned three documents by delivering them on this date for mailing with the U.S. Postal Service with first-class postage thereon fully prepaid on:

Petitioners

David Haddock
P.O. Box 2501
Citrus Heights, CA. 95611
dave@davidhaddocklegal.com

Interested Entities

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Huntington Beach, CA. 92648
dblanke@cheers.org

Petitioners (Continued)

Erik Hoover
JaaR Sales, Inc. dba Valley Duct Testing
2272 Sierra Meadows Dr., Suite A
Rocklin, CA. 95677

Patrick Davis
JaaR Sales, Inc. dba Valley Duct Testing
2272 Sierra Meadows Dr., Suite A
Rocklin, CA. 95677

Interested Entities (Continued)

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Michael T. Thompson
Director CBPCA HERS Providership
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michaelt@cbpca-hers.org

And served electronically to the above-mentioned three documents by e-mailing one electronic copy to the following:

In House

California Energy Commission's,
Docket Office
Docket@energy.ca.gov

Robert B. Weisenmiller, Chairman
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on or before March 5, 2012, at Sacramento, California.

CHESTER HONG