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STEVEN H. FRANKEL (State Bar No. 171919)  
SONNENSCHN NATH & ROSENTHAL LLP  
525 Market Street, 26th Floor  
San Francisco, CA 94105-2708  
Telephone: (415) 882-5000  
Facsimile: (415) 882-0300

|                 |             |
|-----------------|-------------|
| <b>DOCKET</b>   |             |
| <b>08-CRI-1</b> |             |
| <b>DATE</b>     | MAR 27 2009 |
| <b>RECD.</b>    | MAR 27 2009 |

BRETT A. CRAWFORD  
SONNENSCHN NATH & ROSENTHAL LLP  
1301 K Street, N.W.  
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Telephone: (202) 408-6400  
Facsimile: (202) 408-6399

**STATE OF CALIFORNIA**  
**ENERGY RESOURCES CONSERVATION**  
**AND DEVELOPMENT COMMISSION**

CALIFORNIA LIVING & ENERGY (a Docket Number 08-CRI-01  
division of William Lilly & Associates, Inc.)  
and DUCT TESTERS, INC.,

Complainants, **Affidavit of Jaime Padron**

vs.

MASCO CORPORATION and  
ENERGYSENSE, INC.,  
Respondents.

Being first duly sworn under oath, Jaime Padron deposes and states as follows:

1. I am employed as the Division Manager of EnergySense, Inc., a position I have held since March 2008. I have personal knowledge of all facts set forth below. EnergySense, Inc. operates and conducts business only in the States of California and Nevada. As Division Manager, I am responsible for overseeing the management and operations of EnergySense in both states.

2. I am certified as a HERS rater by the California Home Energy Efficiency Service ("CHEERS").

1           3.       I am not an officer or director of Masco Corporation or any Masco-related  
2 entity.

3           4.       I am not an employee of Masco Corporation or any Masco-related entity  
4 other than EnergySense, Inc.

5           5.       For my work for EnergySense, Inc., I am compensated entirely by  
6 EnergySense, Inc. on a salaried wage basis. I do not receive any form of performance-  
7 based bonus compensation.

8           6.       I have no ownership interest in any entity whose installation work is field  
9 verified or diagnostically tested for Title 24 HERS compliance purposes by me or by any  
10 other HERS rater employed by EnergySense.

11          7.       I have no debt agreements with any person or entity whose installation  
12 work is field verified or diagnostically tested for Title 24 HERS compliance purposes by  
13 me or by any other HERS rater employed by EnergySense.

14          8.       I am not an employee or employer of any person or entity whose  
15 installation work is field verified or diagnostically tested for Title 24 HERS compliance  
16 by me.

17          9.       I have not advocated or recommended the use of any product or service as  
18 a means of gaining increased business from a builder or installer of energy efficient  
19 improvements that are subject to Title 24 HERS compliance requirements.

20          10.       A true and correct copy of the Verification of Rater Agreement form  
21 signed by me and submitted to CHEERS in September 2008 is attached hereto as Exhibit  
22 1, and I reaffirm that I remain in compliance with the terms and conditions of that  
23 agreement.

24          11.       The offices of EnergySense, Inc. are located at 1441 Coldwell, Suite D,  
25 Modesto CA 95350. Neither I nor EnergySense share those offices, facilities or  
26 equipment with any person or entity whose installation work is field verified or  
27 diagnostically tested for Title 24 HERS compliance purposes by me or any other HERS  
28 rater employed by EnergySense.

1           12.    No HERS rater employed by EnergySense, Inc. shares an office or work  
2 address with any entity whose installation work is field verified or diagnostically tested  
3 for Title 24 HERS compliance purposes.

4           13.    EnergySense, Inc. currently employs three HERS raters (including myself)  
5 and one administrative assistant. In the past, EnergySense employed as many as ten  
6 HERS raters, but no other employees (except for an administrative assistant).

