

DOCKET
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STATE OF CALIFORNIA RECEIVED BY

ENERGY RESOURCES CONSERVATION 2009 FEB 11 PM 2:52

CHIEF COUNSEL OFFICE
AND DEVELOPMENT COMMISSION

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

Docket Number 08-CRI-01

Complainants,

**PETITIONERS FIRST AMENDED
APPLICATION FOR SUBPOENA TO
PRODUCE BUSINESS RECORDS.**

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. herby 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.

GIANELLI & ASSOCIATES
A Professional Law Corporation
1014 16th Street/ P.O. Box 3212
Modesto, CA 95353
Telephone: (209) 521-6260

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

1 **ii) From the California Energy Commission:**

2 Any and all documents (excluding any confidential internal deliberative documents)
3 relating to any investigations conducted by the California Energy Commission ("CEC") into
4 alleged violations of Section 1673(i) of Title 20 of the California Code of Regulations between
5 Masco, any other Masco-related entity and Energy Sense Inc. relating to the field verification
6 and diagnostic testing services Energy Sense performs for Title 24 compliance purposes under
7 the California Home Energy Rating System Program (the "Alleged HERS Conflict of Interest
8 Violations") described in Sections 1670 through 1675 of Title 20 of the California Code of
9 Regulations, including, but not limited to:
10

- 11 1. Initial complaints, including, but not limited to, those lodged by either California
12 Living and Energy and/or Duct Testers (hereinafter the "Complainants");
- 13 2. All written and/or electronic communications between the CEC and the
14 Complainants regarding the Alleged HERS Conflict of Interest Violations;
- 15 3. All written correspondence between the CEC and Masco, or any other Masco-
16 related entity, regarding the Alleged HERS Conflict of Interest Violations,
17 including, but not limited to, American National Services, Inc., Builder Services
18 Group, Inc., Masco Contractor Services of California, Inc., Energy Sense, Inc.,
19 Coast Insulation, Western Insulation, Sacramento Building Products Company or
20 any other Masco-related entity for whom Energy Sense, Inc. performs HERS field
21 verification and testing services;
- 22 4. Any and all CEC Board minutes, reports, notes, or other memoranda, written or
23 electronic, generated by the CEC upon completion of the CEC's investigation into
24 the Alleged HERS Conflict of Interest Violations;
- 25 5. Any and all correspondence between the California Home Energy Efficiency
26 Rating Service ("CHEERS") and the CEC and/or agents, representatives and
27 employees of the CEC concerning the Alleged HERS Conflict of Interest
28 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;

- 1 7. Any and all CEC Board minutes or any other documents, notes or other written
2 memoranda in which the topic of the employees, agents or representatives of
3 Masco and/or any other Masco-related entities, American National Services, Inc.,
4 Builder Services Group, Inc., Masco Contractor Services of California, Inc.,
5 Energy Sense, Inc., Coast Insulation, Western Insulation, Sacramento Building
6 Products Company, becoming CHEERS certified Raters were discussed;
- 7 8. Any and all CEC Board minutes, or any other documents, notes or other written
8 or electronic memoranda concerning any discussion, consultation or conversation
9 regarding attempts by Masco or any other Masco-related entity, including, but not
10 limited to, American National Services, Inc., Builder Services Group, Inc., Masco
11 Contractor Services of California, Inc., Energy Sense, Inc., Coast Insulation,
12 Western Insulation, Sacramento Building Products Company to obtain HERS
13 Rater certification; and
- 14 9. Any and all CEC Board minutes, or any other documents, notes or other written
15 or electronic memoranda concerning any discussion, consultation or conversation
16 regarding any de-certification of HERS Raters employed by Masco or any other
17 Masco-related entity, including, but not limited to American National Services,
18 Inc., Builder Services Group, Inc., Masco Contractor Services of California, Inc.,
19 Energy Sense, Inc., Coast Insulation, Western Insulation, Sacramento Building
20 Products Company.

IV.
**STATEMENT OF WHY THE REQUESTED
DOCUMENTS ARE NEEDED**

21 The present matter has been an issue among the various entities going back as far as
22 2005. The Complainants have previously engaged in extensive communications with both
23 CHEERS and the Commission regarding their concerns over these alleged conflicts of interest.
24 Additionally, Complainants are informed and believe that investigations have been conducted
25 into the alleged conflicts by both CHEERS and the Commission. However, the results of those
26 investigations have never been disclosed to the Complainants. Whether theses investigations
27 were, in fact, carried out and, most importantly, the scope and results thereof are of pivotal
28 important as to the determination of conflicts of interest under the applicable standards enforced

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by the California Energy Commission and the manner in which HERS raters receive their
certifications.

Dated: February 9, 2009

GIANELLI & ASSOCIATES,
A Professional Law Corporation

By: 

BRETT L. DICKERSON
Attorneys for California Living & Energy

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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 BUSINES 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

- 1 Dockets Unit
- 2 California Energy Commission
- 3 1516 Ninth Street, MS 4
- 4 Sacramento, CA 95814
- 5 STEVEN S. FRANKEL
- 6 Sonnenschein Nath & Rosenthal LLP
- 7 525 Market Street, 26th Floor
- 8 San Francisco, CA 94105-2708
- 9 Carol A. Davis
- 10 CHEERS Legal Counsel
- 11 3009 Palos Verdes Drive West
- 12 Palos Verde Estates, CA 90274
- 13 Certified Energy Consulting
- 14 Attn: John Richau, HERS Rater
- 15 4782 N. Fruit Avenue
- 16 Fresno, CA 93705
- 17 California Certified Energy Rating &
- 18 Testing Services (CalCERTS)
- 19 Attn: Mike Bachand
- 20 31 Natoma Street, Suite 120
- 21 Folsom, CA 95630
- 22 California Building Performance
- 23 Contractors Association (CBPCA)
- 24 Attn: Randel Riedel
- 25 1000 Broadway, Suite 410
- 26 Oakland, CA 94607
- 27 California Home Energy Efficiency
- 28 Rating System (CHEERS)
- Attn: Robert Scott
- 20422 Beach Blvd.
- Huntington Beach, CA 92648
- Duct Testers, Inc.
- Attn: Dave Hegarty
- P.O. Box 266
- Ripon, CA 95366
- Energy Inspectors
- Attn: Galo LeBron, CEO
- 1036 Commerce Street, Suite B
- San Marcos, CA 92078

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ConSol
Attn: Mike Hodgson
7407 Tam O'Shanter Drive
Stockton, CA 95310-3370

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