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DOCKET

12-CA1-01

DATE FEB 13 2012

RECD. FEB 24 2012

February 13, 2012

Dennis L. Beck, Jr.
Senior Staff Counsel
California Energy Commission
1516 9th Street, MS-14
Sacramento, CA 95814

RECEIVED

FEB 15 2012

OFFICE OF CHIEF COUNSEL

Via Email & U.S. Mail

Re: Complaint Against and Request for Investigation of CalCERTS, Inc.

Dear Mr. Beck,

I write for the purpose of initiating a complaint against, and requesting an investigation of, CalCERTS, Inc., pursuant to California Code of Regulations Title 20 § 1675 and Title 20 § 1230 et seq. I also seek relief for my clients Erik Hoover and Patrick Davis, who were making their livings as HERS raters before being summarily decertified by CalCERTS and barred from continuing to work in their chosen field.

As more fully set forth below, my clients Hoover and Davis complain that CalCERTS has taken the "quality assurance" process described in the HERS regulations and transformed it unlawfully into a system of professional discipline that they administer. CalCERTS employees act as judge, jury, and executioner in terminating the ability of HERS raters to work. They take these drastic steps unfettered by the requirements of the HERS regulations themselves, by the procedural due process rules of the California and United States constitutions that apply to them, or by the basic rules of fairness and decency.

Although the HERS regulations provide the very authority for CalCERTS to act as providers in this industry, CalCERTS has ignored the quality assurance regulation that applies to HERS raters who are alleged to have made mistakes. Rather than simply record a failure in the registry, and perform additional quality assurance review over a period of 12 months, as the HERS regulations require, CalCERTS has imposed an entirely different penalty upon Hoover and Davis, by decertifying them as HERS raters. This is unlawful. Hoover and Davis are entitled to have the HERS regulations apply to their work, rather than the subjective rules of CalCERTS.

More egregiously, CalCERTS has imposed this drastic form of discipline in violation of procedural due process rules. Although CalCERTS apparently initiated an investigation of Hoover and Davis because a complaint had been filed against them, CalCERTS did not provide them with a copy of the complaint, or a description of the allegations contained in it. Moreover, CalCERTS did not provide Hoover and Davis any notice of any kind prior to their certification being suspended. According to the e-mail notice they received, their suspension was already effective by the time they received it. Hoover and Davis were provided no meaningful details about the reasons for their suspension. They were not provided with a meaningful opportunity for a hearing. They had no opportunity to challenge or dispute the CalCERTS quality assurance findings, and were in fact not even told what those findings were until after their professional certification had already been terminated. They had no opportunity to confront or cross-examine

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witnesses who accuse them. The decision to decertify Hoover and Davis was not made "on the record," so that Hoover and Davis could see the evidence and reasoning of the decision maker. In fact, they were told that if their lone interview with CalCERTS was to be recorded, Hoover and Davis would not be permitted to have a copy of the recording. Hoover and Davis were not notified of any opportunity to appeal the decision of CalCERTS

This method of imposing discipline upon HERS raters is unlawful and must be stopped. Accordingly, Erik Hoover and Patrick Davis respectfully request that the California Energy Commission take the following action:

1. Immediately reverse the decision of CalCERTS to decertify Erik Hoover and Patrick Davis. Hoover and Davis should be permitted to continue working as HERS raters until such time as (a) the HERS regulations have been applied to them as written, and (b) Hoover and Davis have been given due process prior to the removal of their right to work. Hoover and Davis have now been unable to work for nearly two months.
2. Investigate the way CalCERTS imposes discipline upon HERS raters who are alleged to have made mistakes.
3. Require CalCERTS to adopt a written discipline procedure that complies with the HERS regulations, and with the constitutional requirements of due process.

Details of these allegations, including supporting facts and law, are set forth below.

Sincerely,



David Haddock
Attorney for Erik Hoover and Patrick Davis

Erik Hoover and Patrick Davis respectfully submit the following complaint and request for investigation:

- I. The name, address, and telephone number of the person filing the complaint (complainant) or request for investigation (petitioner). California Code of Regulations Title 20 § 1231 (b)(1).**

The names, addresses, and telephone numbers of the complainants/petitioners are as follows:

Erik Hoover
JaaR Sales, Inc. dba Valley Duct Testing
2272 Sierra Meadows Dr., Suite A
Rocklin, CA 95677
916-624-2092

Patrick Davis
JaaR Sales, Inc. dba Valley Duct Testing
2272 Sierra Meadows Dr., Suite A
Rocklin, CA 95677
916-624-2092

They may also be contacted through their attorney at the following address:

David Haddock
P. O. Box 2501
Citrus Heights, CA 95611
916-420-5802
dave@davidhaddocklegal.com

- II. The name, address, and telephone number of the person allegedly violating the statute, regulation, order, or decision (respondent). Title 20 § 1231 (b)(2).**

CalCERTS
31 Natoma St Suite 120
Folsom, CA 95630
916-985-3400

III. Statement of the facts upon which the complaint or request for investigation is based.

a. Erik Hoover and Patrick Davis were granted "professional certification" by CalCERTS in 2009, and were authorized to work as HERS raters. *See* Hoover CalCERTS Certified Rater Agreement, attached hereto as Exhibit A, and Davis CalCERTS Certified Rater Agreement, attached hereto as Exhibit B.