7           14.    The only Masco-related companies whose installation work is field  
8 verified or diagnostically tested for Title 24 HERS compliance by any HERS raters  
9 employed by EnergySense, Inc. are: Sacramento Insulation Contractors, Coast Insulation  
10 Contractors, Inc., Western Insulation, L.P., and Masco Contractor Services of California,  
11 Inc. High Quality Installation of Insulation is the only energy efficiency improvement  
12 installed by those companies that is subject to Title 24 HERS field verification or  
13 diagnostic testing.

14           15.    Neither EnergySense, Inc., nor the HERS raters it employs, submit bids  
15 for HERS testing services to builders jointly with any companies that install  
16 improvements that are subject to Title 24 HERS field verification or diagnostic testing.

17           16.    In the event that a HERS rater employed by EnergySense, Inc. determines  
18 that an installation has failed the required Title 24 HERS standards, retesting of the  
19 installation by an EnergySense rater is paid for by the builder and not by the installing  
20 company.

21           17.    The use of bid forms bearing EnergySense's name in the letterhead by the  
22 Concord, California division of Coast Insulation Contractors, Inc., was done on the sole  
23 initiative of that installing division, without my knowledge or approval. The bid forms  
24 incorrectly identify EnergySense as a division of Masco Contractor Services.

25           18.    I have reviewed a draft of the Declaration of Vicki Rule that I understand  
26 Complainants may file in this proceeding. Contrary to Ms. Rule's declaration, the  
27 meeting that she references occurred on March 5, 2008, not April 2007. The purpose of  
28 the meeting was to assist Del Valle Capital Corp. in understanding the process for

1 obtaining Energy Star credits. At that meeting, Dave Hegarty, the principal of  
2 Complainant Duct Testers, Inc., became hostile, claiming that EnergySense could not  
3 perform Title 24 HERS testing because of a "conflict of interest." At no time during that  
4 meeting or otherwise, did I become "strangely enraged" or "angry." Instead, it was Mr.  
5 Hegarty who behaved in that fashion. I also never said that "EnergySense was not in any  
6 way affiliated with Masco," and I have no recollection of stating to Ms. Rule that I had  
7 "a letter from Bill Pennington of the C.E.C. stating that there was no conflict with  
8 EnergySense inspecting installations by other Masco entities." If I made a statement  
9 about the existence of such a letter, that would have been in error. Instead, I stated that  
10 EnergySense was a separate corporation owned by Masco, and that EnergySense and the  
11 HERS raters employed by EnergySense complied with the HERS conflict of interest  
12 requirements.

13 19. Prior to my employment as Division Manager of EnergySense, Inc. in  
14 March 2008, I was employed by BuildLogix, a wholly-owned subsidiary of Masco  
15 Corporation. While employed by BuildLogix, Ms. Rule contacted me on occasion to  
16 assist her with resolving matters regarding work performed by other Masco subsidiaries  
17 at the Del Valle project in Isleton, California. However, after I began my employment as  
18 Division Manager of EnergySense, Inc., neither I or EnergySense, Inc. ever assisted Ms.  
19 Rule or Del Valle Capital Corp. in resolving "problems with any of the other trades  
20 provided by Masco subsidiaries" on that or any other project.

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I swear or affirm, under penalty of perjury under the laws of the State of the California, that all facts set forth herein are true and correct.

FURTHER AFFIANT SAYETH NOT.

Executed this 27 day of March, 2009.

  
\_\_\_\_\_  
Jaime Padron

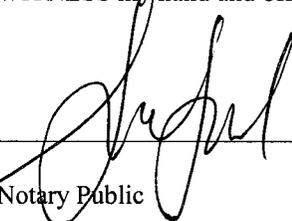
State of California )

County of Stanislaus )

On March 27, 2009, before me, Shawna Crawford Notary Public, personally appeared Jaime Padron, who provided to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity/~~ies~~, and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing is true and correct.

WITNESS my hand and official seal.

