

DOCKET

08-CRI-01

DATE MAR 11 2009

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STATE OF CALIFORNIA

ENERGY RESOURCES CONSERVATION

AND DEVELOPMENT COMMISSION

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

Complainants,

vs.

MASCO CORPORATION and
ENERGYSENSE, INC.,

Respondents.

Docket Number 08-CRI-01

**RESPONDENTS MASCO
CORPORATION'S AND
ENERGYSENSE, INC.'S
RESPONSES TO COMPLAINANTS'
SUPPLEMENTAL
INTERROGATORIES AND
REQUEST FOR PRODUCTION OF
DOCUMENTS**

Respondents Masco Corporation and EnergySense, Inc. (hereinafter referred to as "Masco" or "EnergySense," respectively, or "Respondents") hereby respond to the Complainants' Supplemental Interrogatories and Request for Production of Documents ("Supplemental Requests"), dated February 25, 2009.

GENERAL OBJECTIONS AND RESERVATIONS

Respondents reserve their right to rely on any information or other evidence which may develop or come to their attention at a later time. Respondents' objections as set forth herein are made without prejudice to Respondents' right to assert further objections or responses should Respondents discover additional grounds for such objections or responses. Respondents make the following general objections to each Supplemental Request. The assertion of the same, similar, or additional objections, or the provision of any responses to any of these Supplemental Requests, shall not waive any of these objections as set forth below:

1 A. Respondents object to each Supplemental Request on the grounds that they are
2 untimely. Respondents have previously responded to numerous requests for information and
3 documents from Complainants following the November 2008 initial pre-hearing conference.
4 Served on February 27, 2009, less than three weeks before the hearing in this proceeding is set
5 to commence, the Supplemental Requests are completely new requests that Complainants had
6 the opportunity to propound immediately following the initial pre-hearing conference.
7 However, Complainants never did so. By being compelled to respond to the untimely
8 Supplemental Requests on an expedited basis, Respondents' hearing preparation is being unduly
9 and unfairly prejudiced.

10 B. Respondents object to each Supplemental Request to the extent it seeks information
11 protected from disclosure by any applicable privilege, including, without limitation, the
12 attorney-client privilege, the work product privilege, the mediation privilege, or any other
13 privilege or doctrine protecting information and/or documents from disclosure.

14 C. Respondents object to each Supplemental Request to the extent it seeks information
15 that is private and/or confidential and constitutes proprietary, business, trade secret, financial or
16 commercially sensitive information of Respondents and/or third parties.

17 D. Respondents object to each Supplemental Request to the extent it seeks information
18 that is neither relevant nor reasonably calculated to lead to the discovery of relevant and
19 admissible evidence.

20 E. Respondents object to each Supplemental Request to the extent it purports to seek
21 documents that are not in Respondents' possession, custody or control or are equally or more
22 readily available to Complainants.

23 F. Respondents object to each Supplemental Request to the extent that it is vague,
24 unclear, ambiguous and/or capable of multiple interpretations.

25 G. Respondents object to each Supplemental Request to the extent that it is overly
26 broad and/or responding thereto would be unduly burdensome.

RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS FROM MASCO
CORPORATION

REQUEST NO. 1:

All documents identifying the terms and conditions of MASCO's acquisition of Energy Sense, Inc. as a subsidiary of MASCO.

RESPONSE TO REQUEST NO. 1:

Masco objects to this request on the grounds that it is vague, overly broad and not relevant or reasonably calculated to lead to the discovery of relevant and admissible evidence. The relationship between Masco and EnergySense is irrelevant to the question presented in this proceeding: whether HERS raters employed by EnergySense comply with the HERS conflict of interest regulations. Notwithstanding those objections and without waiver thereof, Masco states that EnergySense, Inc. was not acquired by Masco. Instead, Masco caused EnergySense, Inc. to be incorporated as a Delaware corporation on August 11, 2006. A true and correct copy of EnergySense's Delaware certificate of incorporation is provided at Tab 1. EnergySense, Inc.'s by-laws have been previously produced.

