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

Complainants,

vs.

MASCO CORPORATION and ENERGYSENSE, INC.,

Respondents.

Pursuant to the relevant sections of the California Code of Regulations, Complainants CALIFORNIA LIVING AND ENERGY and DUCTTESTERS, INC. hereby respectfully request that the California Energy Commission (hereinafter “the Commission”) issue subpoenas for the Production of Business Records to the entities described below.

I. COMMISSIONS AUTHORITY TO ISSUE SUBPOENAS

The Commission’s power to issue the requested subpoenas is reposed within Title 20, section 1203 of the California Code of Regulations. This section provides that the chairman or presiding member of the Commission may “[I]ssue subpoenas and subpoenas duces tecum at the direction of the Commission, on his motion or upon application of any party.”

II. IDENTIFICATION OF ENTITIES FROM WHOM THE COMMISSION IS REQUESTED TO SEEK DOCUMENTS

Complainants requests that documents be subpoenaed from the following entities:

1) The custodian of records of the California Home Energy Efficiency Rating Service (a.k.a “CHEERS”) located at 20422 Beach Blvd., Suite 235, Huntington Beach, CA, 92648;

2) The custodian of records of the California Energy Commission, located at 1516 Ninth Street, Sacramento, California, 95814.
III. IDENTIFICATION OF DOCUMENTS REQUESTED TO BE SOUGHT

Complainants respectfully request that the Commission issue subpoenas for the production of the following documents:

i) From the California Home Energy Efficiency Rating Service:

Any and all documents relating to any investigations conducted by the California Home Energy Efficiency Rating Service ("CHEERS") into alleged violations of Section 1673(i) of Title 20 of the California Code of Regulations between Masco, any other Masco-related entity and Energy Sense Inc. relating to the field verification and diagnostic testing services Energy Sense performs for Title 24 compliance purposes under the California Home Energy Rating System Program (the "Alleged HERS Conflict of Interest Violations") described in Sections 1670 through 1675 of Title 20 of the California Code of Regulations, including, but not limited to:

1. Initial complaints;

2. All written communications between Complainants and CHEERS and/or their employees, agents or independent contractors regarding the Alleged HERS Conflict of Interest Violations;

3. All written correspondence between CHEERS and Masco, or any other Masco-related entity, regarding the Alleged HERS Conflict of Interest Violations, including, but not limited to, American National Services, Inc., Builder Services Group, Inc., Masco Contractor Services of California, Inc., Energy Sense, Inc., Coast Insulation, Western Insulation, Sacramento Building Products Company or any other Masco-related entity for whom Energy Sense, Inc. performs HERS field testing and verification services;

4. Any and all reports, notes, or other memoranda generated by CHEERS and/or their agents, employees or independent contractors upon completion of CHEERS' investigation into the Alleged HERS Conflict of Interest Violations;

5. Any and all correspondence between the California Energy Commission and CHEERS, their employees, agents or independent contractors concerning the Alleged HERS Conflict of Interest Violations; and

6. Any and all documents concerning funds provided by Masco or any other Masco-related entity for purposes of education and/or training for CHEERS raters.
ii) From the California Energy Commission:

Any and all documents (excluding any confidential internal deliberative documents) relating to any investigations conducted by the California Energy Commission ("CEC") into alleged violations of Section 1673(i) of Title 20 of the California Code of Regulations between Masco, any other Masco-related entity and Energy Sense Inc. relating to the field verification and diagnostic testing services Energy Sense performs for Title 24 compliance purposes under the California Home Energy Rating System Program (the "Alleged HERS Conflict of Interest Violations") described in Sections 1670 through 1675 of Title 20 of the California Code of Regulations, including, but not limited to:

1. Initial complaints, including, but not limited to, those lodged by either California Living and Energy and/or Duct Testers (hereinafter the "Complainants");

2. All written and/or electronic communications between the CEC and the Complainants regarding the Alleged HERS Conflict of Interest Violations;

3. All written correspondence between the CEC and Masco, or any other Masco-related entity, regarding the Alleged HERS Conflict of Interest Violations, including, but not limited to, American National Services, Inc., Builder Services Group, Inc., Masco Contractor Services of California, Inc., Energy Sense, Inc., Coast Insulation, Western Insulation, Sacramento Building Products Company or any other Masco-related entity for whom Energy Sense, Inc. performs HERS field verification and testing services;