  
\_\_\_\_\_  
Notary Public (Seal)



# **EXHIBIT 1**

July 25, 2008

Jaime Padron CCNJP285383  
EnergySense  
1441 Coldwell Ave Ste D  
Modesto, California 95350

**YOUR ATTENTION IS REQUIRED REGARDING THE FOLLOWING MATTER**

Dear Jaime:

I am informing you that CHEERS has received a complaint against EnergySense, charging violation of the conflict of interest provisions specified in the California Code of Regulations, Title 20, Chapter 4, Article 8, Sections 1670 through 1675 (California Home Energy Rating System Program). The complaint alleges that EnergySense is a subsidiary of Masco Corporation and as such some of the work performed by raters employed by EnergySense violates the independent entity definition and is not allowable under State law. These allegations are not necessarily directed at the performance of individual raters in the employ of EnergySense, however, if such a relationship exists between EnergySense and Masco Corporation or one or more Masco subsidiaries, then the right of any EnergySense rater to perform Title24 HERS verification under CHEERS' authority to certify raters, may be in question. It is CHEERS' responsibility to confirm that Raters whom we certify are in compliance with these requirements.

The specific issue in question relates to the installation of measures required for compliance with Title 24 by a contractor that is related to the HERS Rater. For example: a rater who verifies Quality Installation of Insulation cannot be related to the installing contractor. This rule applies to all HERS-verified features and all raters providing verification services involving compliance with Title 24.

Your Rater certification through CHEERS is as an individual and the agreement that you signed includes the following provisions:

- HERS RATER shall comply with all applicable federal, state and local laws and regulations.
- HERS RATER acknowledges that HERS RATER has read California Code of Regulations, Title 20, Chapter 4, Article 8, Sections 1670-1675 ("Regulations"), a copy of which is attached (attachment 5) and incorporated herein by reference, understands the Regulations and agrees to provide home energy rating, field verification services and diagnostic testing services in compliance with the Regulations. HERS RATER agrees to comply with the conflict of interest requirements as specified in Section 1673(i) of the Regulations.

**A copy of your signed agreement is enclosed.**

For your reference, the restricted relationships are described in the following information extracted from Title 20. These apply to verifications performed by all Raters certified by CHEERS:

- Section 1671. Definitions.
  - o Financial Interest means an ownership interest, debt agreement or employer/employee relationship. Financial interest does not include ownership of less than 5% of the outstanding equity securities of a publically traded corporation.
  - o Independent Entity means having no financial interest in, and not advocating or recommending the use of any product or service as a means of gaining increased business with, firms or persons specified in Section 1673(i).
- Section 1673. Requirements for Providers, subsection (i) (2).
  - o Providers and raters shall be independent entities from the builder and from the subcontractor installer of energy efficiency improvements field verified or diagnostically tested.

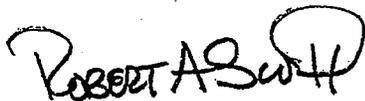
**A RESPONSE TO THIS INQUIRY IS REQUIRED!**

Using the enclosed VERIFICATION OF RATER AGREEMENT, CHEERS requests that you verify acceptance of the terms and conditions of your agreement with CHEERS as specified in the latest Rater Agreement. A copy of your most recent signed agreement is enclosed. If you are unable or unwilling to verify acceptance of the terms and conditions of you agreement with CHEERS then your certification will be suspended pending further review and action.

**YOU MUST REPLY WITHIN 10 DAYS FROM THE DATE OF RECEIPT OF THIS NOTICE TO AVOID SUSPENSION.**

If you have any questions or require additional information, please contact me at (800) 424-3377.

Sincerely,



Robert A. Scott, CHEERS  
Executive Director

Attachments

**VERIFICATION OF RATER AGREEMENT**

I have reviewed a copy of the current *CHEERS® TITLE-24/RESIDENTIAL NEW CONSTRUCTION RATER RENEWAL AGREEMENT* that contains my signature and verify that I am in compliance with its terms and conditions.