REQUEST NO. 2:

Any and all documents concerning the inclusion of the Financial Performance of Energy Sense, Inc. into the financial statements of MASCO for the fiscal years ending December 31, 2002 through and including December 31, 2008, including, but not limited to those contained in MASCO's Annual Reports and Form 10-Ks. In this and all following document demands and Special Interrogatories, the term "Financial Performance" shall include, but not be limited to: 1) Net Sales; 2) Operating Profit; 3) Income Before Taxes; 4) Net income; 5) Depreciation & Amortization; 6) Working Capital; 7) Assets; 8) Liabilities, and 9) Shareholder's Equity.

RESPONSE TO REQUEST NO. 2:

Masco objects to this request on the grounds that it is vague, compound, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant and admissible evidence. The inclusion of the financial performance of EnergySense in Masco's

1 financial statements is irrelevant to the question presented in this proceeding: whether HERS
2 raters employed by EnergySense comply with the HERS conflict of interest regulations.
3 Notwithstanding those objections and without waiver thereof, Masco states that as a wholly-
4 owned subsidiary of Masco, EnergySense's financial performance has been included in Masco's
5 consolidated financial statements since EnergySense commenced operations. Those consolidated
6 financial statements are included in Masco's publicly available Annual Reports and Form 10-Ks
7 on file with the Securities and Exchange Commission.

8 **REQUEST NO. 3:**

9 Any and all documents concerning the inclusion of the Financial Performance of Masco
10 Building Products into the financial statements of MASCO for the fiscal years ending December
11 31, 2002 through and including December 31, 2008, including, but not limited to, those
12 contained in MASCO's Annual Reports and Form 10-Ks.

13 **RESPONSE TO REQUEST NO. 3:**

14 Masco objects to this request on the grounds that it is vague, overly broad, unduly
15 burdensome and not reasonably calculated to lead to the discovery of relevant and admissible
16 evidence. The financial performance of Masco Building Products is irrelevant to the question
17 presented in this proceeding: whether HERS raters employed by EnergySense comply with the
18 HERS conflict of interest regulations. Notwithstanding those objections and without waiver
19 thereof, Masco states that Masco Building Products Corp. is a Masco subsidiary that previously
20 had an ownership interest in a company that manufactured door locks. However, that door lock
21 business has been sold and Masco Building Products Corp. has no connection to the business or
22 operations of EnergySense, Inc.

23 **REQUEST NO. 4:**

24 Any and all documents concerning any loans, cash advances or any other manner of
25 financing provided by MASCO or any other MASCO-related entity to Energy Sense, Inc.

26 **RESPONSE TO REQUEST NO. 4:**

27 Masco objects to this request on the grounds that it is vague, overly broad, unduly
28 burdensome and not reasonably calculated to lead to the discovery of relevant and admissible

evidence. Whether Masco or any other Masco-related entity has provided loans, cash advances or any other manner of financing to EnergySense is irrelevant to the question presented in this proceeding: whether HERS raters employed by EnergySense comply with the HERS conflict of interest regulations. Notwithstanding those objections and without waiver thereof, Masco states that EnergySense has received no loans, cash advances or any other financing from any Masco installation subsidiary whose work has been field tested or verified under Title 24 by a HERS rater employed by EnergySense.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS FROM
ENERGYSENSE, INC.

REQUEST NO. 1:

All year-end financial statements generated by Energy Sense, Inc. subsequent to their acquisition by MASCO, including, but not limited to, those contained in MASCO's Annual Reports and Form 10-Ks. Any and all documents concerning the inclusion of the Financial Performance of Energy Sense, Inc. into the financial statements of Masco Contractor Services for the fiscal years ending December 31, including, but not limited to, those contained in MASCO's Annual Reports and Form 10-Ks.