b. At some point in time, complaints about Hoover and Davis were allegedly submitted to CalCERTS. *See* Letter of Attorney Andrew L. Collier, February 8, 2012, attached hereto as Exhibit C (exhibits to the letter omitted). Hoover and Davis have never received copies of the complaints.

c. On December 16, 2011, Hoover and Davis were notified by e-mail that they had allegedly failed a quality assurance review, and that they had been suspended for 15 days. *See* Hoover QA Review E-mail, attached hereto as Exhibit D; Davis QA Review E-mail, attached hereto as Exhibit E. The e-mail notices identified addresses where Hoover and Davis had allegedly failed quality assurance inspections, but the notices did not provide any data or describe any details about the alleged failures. *Id.* The notices indicated that if Hoover and Davis did not schedule a meeting with CalCERTS within 15 days they would be decertified, but the notices did not otherwise indicate that Hoover and Davis would be or could be subject to any additional discipline arising out of the alleged failures, other than the 15 day suspension that had already been imposed. *Id.*

d. Hoover and Davis attended interviews with CalCERTS to discuss the alleged quality assurance failures. CalCERTS did not allow Hoover and Davis to create audio recordings of the interviews. CalCERTS told Hoover and Davis that if the interviews were to be recorded, CalCERTS would record them and keep the only copy.

e. At the interviews, CalCERTS did not formally provide Hoover and Davis with any data, or give them any documents. CalCERTS employees rather questioned them about the work they had done without revealing the exact nature of the alleged errors. Hoover and Davis were not given the opportunity to examine any data, question any methods or procedures followed, or examine any witnesses. In fact, no witnesses were present at the interviews except for Hoover and Davis.

f. Following the interviews, Hoover and Davis were asked by e-mail whether they had any questions or comments based upon the interviews. Although Hoover and Davis had been told in their interviews what tests had failed quality assurance, they were not aware of what the specific numerical QA findings were, because the findings had never been revealed to them by CalCERTS. Hoover and Davis asked no questions.

g. On January 30, 2012, CalCERTS notified Hoover and Davis that they had been decertified. *See* Hoover Decertification Letter, attached hereto as Exhibit F; Davis Decertification Letter, attached hereto as Exhibit G. Although CalCERTS' internal quality

assurance procedure specifies that written reports of quality assurance review will be given to the raters, a written report was not provided to Hoover and Davis at this time. *See* CalCERTS Quality Assurance Program at ¶ 4, attached hereto as Exhibit H.

h. Hoover and Davis were not provided with a copy of the written report until their attorney requested it from CalCERTS' attorney. It was provided by CalCERTS' attorney on February 7, 2012. This is the first time Hoover and Davis were provided with any written detail regarding the alleged quality assurance failures, the nature of the charges against them, or the findings of CalCERTS in performing quality assurance review. At the time of this complaint Hoover and Davis still do not know the name of the complainant or the nature of the complaint that initiated this process.

i. The CalCERTS decertification letters relating to Hoover and Davis report that CalCERTS determined that Hoover's and Davis' errors were "egregious, establish a pattern, and are not rectifiable." *See* Hoover Decertification Letter, attached hereto as Exhibit F; Davis Decertification Letter, attached hereto as Exhibit G. However, neither the decertification letters, nor any other document that has been provided by CalCERTS provides any factual support or explanation of these findings.

IV. Statement indicating the statute, regulation, order, or decision upon which the complaint or request for investigation is based

The Fourteenth Amendment of the United States Constitution; Section 13 of article I of the California Constitution; Cal Public Resources Code § 25942; California Code of Regulations Title 20 § 1230 et seq. and Title 20 § 1675.

V. Action the complainant or petitioner desires the commission to take

As noted above, Erik Hoover and Patrick Davis respectfully request that the California Energy Commission take the following action:

- a. Immediately reverse the decision of CalCERTS to decertify Erik Hoover and Patrick Davis. Hoover and Davis should be permitted to continue working as HERS raters until such time as (a) the HERS regulations have been applied to them as written, and (b) Hoover and Davis have been given due process prior to the removal of their right to work. Hoover and Davis have now been unable to work for nearly two months.
- b. Investigate the way CalCERTS imposes discipline upon HERS raters who are alleged to have made mistakes.
- c. Require CalCERTS to adopt a written quality assurance procedure that complies with the HERS regulations, and with the constitutional requirements of due process.

VI. Authority under which the commission may take the action requested.

a. Regulatory Authority

California Code of Regulations Title 20 § 1675 and Title 20 § 1230 et seq. allow “any person” to file a complaint concerning violations of the HERS regulations found at California Code of Regulations Title 20 §§ 1670-1675, and more broadly, allow “any person” to allege a violation “of a statute, regulation, order, program, or decision adopted, administered, or enforced by the commission.”

Hoover and Davis allege that CalCERTS has violated and continues to violate the HERS regulations by the manner in which it imposes discipline on HERS raters. Specifically, Title 20 § 1673 (i)(3)(C) requires that when quality assurance evaluation shows that a HERS rater has failed to meet the standard for truth, accuracy, or completeness, the Provider is required to report the quality assurance failure in the Provider’s registry, and conduct additional quality assurance evaluations over a period of 12 months. At least in the case of Hoover and Davis, and perhaps more generally, CalCERTS has ignored this requirement in favor of its own internal policy of immediately suspending the HERS certification, thus preventing Hoover and Davis from working as HERS raters. Hoover and Davis were not provided with an additional 12 months of evaluations as the regulations require.

