

DOCKET

08-CRI-1

DATE MAR 24 2009

RECD. MAR 27 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.,

Docket Number 08-CRI-01

Complainants,

Affidavit of Richard Smith

vs.

MASCO CORPORATION and
ENERGYSENSE, INC.,
Respondents.

Being first duly sworn under oath, Richard Smith deposes and states as follows:

1. I am the Manager of Masco Contractor Services of California, Inc. I have personal knowledge of all facts set forth below. In my capacity as Manager of Masco Contractor Services of California, Inc., I am responsible for overseeing the management, operations and performance of the company.

2. Masco Contractor Services of California, Inc. is an indirect wholly-owned subsidiary of Masco Corporation that also operates under the assumed names of "Paragon Schmid Building Products" and "Schmid Building Products."

1 3. Masco Contractor Services of California, Inc. installs insulation in
2 California homes.

3 4. Masco Contractor Services of California, Inc. does not install ductwork in
4 California homes, nor any other improvement (besides insulation) that is subject to Title
5 24 HERS field verification or testing.

6 5. Masco Contractor Services of California, Inc. does not receive direction
7 from Masco Corporation regarding insulation installation work or HERS testing governed
8 by Title 24 HERS requirements.

9 6. Masco Contractor Services of California, Inc. has provided no loans, cash
10 advances or any other financing to EnergySense, Inc.

11 7. Masco Contractor Services of California, Inc. provides invoicing and
12 payment collection services for EnergySense, Inc. in exchange for the ability to offer a
13 more comprehensive set of services to builders.

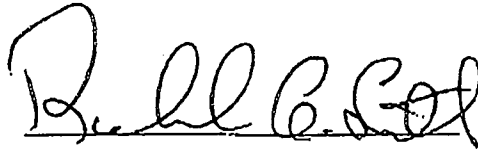
14 8. Bids submitted to builders by Masco Contractor Services of California,
15 Inc. for installation and for field verification and diagnostic testing by HERS raters
16 employed by EnergySense, Inc. are generally evaluated by the builders on a standalone
17 basis, allowing the builders to pick from a variety of service options.

18 9. Payments received by Masco Contractor Services of California, Inc. from
19 builders for field verification and testing services performed by a HERS rater employed
20 by EnergySense are passed through to EnergySense in their entirety without any
21 administrative or other charge subtracted from the total payment by Masco Contractor
22 Services of California, Inc.

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

1 FURTHER AFFIANT SAYETH NOT.

2 Executed this 24 day of March, 2009.

3
4 

5 Richard Smith

6 State of CALIFORNIA,,

7 County of SAN BERNARDINO

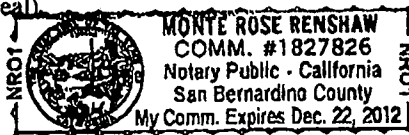
8 On March 24, 2009 before me, Monte Rose Renshaw, Notary Public, personally appeared
9 Richard Smith, who provided to me on the basis of satisfactory evidence to be the person(s) whose name(s)
10 is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in
11 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.

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

13 WITNESS my hand and official seal.

14
15 Monte Rose Renshaw (Seal)

16 Notary Public



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, 26th 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)
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
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

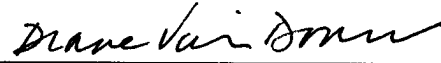
Randel Riedel
California Building Performance
Contractors Association (CBPCA)
1000 Broadway, Suite 410
Oakland, CA 94607

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.

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct, and that this declaration was executed on March 27, 2009, at
3 San Francisco, California.
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DIANE VIVIAN DONNER

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