RESPONSE TO REQUEST NO. 1:

EnergySense objects to this request on the grounds that it is vague, compound, overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of relevant and admissible evidence. EnergySense further objects to this request on the grounds that it seeks confidential and proprietary business and financial information, the disclosure of which would cause significant competitive harm to EnergySense. The financial performance of Masco, EnergySense and Masco Contractor Services (which is not a legal entity) is irrelevant to the question presented in this proceeding: whether HERS raters employed by EnergySense comply with the HERS conflict of interest regulations.

RESPONSES TO SUPPLEMENTAL SPECIAL INTERROGATORIES FROM MASCO
CORPORATION

INTERROGATORY NO. 1:

Did you acquire Energy Sense, Inc as a subsidiary?

RESPONSE TO INTERROGATORY NO. 1:

No.

INTERROGATORY NO. 2:

If the answer to the preceding Interrogatory is "No", please identify the nature of any relationship, financial or otherwise, between MASCO and Energy Sense, Inc.

RESPONSE TO INTERROGATORY NO. 2:

Masco formed EnergySense, Inc. as its wholly-owned subsidiary when Masco caused EnergySense, Inc. to be incorporated in Delaware on August 11, 2006.

INTERROGATORY NO. 3:

Was the Financial Performance of Energy Sense, Inc. included in the financial figures contained in MASCO's Annual Reports and/or Form 10-Ks for any of the fiscal years ending December 31, 2002 through and including December 31, 2008?

RESPONSE TO INTERROGATORY NO. 3:

Masco objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of relevant and admissible evidence. The financial performance of Masco and EnergySense is irrelevant to the question presented in this proceeding: whether HERS raters employed by EnergySense comply with the HERS conflict of interest regulations. Notwithstanding that objection and without waiver thereof, Masco states that EnergySense's Financial Performance has been included in the consolidated financial statements included in Masco's Annual Reports and Form 10-Ks since EnergySense began operations.

INTERROGATORY NO. 4:

If the answer to the proceeding Interrogatory is “Yes”, please identify the fiscal years in which Energy Sense Inc.’s Financial Performance was included in the financial figures contained in MASCO’s Annual Report and Form 10-Ks.

RESPONSE TO INTERROGATORY NO. 4:

Masco objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of relevant and admissible evidence. The financial performance of Masco and EnergySense is irrelevant to the question presented in this proceeding: whether HERS raters employed by EnergySense comply with the HERS conflict of interest regulations.

Notwithstanding that objection and without waiver thereof, Masco states that EnergySense’s Financial Performance has been included in Masco’s consolidated financial statements included in Masco’s Annual Reports and Form 10-Ks for fiscal years 2007 and 2008.

INTERROGATORY NO. 5:

Was the Financial Performance of Masco Contractor Services included in the financial figures contained in MASCO’s Annual Reports and Form 10-Ks for any of the fiscal years ending December 31, 2002 through and including December 31, 2008?

RESPONSE TO INTERROGATORY NO. 5:

Masco objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of relevant and admissible evidence. The financial performance of Masco and Masco Contractor Services is irrelevant to the question presented in this proceeding: whether HERS raters employed by EnergySense comply with the HERS conflict of interest regulations. Notwithstanding that objection and without waiver thereof, Masco states that Masco Contractor Services is not a legal entity. However, the financial performance of the Masco installation subsidiaries operating in California—including Western Insulation, LP, Coast Insulation Contractors, Inc., Sacramento Insulation Contractors and Masco Contractor Services of California, Inc.—have been included in Masco’s consolidated annual financial statements included in Masco’s Annual Reports and Form 10-Ks since those companies began operations or were acquired by Masco.

INTERROGATORY NO. 6:

Does MASCO or any other MASCO-related entity sell or install Milgard windows in California?

RESPONSE TO INTERROGATORY NO. 6:

Yes.

INTERROGATORY NO. 7:

Does MASCO or any other MASCO-related entity install insulation in California?

RESPONSE TO INTERROGATORY NO. 7:

Yes.

INTERROGATORY NO. 8:

Does MASCO or any other MASCO-related entity sell or install ductwork in California?