Given that life, liberty, and property is almost never at risk due to a HERS rater’s failure to meet the standard for truth, accuracy, or completeness, such a sudden and dramatic suspension of a right to work is unlikely to ever be justified.

b. Constitutional Authority

The Fourteenth Amendment of the United States Constitution provides in part that no state shall “deprive any person of life, liberty, or property, without due process of law.” Section 13 of article I of the California Constitution similarly provides in part that no person shall “. . . be deprived of life, liberty, or property without due process of law” This provision of the state constitution has been held to be identical in scope and purpose with the Fourteenth Amendment of the Federal Constitution. *Manford v. Singh*, 40 Cal. App. 700 (1919).

While this requirement to provide due process typically only applies to governmental actors, *see Shelley v. Kramer*, 334 U.S. 1 (1948), where sufficient entanglement between government and a private person exists, private persons will also be bound. For example, the United States Supreme Court has explained that “a private party’s joint participation with state officials in the seizure of disputed property is sufficient to characterize that party as a ‘state actor’ for purposes of the Fourteenth Amendment.” *Lugar v. Edmondson Oil Co.*, 457 US 922, 942 (1982). Likewise, the California Supreme Court has explained that “private conduct may become so entwined with governmental action as to become subject to the constitutional limitations placed on state action by the Fourteenth Amendment to the United States Constitution and article I, section 13, of the California Constitution.” *Adams v. Department of Motor Vehicles*, 11 Cal.3d 146, 152 (1974) (citations omitted).

In this case it is clear that the actions of CalCERTS in administering the HERS program are so entwined with governmental action as to require compliance with due process. All of the functions of CalCERTS are performed pursuant to the HERS regulations, without which

CalCERTS itself would not exist. The HERS program is entirely a creation of the state. It is authorized by statute, created by regulation, and overseen by the California Energy Commission. Though CalCERTS asserts an independent right to contract with HERS raters (*See* Collier Letter at p. 2, attached hereto as Exhibit C), even that right depends upon Title 20 § 1673(c), which requires CalCERTS to make such contracts. CalCERTS in fact makes its contracts with raters subject to the HERS regulations. *See, e.g.* Hoover CalCERTS Certified Rater Agreement at ¶ IV(E), attached hereto as Exhibit A, and Davis CalCERTS Certified Rater Agreement at ¶ IV(E), attached hereto as Exhibit B. When CalCERTS disciplines HERS raters, it claims to be enforcing the HERS regulations. *See* Hoover Decertification Letter, attached hereto as Exhibit F; Davis Decertification Letter, attached hereto as Exhibit G. The effect of such discipline is to limit the ability of HERS raters to submit energy efficiency data to the HERS database, the creation of which is one of the fundamental purposes of the HERS program. *See* Cal Public Resources Code § 25942 (a)(4). Clearly, CalCERTS acts solely as the delegate of the California Energy Commission. It is consequently subject to the demands of due process to the same extent that the CEC itself would be.

CalCERTS cannot have it both ways. If it exercises delegated power when it disciplines HERS raters, it must provide due process, just as the CEC would have to do if it chose to administer the HERS program directly. If CalCERTS exercises its own independent authority as a private contractor when it disciplines HERS raters, it violates the provisions of the HERS regulations by failing to follow the quality assurance procedure as outlined in Title 20 § 1673(i).

c. Requirements of Due Process

At the most fundamental level, procedural due process requires that *before* a person is deprived of a fundamental right, he must be provided with reasonable notice, and a reasonable opportunity for a hearing. *Drumme v. State Board of Funeral Directors*, 13 Cal. 2d 75, 80-81 (1939).

i. Reasonable Notice

An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.

Mullane v. Central Hanover Bank & Trust Co., 339 US 306, 314 (1950). The notice must be sufficient to enable the recipient to determine what is being proposed and what he must do to prevent the deprivation of his interest. *Goldberg v. Kelly*, 397 U.S. 254, 267-68 (1970).

ii. Reasonable Opportunity for a Hearing

“[S]ome form of hearing is required before an individual is finally deprived of a property [or liberty] interest.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). This right is a “basic aspect of the duty of government to follow a fair process of decision making when it acts to deprive a person of his possessions. The purpose of this requirement is not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment” *Fuentes v. Shevin*, 407 U.S. 67, 80-81 (1972)

iii. Impartiality and Decision on the Record.

A "decisionmaker's conclusion . . . must rest solely on the legal rules and evidence adduced at the hearing. To demonstrate compliance with this elementary requirement, the decision maker should state the reasons for his determination and indicate the evidence he relied on, though his statement need not amount to a full opinion or even formal findings of fact and conclusions of law. And, of course, an impartial decision maker is essential. *Goldberg v. Kelly*, 397 U.S. 254, 271 (1970) (citations omitted).

iv. Confrontation and Examination


"In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses." *Goldberg v. Kelly*, 397 U.S. 254, 269 (1970)

VII. Statement by the complainant or petitioner specifically listing the names and addresses of any other individuals, organizations, and businesses which the complainant or petitioner knows or has reason to believe would be affected by the relief sought.