Jaime Padron  
Printed Name

  
Signature

9/3/08  
Date

SONNENSCHN NATH & ROSENTHAL LLP  
525 MARKET STREET, 26<sup>TH</sup> FLOOR  
SAN FRANCISCO, CALIFORNIA 94105  
(415) 882-5000

**PROOF OF SERVICE**

*California Living & Energy v. MASCO Corporation*  
Docket No. 08-CRI-01

I, Diane Donner, hereby declare:

I am employed in the City and County of San Francisco, California in the office of a member of the bar of this court and at whose direction the following service was made. I am over the age of eighteen years and not a party to the within action. My business address is Sonnenschein Nath & Rosenthal, 525 Market Street, 26<sup>th</sup> Floor, San Francisco, California 94105.

On March 27, 2009, I served the following documents, filed electronically with the State of California Energy Resources Conservation and Development Commission, and described as

1. **Affidavit of David Bell**
2. **Affidavit of Jim Brewer**
3. **Affidavit of Israel Calleros**
4. **Affidavit of Dan Calton**
5. **Affidavit of Mark Curry**
6. **Affidavit of Richard A. Davenport**
7. **Affidavit of Steven Heim**
8. **Affidavit of Jaime Padron**
9. **Affidavit of Richard Smith**
10. **Affidavit of Steve Weber**
11. **Affidavit of Sharon Werner**
12. **Affidavit of Timothy Williams**

on the interested parties in this action by placing a true copy thereof, on the above date, enclosed in a sealed envelope, following the ordinary business practice of Sonnenschein Nath & Rosenthal LLP, addressed as follows:

|                                      |                    |
|--------------------------------------|--------------------|
| Brett L. Dickerson (via e-mail also) | Dave Hegarty       |
| Gianelli & Associates PLC            | Duct Testers, Inc. |
| 1014 16th Street                     | P.O. Box 266       |
| P.O. Box 3212                        | Ripon, CA 95366    |
| Modesto, CA 95353                    |                    |

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Carol A. Davis  
CHEERS Legal Counsel  
3009 Palos Verdes Drive West  
Palos Verdes Estates, CA 90274

Galo LeBron, CEO  
Energy Inspectors  
1036 Commerce Street, Suite B  
San Marco, CA 93078

John Richau, HERS Rater  
Certified Energy Consulting  
4782 N. Fruit Avenue  
Fresno, CA 93705

Mike Hodgson  
ConSol  
7407 Tam O'Shanter Drive  
Stockton, CA 95210-3370

Mike Bachand  
California Certified Energy Rating &  
Testing Services (CalCERTS)  
31 Natoma Street, Suite 120  
Folsom, CA 95630

Randel Riedel  
California Building Performance  
Contractors Association (CBPCA)  
1000 Broadway, Suite 410  
Oakland, CA 94607

Robert Scott  
California Home Energy Efficiency  
Rating System (CHEERS)  
20422 Beach Boulevard  
Huntington Beach, CA 92648

Bill Lilly, President  
California Living & Energy  
3015 Dale Court  
Ceres, CA 95307

- U.S. MAIL: I am personally and readily familiar with the business practice of Sonnenschein Nath & Rosenthal for collection and processing of correspondence for mailing with the United States Postal Service, pursuant to which mail placed for collection at designated stations in the ordinary course of business is deposited the same day, proper postage prepaid, with the United States Postal Service.
- FACSIMILE TRANSMISSION: I caused such document to be sent by facsimile transmission at the above-listed fax number for the party.
- FEDERAL EXPRESS: I served the within document in a sealed Federal Express envelope with delivery fees provided for and deposited in a facility regularly maintained by Federal Express.
- HAND DELIVERY: I caused such document to be served by hand delivery.

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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, and that this declaration was executed on March 27, 2009, at San Francisco, California.

  
\_\_\_\_\_  
DIANE VIVIAN DONNER

[27282008]

SONNENSCHN NATH & ROSENTHAL LLP  
525 MARKET STREET, 26<sup>TH</sup> FLOOR  
SAN FRANCISCO, CALIFORNIA 94105  
(415) 882-5000