RESPONSE TO INTERROGATORY NO. 8:

No.

INTERROGATORY NO. 9:

Is the installation of Milgard windows in California ever subject to Title 24 HERS testing?

RESPONSE TO INTERROGATORY NO. 9:

Masco does not believe that the installation of Milgard windows in California is subject to testing by a HERS rater under Title 24.

INTERROGATORY NO. 10:

Is the installation of insulation in California ever subject to Title 24 HERS testing?

RESPONSE TO INTERROGATORY NO. 10:

Masco believes that high quality installation of insulation in California can be subject to testing by a HERS rater under Title 24.

INTERROGATORY NO. 11:

Is the installations of ductwork in California ever subject to Title 24 HERS testing?

RESPONSE TO INTERROGATORY NO. 11:

Masco believes that the installation of ductwork in California can be subject to testing by a HERS rater under Title 24.

INTERROGATORY NO. 12:

Has any MASCO-related entity, including, but not limited to Energy Sense, Inc ever conducted Title 24/HERS testing of a home improved with Milgard windows?

RESPONSE TO INTERROGATORY NO. 12:

Masco does not know whether any HERS rater employed by a Masco-related entity, including, but not limited to EnergySense, Inc., has conducted Title 24/HERS testing of a home improved with Milgard windows in California.

INTERROGATORY NO. 13:

Has any MASCO-related entity, including, but not limited to Energy Sense, Inc., ever conducted Title 24/HERS testing of a home improved with insulation sold or installed by a MASCO-related entity?

RESPONSE TO INTERROGATORY NO. 13:

Masco believes that HERS raters employed by EnergySense, Inc. have conducted Title 24/HERS testing of homes improved with installation installed by separate Masco installation subsidiaries operating in California.

INTERROGATORY NO. 14:

Has any MASCO-related entity, including, but not limited to Energy Sense, Inc., ever conducted Title 24/HERS testing of a home improved with ductwork sold or installed by MASCO-related entity.

RESPONSE TO INTERROGATORY NO. 14:

Masco does not believe that any HERS raters employed by any Masco-related entity, including, but not limited to EnergySense, Inc., has conducted Title 24/HERS testing of a home improved with ductwork sold or installed by a Masco-related entity in California.

INTERROGATORY NO. 15:

Has Rick Davenport, whom Claimants are informed and believe is the Vice President of Masco Home Services, Inc., ever occupied any position as either an officer, director or shareholder, of Energy Sense, Inc. between 2002 and the present?

RESPONSE TO INTERROGATORY NO. 15:

No.

INTERROGATORY NO. 16:

Has Rick Davenport, whom Claimants are informed and believe is the Vice President of Masco Home Services, Inc. ever occupied any position as either an officer, director or shareholder, of Masco Contractor Services between 2002 and the present?

RESPONSE TO INTERROGATORY NO. 16:

Masco objects to this interrogatory on the grounds that it is vague, ambiguous and not reasonably calculated to lead to the discovery of relevant and admissible evidence.

Notwithstanding that objection and without waiver thereof, Masco states that "Masco Contractor Services" is not a corporation, and responds: No.

INTERROGATORY NO. 17:

Please identify all positions that David Bell has held as either an officer, director or shareholder of any Masco-related entity between 2002 through the present.

RESPONSE TO INTERROGATORY NO. 17:

President, EnergySense, Inc., August 2006 to present.

Masco Corporation shareholder

RESPONSES TO SUPPLEMENTAL SPECIAL INTERROGATORIES FROM
ENERGYSENSE, INC.

INTERROGATORY NO. 1:

Do you provide information concerning your Financial Performance to MASCO?

RESPONSE TO INTERROGATORY NO. 1:

EnergySense objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of relevant and admissible evidence. The financial performance of

1 EnergySense is irrelevant to the question presented in this proceeding: whether HERS raters
2 employed by EnergySense comply with the HERS conflict of interest regulations.
3 Notwithstanding that objection and without waiver thereof, EnergySense states that it provides
4 information concerning its Financial Performance to Masco.