Hoover and Davis are not aware of all the names and addresses of the many individuals who have been unlawfully disciplined by CalCERTS. But Hoover and Davis believe that all HERS raters who are now certified, and those who may in the future become certified, would be affected by CalCERTS' adoption, and the CEC's imposition, of quality assurance rules that conform to the constitutional requirements of due process.

VIII. Declaration under penalty of perjury by the complainant or petitioner attesting to the truth and accuracy of any factual allegations contained in the complaint or request for investigation.


Under penalty of perjury, we the undersigned hereby declare that to the best of our knowledge the information contained herein is true and correct.



Erik Hoover

2-13-12

Date



Patrick Davis

2-13-12

Date

Exhibit A

Energy Efficiency Standards, as specified by these regulations represented on a 0 to 100 scale of the annual source energy efficiency of a home, as specified in Section 1672(c).

RATING SYSTEM means the materials, analytical tools, diagnostic tools and procedures to produce home energy ratings, and provide home energy rating and field verification and diagnostic testing services (referred to as "home energy rating services" in Section 25942 of the Public Resources Code).

COMISSION means the State of California Energy Resources Conservation and Development Commission, commonly known as the California Energy Commission.

CalCERTS RATER or **CalCERTS Certified Rater** is a rater that is trained, tested and certified by CalCERTS. A CalCERTS RATER has submitted a Rater Application, completed CalCERTS Rater Training, has completed all required continuing education, and has passed the Rater Certification Test; or the CalCERTS Challenge Test, if already certified by another approved Provider or otherwise approved by CalCERTS to take the challenge test.

I. The Certification Authority's Obligations

- A. CalCERTS shall provide a Certificate of completion and a certification to the Commission upon completion of CalCERTS training and testing requirements in effect at the time of the application and upon the payment of applicable certification fees.
- B. As a condition of RATER Certification, CalCERTS shall certify to the Commission that a rater applicant has met the requirements of training and certification procedures and entered into the Subscription Agreement. CalCERTS shall maintain a registry of all raters who meet these requirements, provide an electronic copy of the registry to the Commission and make that registry available in printed or electronic form upon written request.
- C. Field Checks (Quality Assurance, or QA) of RATER: CalCERTS shall annually evaluate the greater of one home or one percent of the RATER's annual total of homes for which field verification and diagnostic testing services or ratings were provided. CalCERTS may independently repeat the field verification and diagnostic testing to check whether field verification and diagnostic testing was accurately completed by RATER, and determine whether information was completely collected and reported.

- D. CalCERTS shall provide to Rater Training Manuals ("Manuals"); Training Materials ("Materials"); User's Guides ("Guides"), and/or any supporting Proprietary Information under the following terms and conditions:
1. RATER agrees that the Manuals, Materials, Guides, and Proprietary Information are owned exclusively by CalCERTS, and are protected by the copyright laws of the United States.
 2. RATER agrees that RATER obtains no rights in the Manuals, Materials, Guides, or Proprietary Information, except to use them specifically in accordance with this Agreement.
 3. "Proprietary Information" shall mean CalCERTS's confidential information, trade secrets and know-how embodied in the Manuals, Materials and Guides and verbal information provided by CalCERTS that is not generally known or available to the public, including but not limited to, data communication processes and systems design.
 4. The Manuals, Materials, Guides and Proprietary Information may only be used by CalCERTS RATERS who shall keep strictly confidential the Manuals, Materials, Guides and Proprietary Information. RATER acknowledges that the Manuals, Materials, Guides and Proprietary Information constitute valuable property and work product of CalCERTS, and that any breach of the confidentiality obligations hereunder may cause CalCERTS irreparable harm and damage, and that all confidentiality obligations hereunder shall survive any expiration or termination of this Agreement.
 5. CalCERTS shall have the right, without prior approval from CalCERTS RATER, to make changes, updates, modifications or enhancements to any of its work product, and such changes, updates, modifications and enhancements shall remain the property of CalCERTS.

II. The Candidate's Obligations

- A. The Candidate Rater hereby warrants and represents that he/she meets the Certification Requirements at the time of certification and will continue to meet the Certification Requirements throughout the time they are certified, in accordance with the Certification Policy of CalCERTS, as periodically amended.
- B. RATER shall comply with all CalCERTS policies and procedures. All current policies at the time of signing, and all new and revised policies and procedures shall be sent to RATER via email.
- C. RATER shall comply with all CalCERTS Quality Assurance Procedures and Performance Requirements provided to RATER by CalCERTS and will meet the requirements of California Code of Regulations, Title 20 as a minimum standard. Quality Assurance includes field quality assurance, Registry quality assurance and consumer quality assurance, as well as continuing education requirements as may be necessary from time to time.
- D. RATER shall comply with all applicable federal, state and local laws and regulations.
- E. RATER shall personally complete all required field verification and diagnostic testing; THESE ACTIVITIES MAY NOT BE PERFORMED BY ANYONE ELSE. RATER agrees to provide true, accurate and complete ratings, field verification and diagnostic testing.
 - 1. Rating Site Inspections and Diagnostic Testing: Each rating shall be based on a site inspection of the home, and diagnostic testing as specified by the rating system.
 - 2. Field Verification and Diagnostic Testing: RATER shall provide field verification and diagnostic testing of energy efficiency improvements as a condition for those improvements to qualify for Title 24 or other building energy performance standards' compliance credit, scores, indices or ratings. RATER shall not knowingly provide untrue, inaccurate or incomplete field verification diagnostic testing information or report field verification or test results that were not conducted in compliance with these regulations. RATER shall not knowingly

accept payment or consideration in exchange for reporting a rating or field verification and diagnostic test result that was not in fact conducted and reported in compliance with *California Code of Regulations*, Title 20 Chapter 4, Article 8, Sections 1670-1675.

