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STEVEN H. FRANKEL (State Bar No. 171919)  
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<b>DOCKET</b>	
<b>08-CRI-1</b>	
DATE	MAR 24 2009
RECD.	MAR 27 2009

BRETT A. CRAWFORD  
SONNENSCHN NATH & ROSENTHAL LLP  
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Attorneys for Respondents  
MASCO CORPORATION and ENERGYSSENSE, INC.

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

CALIFORNIA LIVING & ENERGY (a  
division of William Lilly & Associates, Inc.)  
and DUCT TESTERS, INC.,

Docket Number 08-CRI-01

Complainants,

**Affidavit of Richard A. Davenport**

vs.

MASCO CORPORATION and  
ENERGYSSENSE, INC.,  
Respondents.

Being first duly sworn under oath, Richard A. Davenport deposes and states as follows:

1. Since November 2007, I have been Vice President-Building Science of Masco Home Services, Inc., a wholly-owned subsidiary of Masco Corporation. I have personal knowledge of all facts set forth below. In my capacity as Vice President-

1 Building Science for Masco Home Services, Inc., I have oversight responsibility for the  
2 company's Environments For Living® program.

3 2. I have never been an officer, director, shareholder or employee of  
4 EnergySense, Inc. or of Masco Contractor Services, Inc. I have never directed or  
5 otherwise managed the operations of EnergySense, Inc. or of Masco Contractor Services,  
6 Inc.

7 3. Although at times I have been previously identified as the Vice President  
8 of Marketing for Masco Contractor Services, I have never occupied any corporate officer  
9 or director position with Masco Contractor Services. In fact, the name "Masco  
10 Contractor Services" does not refer to a corporation or other legal entity. Rather, it is a  
11 service mark used by several separate companies that are subsidiaries of Masco  
12 Corporation.

13 4. The Environments For Living® program is an energy efficiency  
14 certification program operated by Masco Home Services, Inc. Home builder  
15 participation in the Environments For Living® program is voluntary and is not required  
16 by any statute or regulation.

17 5. On January 12, 2006, I participated in a meeting with Tom Hamilton, the  
18 executive director of the California Home Energy Efficiency Service ("CHEERS"), to  
19 discuss the potential impact of HERS testing of high quality installation of insulation on  
20 HERS raters employed by Masco installation subsidiaries. In that meeting, Hamilton  
21 expressed support for a proposal to establish a separate Masco subsidiary that would  
22 employ HERS raters who could perform Title 24 HERS field verification and diagnostic  
23 testing of insulation installed by separate Masco installation subsidiaries. At that time,  
24 Hamilton stated his belief that such an approach would comply with the HERS conflict of  
25 interest requirements, given (a) the regulations' application to individual raters rather  
26 than to their employers, and (b) the additional organizational, procedural and contractual  
27 protections Masco Corporation proposed to ensure the independence of the HERS raters  
28 that the new subsidiary would employ.

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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 24<sup>th</sup> day of March, 2009.

Richard A. Davenport

State of Florida ))

County of Volusia )

On March 24<sup>th</sup>, 2009 before me, BEVERLY MEEKS, Notary Public, personally appeared Richard A. Davenport, 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.

Beverly Meeks (Seal)

Notary Public



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  
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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  
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