5 **INTERROGATORY NO. 2:**

6 Do you provide information relating to your Financial Performance to Masco Contractor
7 Services?

8 **RESPONSE TO INTERROGATORY NO. 2:**

9 EnergySense objects to this request on the grounds that it is vague and not reasonably
10 calculated to lead to the discovery of relevant and admissible evidence. The financial
11 performance of EnergySense is irrelevant to the question presented in this proceeding: whether
12 HERS raters employed by EnergySense comply with the HERS conflict of interest regulations.
13 Notwithstanding that objection and without waiver thereof, EnergySense states that there is no
14 corporation named "Masco Contractor Services," and responds: No.

15 **INTERROGATORY NO. 3:**

16 Has Energy Sense, Inc. performed any Title 24/HERS testing on any structure in California
17 which incorporated Milgard windows?

18 **RESPONSE TO INTERROGATORY NO. 3:**

19 EnergySense objects to this request on the grounds that it is not reasonably calculated to
20 lead to the discovery of relevant and admissible evidence. Notwithstanding those objections and
21 without waiver thereof, EnergySense states that it has not yet had sufficient time to review its
22 records to determine whether any HERS rater employed by EnergySense has performed Title
23 24/HERS testing on any structure in California which incorporated Milgard windows. In any
24 event, whether Milgard windows are present or not in a structure tested by HERS raters
25 employed by EnergySense is irrelevant to this proceeding since Title 24 HERS field verification
26 and testing does not include any testing or verification of window installations.

INTERROGATORY NO. 4:

Has Energy Sense, Inc. performed any Title 24/HERS testing on any structure in California which incorporates insulation sold and/or installed by a MASCO-related entity?

RESPONSE TO INTERROGATORY NO. 4:

HERS raters employed by EnergySense have performed Title 24/HERS testing of California homes containing insulation installed by separate Masco installation subsidiaries.

INTERROGATORY NO. 5:

Has Energy Sense, Inc. performed any Title 24/HERS testing on any structure in California which incorporates ductwork sold and/or installed by a MASCO-related entity?

RESPONSE TO INTERROGATORY NO. 5:

HERS raters employed by EnergySense have not performed Title 24/HERS testing on California homes which incorporate ductwork sold/or installed by a Masco-related entity.

INTERROGATORY NO. 6:

Has Energy Sense, Inc. performed any Title 24/HERS testing on any structure in California which was built or improved, as a contractor or subcontractor, by a MASCO-related entity?

RESPONSE TO INTERROGATORY NO. 6:

HERS raters employed by EnergySense have performed Title 24/HERS testing of California homes on which separate Masco installation subsidiaries have made improvements under subcontracts with builders.

INTERROGATORY NO. 7:

Does Energy Sense, Inc. vary the pricing of their Title 24/HERS testing services based upon the installations they are testing having been carried out by a MASCO-related entity?

RESPONSE TO INTERROGATORY NO. 7:

EnergySense does not vary the pricing for the Title 24/HERS testing services provided by the HERS raters it employs based upon the installations they are testing having been carried out by a Masco related-entity.

INTERROGATORY NO. 8:

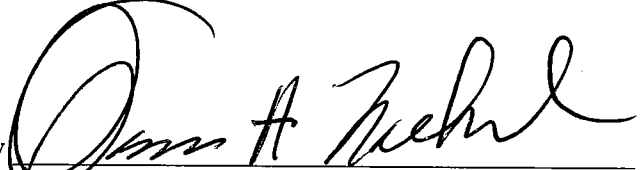
Please provide the fees charged by Energy Sense, Inc to carry out Title 24/HERS testing within the central San Joaquin Valley.