- F. RATER shall transmit all data to CalCERTS via the CalCERTS online Registry within forty-eight (48) hours after completing the rating, including the field verification, and diagnostic testing. CalCERTS RATER is responsible and liable for all data transmitted hereunder. CalCERTS may also use transmitted data for statistical, evaluation, quality control and archival purposes.
- G. RATER shall keep confidential all ratings, field verifications and diagnostic testing results and all information gathered from ratings except for transmission to CalCERTS, the Builder, Homeowner or Utility. All confidentiality obligations hereunder shall survive any expiration or termination of this Agreement.
- H. RATER shall be an independent entity from the builder and the subcontractor installer of the energy efficiency improvements being tested and verified, and shall have no financial interest in the installation of the improvements, whether the improvements are existing or proposed. Accordingly, RATER may not rate or perform a field verification or diagnostic test on any home in which RATER has any financial interest, including, but not limited to the following:
1. Property in which RATER has a direct or indirect ownership;
 2. Property in which RATER has a financial interest of any kind; or
 3. Property for which RATER is making a loan or negotiating a loan, or soliciting a prospective lender to make a loan with the expectation of compensation.
- I. RATER shall act hereunder solely as an independent contractor. RATER shall not represent himself/herself to be an employee or agent of CalCERTS.

III. Termination and Decertification

- A. Upon written notice to CalCERTS, RATER may terminate this Agreement at any time effective ten (10) days after receipt of the written notice by CalCERTS. RATER agrees to return all intellectual property and materials including Manuals, Guides and proprietary written materials within ten (10) days of notification of termination or decertification. RATER will also cease the display of any CalCERTS Certificates and cease any representation to the public that RATER is CalCERTS certified.
- B. CalCERTS may reprove, suspend for a period not to exceed two years, or PERMANENTLY decertify any RATER who is found to have committed one or more of the following acts:
1. Failure of RATER to comply with any of the terms and conditions of this Agreement, the Subscriber Agreement or any other agreement between RATER and CalCERTS.
 2. RATER's conviction of a felony.
 3. Disciplinary action of RATER by the Contractors State License Board or any like authority.
 4. Willful failure of RATER to provide a true, accurate and complete rating, field verification or diagnostic testing.
 5. Pattern of failure of RATER to provide a true, accurate and complete rating, field verification, diagnostic testing or data entry, whether willful or not.
 6. Two or more complaints about RATER from ratings customers, or potential customers.
 7. RATER's failure to promptly pay any amounts due CalCERTS.
 8. Misrepresentation of CalCERTS RATER's relationship with CalCERTS, or
 9. Any act or failure to act which, in CalCERTS's opinion, harms its name or reputation.

- C. The certification of Rater and this agreement shall automatically terminate upon the occurrence of any of the following events:
1. RATER or CalCERTS RATER's business is adjudged bankrupt;
 2. RATER or CalCERTS RATER's business is placed in the hands of a receiver;
 3. RATER or CalCERTS RATER's business makes an assignment for the benefit of creditors;
 4. RATER or CalCERTS RATER's business takes the benefit of any insolvency act; or
 5. RATER or CalCERTS RATER's business is liquidated or dissolved.
- D. RATER shall return to CalCERTS all material received from CalCERTS within ten (10) days of the date of the first to occur of any of the above-described events or any termination notice.
- E. TERMINATION OF THIS AGREEMENT RESULTS IN DECERTIFICATION OF RATER, THEREBY TERMINATING RATER'S ABILITY TO RATE, TEST, INSPECT OR VERIFY ENERGY EFFICIENCY INSTALLATIONS. DECERTIFICATION WILL CANCEL THE RATER'S ABILITY TO REGISTER RATINGS RESULTS VIA THE CalCERTS ONLINE DATABASE SERVICE. ALL DATA PREVIOUSLY ENTERED BY THE RATER REMAINS THE EXCLUSIVE PROPERTY OF CalCERTS.
- F. Decertification Procedures: CalCERTS may, upon the verified complaint in writing of any person, investigate the actions of RATER and may temporarily suspend or permanently revoke, the certification of RATER who is guilty of, or commits one or more of the acts or omissions constituting grounds for disciplinary action under the conditions of certification.

IV. Miscellaneous Provisions

- A. RATER may not do the following:
1. Make copies of the Manuals and other proprietary material;
 2. Alter, remove or conceal any copyright or trademark notice on the Manual; or
 3. Assign or transfer any rights to use the Manual, Guides or Proprietary Information except as set forth in this Agreement and the Subscription Agreement.