4. Any and all CEC Board minutes, reports, notes, or other memoranda, written or electronic, generated by the CEC upon completion of the CEC's investigation into the Alleged HERS Conflict of Interest Violations;

5. Any and all correspondence between the California Home Energy Efficiency Rating Service ("CHEERS") and the CEC and/or agents, representatives and employees of the CEC concerning the Alleged HERS Conflict of Interest Violations;

6. Any and all documents concerning funds provided by Masco or any other Masco-related entity for purposes of education and/or training for CHEERS raters, including, but not limited to, any special training classes conducted by, for, or on behalf of Masco or a Masco-related entity including, but not limited to, American National Services, Inc., Builder Services Group, Inc., Masco Contractor Services of California, Inc., Energy Sense, Inc., Coast Insulation, Western Insulation, Sacramento Building Products Company;
7. Any and all CEC Board minutes or any other documents, notes or other written memoranda in which the topic of the employees, agents or representatives of Masco and/or any other Masco-related entities, American National Services, Inc., Builder Services Group, Inc., Masco Contractor Services of California, Inc., Energy Sense, Inc., Coast Insulation, Western Insulation, Sacramento Building Products Company, becoming CHEERS certified Raters were discussed;

8. Any and all CEC Board minutes, or any other documents, notes or other written or electronic memoranda concerning any discussion, consultation or conversation regarding attempts by Masco or any other Masco-related entity, including, but not limited to, American National Services, Inc., Builder Services Group, Inc., Masco Contractor Services of California, Inc., Energy Sense, Inc., Coast Insulation, Western Insulation, Sacramento Building Products Company to obtain HERS Rater certification; and

9. Any and all CEC Board minutes, or any other documents, notes or other written or electronic memoranda concerning any discussion, consultation or conversation regarding any de-certification of HERS Raters employed by Masco or any other Masco-related entity, including, but not limited to American National Services, Inc., Builder Services Group, Inc., Masco Contractor Services of California, Inc., Energy Sense, Inc., Coast Insulation, Western Insulation, Sacramento Building Products Company.

IV. STATEMENT OF WHY THE REQUESTED DOCUMENTS ARE NEEDED

The present matter has been an issue among the various entities going back as far as 2005. The Complainants have previously engaged in extensive communications with both CHEERS and the Commission regarding their concerns over these alleged conflicts of interest. Additionally, Complainants are informed and believe that investigations have been conducted into the alleged conflicts by both CHEERS and the Commission. However, the results of those investigations have never been disclosed to the Complainants. Whether these investigations were, in fact, carried out and, most importantly, the scope and results thereof are of pivotal importance as to the determination of conflicts of interest under the applicable standards enforced.
by the California Energy Commission and the manner in which HERS raters receive their
certifications.
Dated: February 7, 2009

GIANELLI & ASSOCIATES,
A Professional Law Corporation

By: BRET L. DICKERSON
Attorneys for California Living & Energy
PROOF OF SERVICE

I, NIVES GUTHRIE, declare:

I am a citizen of the United States and a resident of the County of Stanislaus, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1014 – 16th Street, Modesto, California 95354.

I am readily familiar with the business practice for collection and processing of correspondence, and on February 10, 2009 I served:

PETITIONERS FIRST AMENDED APPLICATION FOR SUBPOENA TO PRODUCE BUSINESS RECORDS.

in the following manner and addressed as set forth below;

XX Via United States Postal Service: Such correspondence was enclosed in a sealed envelope with postage thereon fully prepaid, addressed as stated below. I caused such envelope to be deposited in the U.S. Mail at Modesto, California through the firm’s ordinary course of business.

PLEASE SEE ATTACHMENT

** Via Federal Express. Such correspondence was enclosed in a sealed envelope with delivery charges thereon fully prepaid, addressed as stated below. I caused such envelope to be presented to Federal Express at my business address at or about 3:00 p.m. through the firm’s ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and if called could truthfully testify thereto.

Dated: February 10, 2009 at Modesto, California.

NIVES GUTHRIE
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Folsom, CA 95630

California Building Performance
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California Home Energy Efficiency
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