RESPONSE TO INTERROGATORY NO. 8:

EnergySense objects to this request on the grounds that it seeks confidential and proprietary business and financial information, the disclosure of which would cause significant competitive harm to EnergySense. That information is not relevant or reasonably calculated to lead to the discovery of relevant and admissible evidence in this proceeding. Notwithstanding those objections and without waiver thereof, EnergySense states that it sets the prices for the testing services provided by its HERS raters based upon prevailing market conditions and EnergySense's own revenue and profit goals.

Dated: March 11, 2008

SONNENSCHN NATH & ROSENTHAL LLP

By 

STEVEN H. FRANKEL (State Bar No. 171919)
SONNENSCHN NATH & ROSENTHAL LLP
525 Market Street, 26th Floor
San Francisco, CA 94105-2708
Telephone: (415) 882-2410
Facsimile: (415) 882-0300

Attorneys for Respondents
MASCO CORPORATION and
ENERGYSENSE, INC.

TAB 1

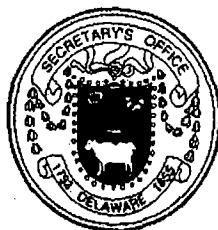
Delaware

PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "ENERGYSENSE, INC.", FILED IN THIS OFFICE ON THE ELEVENTH DAY OF AUGUST, A.D. 2006, AT 11:20 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



4203934 8100

060753800

Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 4968557

DATE: 08-11-06

MAS 00282

CERTIFICATE OF INCORPORATION

OF

ENERGYSENSE, INC.

1. The name of the corporation is: **EnergySense, Inc.**
2. The address of its registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.
3. The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.
4. The total number of shares of stock that the corporation shall have authority to issue is One Thousand (1,000) and the par value of each of such shares is One Dollar (\$1.00) amounting in the aggregate to One Thousand Dollars (\$1,000).
5. The name and mailing address of the incorporator is as follows:

Sharon A. Werner
Masco Corporation
21001 Van Born Road
Taylor, Michigan 48180
6. The corporation is to have perpetual existence.
7. The board of directors is authorized to make, alter, or repeal the Bylaws of the corporation. Election of directors need not be by ballot.

I, THE UNDERSIGNED, being the incorporator of the above-named corporation, for the purpose of forming a corporation pursuant to the General Corporation Law of the State of Delaware, do make this Certificate, hereby declaring and certifying that this is my act and deed and the facts herein stated are true and accordingly have hereunto set my hand this 10th day of August 2006.

Sharon A. Werner
Sharon A. Werner

State of Delaware
Secretary of State
Division of Corporations
Delivered 11:30 AM 08/11/2006
FILED 11:20 AM 08/11/2006
SRV 060753800 - 4203934 FILE

MAS 00283

PROOF OF SERVICE

California Living & Energy v. MASCO Corporation
ERCDC 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, 26th Floor, San Francisco, California 94105.

On March 11, 2009, I served the enclosed document, filed electronically with the State of California Energy Resources Conservation and Development Commission, and described as

**RESPONDENTS MASCO CORPORATION'S AND
ENERGYSENSE, INC.'S RESPONSES TO COMPLAINANTS'
SUPPLEMENTAL INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS**

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
Gianelli & Associates PLC
1014 16th Street
P.O. Box 3212
Modesto, CA 95353

Dave Hegarty
Duct Testers, Inc.
P.O. Box 266
Ripon, CA 95366

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

Galo LeBron, CEO
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Certified Energy Consulting
4782 N. Fruit Avenue
Fresno, CA 93705

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

1 Mike Bachand
2 California Certified Energy Rating &
3 Testing Services (CalCERTS)
4 31 Natoma Street, Suite 120
5 Folsom, CA 95630

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

6 Robert Scott
7 California Home Energy Efficiency
8 Rating System (CHEERS)
9 20422 Beach Boulevard
10 Huntington Beach, CA 92648

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

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

22 I declare under penalty of perjury under the laws of the State of California that the
23 foregoing is true and correct, and that this declaration was executed on March 11, 2009, at
24 San Francisco, California.

25 
26 DIANE VIVIAN DONNER

27 [27282008]