4. Use any of the trademarks, copyrighted works or intellectual property without an express written license agreement with CalCERTS, Inc. However, RATER may indicate that RATER is a CalCERTS CERTIFIED RATER. RATER shall use CalCERTS's trademarks and copyrighted works in good faith and solely for purposes of marketing Rating services under this Agreement and shall take no action that would diminish the goodwill associated with the trademarks.
- B. RATER shall indemnify and hold harmless CalCERTS, its officers, directors, agents, and employees from and against all claims of all kinds arising from or in connection with performance of CalCERTS services including, but not limited to, ratings or any other services for rating customers; or performance of ratings for other rating firms; including all expenses, costs, settlements, judgments, awards, and legal fees incurred by CalCERTS in defense or settlement of such claims.
- C. This Agreement does not confer any right which can or may be transferred, assigned, or otherwise disposed of by Rater and any attempt at transferring, assigning, sublicensing, or otherwise disposing of any interest in this Agreement shall be null and void and a breach of this Agreement. The CalCERTS certification may not be transferred to any third party by RATER.
- D. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- E. RATER acknowledges that RATER has read California Code of Regulations, Title 20, Chapter 4, Article 8, Sections 1670-1675 ("Regulations"), a copy of which is attached and incorporated herein by reference.
- F. RATER understands the Regulations and agrees to provide home energy ratings, field verification services and diagnostic testing services in compliance with the Regulations, laws and requirements of the State of California.
- G. This instrument contains the entire and only agreement between the Parties and supersedes all preexisting agreements between them respecting its subject matter. Any representation, promise, or condition in connection with such subject matter that is not incorporated in this Agreement shall not be binding on either Party. No modification, renewal, extension, or waiver of this Agreement or any of its provisions, shall be binding on the Party against whom enforcement of such modification, renewal, extension, or waiver is sought, unless made in writing and signed on behalf of such Party. Each Party to this Agreement acknowledges that no representations, inducements, promises, or agreements have been

CalCERTS, inc.
www.CalCERTS.com
Home Energy Rating System (HERS) Provider

made by or on behalf of any Party except those covenants and agreements embodied in this Agreement.

- H. RATER acknowledges that RATER has read this Agreement, understands it and agrees to be bound by its terms and conditions.

SUBSCRIBER:

CalCERTS, Inc.:


Signature

Signature

Erik Hoover
Print Name

Michael E. Bachand
Print Name

Title

President
Title

12/12/2009
Date

Date

Exhibit B

CalCERTS Certified Rater Agreement

PLEASE READ THE FOLLOWING TERMS CAREFULLY UNDER WHICH CALCERTS, INC. GRANTS PROFESSIONAL CERTIFICATION TO YOU. CALCERTS, INC PROVIDES THIS CERTIFICATION TO YOU ONLY IF YOU ACCEPT THE TERMS OF THIS AGREEMENT. THE RIGHTS GRANTED UNDER THIS AGREEMENT SHALL NOT BE EFFECTIVE UNTIL THE CANDIDATE HAS SUCCESSFULLY COMPLETED THE CALCERTS RATER CERTIFICATION TEST, OR THE CALCERTS CHALLENGE TEST IF YOU ARE ALREADY CERTIFIED BY ANOTHER PROVIDER, OR OTHERWISE APPROVED BY CALCERTS TO TAKE THE CHALLENGE TEST.

This Certification Agreement ("Agreement") is made and entered into by and between CalCERTS®, Inc., a California Home Energy Ratings System(HERS) rater training and certification provider ("CalCERTS"), and You as an individual Certification Program Candidate (the "Candidate" or "Rater" as defined below), and sets forth the terms and conditions that govern your rater certification.

As used herein, the term **RATER** means a person performing the site inspection and data collection required to produce a home energy rating or the field verification and diagnostic testing required for demonstrating compliance with the Title 24 Energy Efficiency Standards, who is listed on a registry in compliance with California Code of Regulations Title 20 Chapter 4, Article 8, Section 1673(c).

RATER also means a person who has been trained, tested, and certified by a provider to perform one or more of the functions or procedures used to develop a California Whole House Home Energy Rating, a California Home Energy Audit, performing the site inspection and data collection required to produce a home energy rating or the field verification and diagnostic testing required for demonstrating compliance with the Title 24, Part 6, Building Energy Efficiency performance Standards, and who is listed on a provider's registry in compliance with Section 1673(c).

RATING means a California Whole House Home Energy Rating, a California Home Energy Audit, or the Field Verification and Diagnostic Testing required for verifying compliance with the Title 24, Part 6, Building

Energy Efficiency Standards, as specified by these regulations represented on a 0 to 100 scale of the annual source energy efficiency of a home, as specified in Section 1672(c).

RATING SYSTEM means the materials, analytical tools, diagnostic tools and procedures to produce home energy ratings, and provide home energy rating and field verification and diagnostic testing services (referred to as "home energy rating services" in Section 25942 of the Public Resources Code).

COMMISSION means the State of California Energy Resources Conservation and Development Commission, commonly known as the California Energy Commission.

CalCERTS RATER or **CalCERTS Certified Rater** is a rater that is trained, tested and certified by CalCERTS. A CalCERTS RATER has submitted a Rater Application, completed CalCERTS Rater Training, has completed all required continuing education, and has passed the Rater Certification Test; or the CalCERTS Challenge Test, if already certified by another approved Provider or otherwise approved by CalCERTS to take the challenge test.

I. The Certification Authority's Obligations

- A. CalCERTS shall provide a Certificate of completion and a certification to the Commission upon completion of CalCERTS training and testing requirements in effect at the time of the application and upon the payment of applicable certification fees.
- B. As a condition of RATER Certification, CalCERTS shall certify to the Commission that a rater applicant has met the requirements of training and certification procedures and entered into the Subscription Agreement. CalCERTS shall maintain a registry of all raters who meet these requirements, provide an electronic copy of the registry to the Commission and make that registry available in printed or electronic form upon written request.
- C. Field Checks (Quality Assurance, or QA) of RATER: CalCERTS shall annually evaluate the greater of one home or one percent of the RATER's annual total of homes for which field verification and diagnostic testing services or ratings were provided. CalCERTS may independently repeat the field verification and diagnostic testing to check whether field verification and diagnostic testing was accurately completed by RATER, and determine whether information was completely collected and reported.

- D. CalCERTS shall provide to Rater Training Manuals ("Manuals"); Training Materials ("Materials"); User's Guides ("Guides"), and/or any supporting Proprietary Information under the following terms and conditions:
1. RATER agrees that the Manuals, Materials, Guides, and Proprietary Information are owned exclusively by CalCERTS, and are protected by the copyright laws of the United States.
 2. RATER agrees that RATER obtains no rights in the Manuals, Materials, Guides, or Proprietary Information, except to use them specifically in accordance with this Agreement.
 3. "Proprietary Information" shall mean CalCERTS's confidential information, trade secrets and know-how embodied in the Manuals, Materials and Guides and verbal information provided by CalCERTS that is not generally known or available to the public, including but not limited to, data communication processes and systems design.
 4. The Manuals, Materials, Guides and Proprietary Information may only be used by CalCERTS RATERs who shall keep strictly confidential the Manuals, Materials, Guides and Proprietary Information. RATER acknowledges that the Manuals, Materials, Guides and Proprietary Information constitute valuable property and work product of CalCERTS, and that any breach of the confidentiality obligations hereunder may cause CalCERTS irreparable harm and damage, and that all confidentiality obligations hereunder shall survive any expiration or termination of this Agreement.
 5. CalCERTS shall have the right, without prior approval from CalCERTS RATER, to make changes, updates, modifications or enhancements to any of its work product, and such changes, updates, modifications and enhancements shall remain the property of CalCERTS.

II. The Candidate's Obligations

- A. The Candidate Rater hereby warrants and represents that he/she meets the Certification Requirements at the time of certification and will continue to meet the Certification Requirements throughout the time they are certified, in accordance with the Certification Policy of CalCERTS, as periodically amended.
- B. RATER shall comply with all CalCERTS policies and procedures. All current policies at the time of signing, and all new and revised policies and procedures shall be sent to RATER via email.
- C. RATER shall comply with all CalCERTS Quality Assurance Procedures and Performance Requirements provided to RATER by CalCERTS and will meet the requirements of California Code of Regulations, Title 20 as a minimum standard. Quality Assurance includes field quality assurance, Registry quality assurance and consumer quality assurance, as well as continuing education requirements as may be necessary from time to time.
- D. RATER shall comply with all applicable federal, state and local laws and regulations.
- E. RATER shall personally complete all required field verification and diagnostic testing; **THESE ACTIVITIES MAY NOT BE PERFORMED BY ANYONE ELSE.** RATER agrees to provide true, accurate and complete ratings, field verification and diagnostic testing.
 - 1. Rating Site Inspections and Diagnostic Testing: Each rating shall be based on a site inspection of the home, and diagnostic testing as specified by the rating system.
 - 2. Field Verification and Diagnostic Testing: RATER shall provide field verification and diagnostic testing of energy efficiency improvements as a condition for those improvements to qualify for Title 24 or other building energy performance standards' compliance credit, scores, indices or ratings. RATER shall not knowingly provide untrue, inaccurate or incomplete field verification diagnostic testing information or report field verification or test results that were not conducted in compliance with these regulations. RATER shall not knowingly

accept payment or consideration in exchange for reporting a rating or field verification and diagnostic test result that was not in fact conducted and reported in compliance with *California Code of Regulations*, Title 20 Chapter 4, Article 8, Sections 1670-1675.

- F. RATER shall transmit all data to CalCERTS via the CalCERTS online Registry within forty-eight (48) hours after completing the rating, including the field verification, and diagnostic testing. CalCERTS RATER is responsible and liable for all data transmitted hereunder. CalCERTS may also use transmitted data for statistical, evaluation, quality control and archival purposes.
- G. RATER shall keep confidential all ratings, field verifications and diagnostic testing results and all information gathered from ratings except for transmission to CalCERTS, the Builder, Homeowner or Utility. All confidentiality obligations hereunder shall survive any expiration or termination of this Agreement.
- H. RATER shall be an independent entity from the builder and the subcontractor installer of the energy efficiency improvements being tested and verified, and shall have no financial interest in the installation of the improvements, whether the improvements are existing or proposed. Accordingly, RATER may not rate or perform a field verification or diagnostic test on any home in which RATER has any financial interest, including, but not limited to the following:
1. Property in which RATER has a direct or indirect ownership;
 2. Property in which RATER has a financial interest of any kind; or
 3. Property for which RATER is making a loan or negotiating a loan, or soliciting a prospective lender to make a loan with the expectation of compensation.
- I. RATER shall act hereunder solely as an independent contractor. RATER shall not represent himself/herself to be an employee or agent of CalCERTS.

III. Termination and Decertification

- A. Upon written notice to CalCERTS, RATER may terminate this Agreement at any time effective ten (10) days after receipt of the written notice by CalCERTS. RATER agrees to return all intellectual property and materials including Manuals, Guides and proprietary written materials within ten (10) days of notification of termination or decertification. RATER will also cease the display of any CalCERTS Certificates and cease any representation to the public that RATER is CalCERTS certified.
- B. CalCERTS may reprove, suspend for a period not to exceed two years, or PERMANENTLY decertify any RATER who is found to have committed one or more of the following acts:
1. Failure of RATER to comply with any of the terms and conditions of this Agreement, the Subscriber Agreement or any other agreement between RATER and CalCERTS.
 2. RATER's conviction of a felony.
 3. Disciplinary action of RATER by the Contractors State License Board or any like authority.
 4. Willful failure of RATER to provide a true, accurate and complete rating, field verification or diagnostic testing.
 5. Pattern of failure of RATER to provide a true, accurate and complete rating, field verification, diagnostic testing or data entry, whether willful or not.
 6. Two or more complaints about RATER from ratings customers, or potential customers.
 7. RATER's failure to promptly pay any amounts due CalCERTS.
 8. Misrepresentation of CalCERTS RATER's relationship with CalCERTS, or
 9. Any act or failure to act which, in CalCERTS's opinion, harms its name or reputation.

- C. The certification of Rater and this agreement shall automatically terminate upon the occurrence of any of the following events:
1. RATER or CalCERTS RATER's business is adjudged bankrupt;
 2. RATER or CalCERTS RATER's business is placed in the hands of a receiver;
 3. RATER or CalCERTS RATER's business makes an assignment for the benefit of creditors;
 4. RATER or CalCERTS RATER's business takes the benefit of any insolvency act; or
 5. RATER or CalCERTS RATER's business is liquidated or dissolved.
- D. RATER shall return to CalCERTS all material received from CalCERTS within ten (10) days of the date of the first to occur of any of the above-described events or any termination notice.
- E. TERMINATION OF THIS AGREEMENT RESULTS IN DECERTIFICATION OF RATER, THEREBY TERMINATING RATER'S ABILITY TO RATE, TEST, INSPECT OR VERIFY ENERGY EFFICIENCY INSTALLATIONS. DECERTIFICATION WILL CANCEL THE RATER'S ABILITY TO REGISTER RATINGS RESULTS VIA THE CalCERTS ONLINE DATABASE SERVICE. ALL DATA PREVIOUSLY ENTERED BY THE RATER REMAINS THE EXCLUSIVE PROPERTY OF CalCERTS.
- F. Decertification Procedures: CalCERTS may, upon the verified complaint in writing of any person, investigate the actions of RATER and may temporarily suspend or permanently revoke, the certification of RATER who is guilty of, or commits one or more of the acts or omissions constituting grounds for disciplinary action under the conditions of certification.

IV. Miscellaneous Provisions

- A. RATER may not do the following:
1. Make copies of the Manuals and other proprietary material;
 2. Alter, remove or conceal any copyright or trademark notice on the Manual; or
 3. Assign or transfer any rights to use the Manual, Guides or Proprietary Information except as set forth in this Agreement and the Subscription Agreement.

4. Use any of the trademarks, copyrighted works or intellectual property without an express written license agreement with CalCERTS, Inc. However, RATER may indicate that RATER is a CalCERTS CERTIFIED RATER. RATER shall use CalCERTS's trademarks and copyrighted works in good faith and solely for purposes of marketing Rating services under this Agreement and shall take no action that would diminish the goodwill associated with the trademarks.
- B. RATER shall indemnify and hold harmless CalCERTS, its officers, directors, agents, and employees from and against all claims of all kinds arising from or in connection with performance of CalCERTS services including, but not limited to, ratings or any other services for rating customers; or performance of ratings for other rating firms; including all expenses, costs, settlements, judgments, awards, and legal fees incurred by CalCERTS in defense or settlement of such claims.
- C. This Agreement does not confer any right which can or may be transferred, assigned, or otherwise disposed of by Rater and any attempt at transferring, assigning, sublicensing, or otherwise disposing of any interest in this Agreement shall be null and void and a breach of this Agreement. The CalCERTS certification may not be transferred to any third party by RATER.
- D. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- E. RATER acknowledges that RATER has read California Code of Regulations, Title 20, Chapter 4, Article 8, Sections 1670-1675 ("Regulations"), a copy of which is attached and incorporated herein by reference.
- F. RATER understands the Regulations and agrees to provide home energy ratings, field verification services and diagnostic testing services in compliance with the Regulations, laws and requirements of the State of California.
- G. This instrument contains the entire and only agreement between the Parties and supersedes all preexisting agreements between them respecting its subject matter. Any representation, promise, or condition in connection with such subject matter that is not incorporated in this Agreement shall not be binding on either Party. No modification, renewal, extension, or waiver of this Agreement or any of its provisions, shall be binding on the Party against whom enforcement of such modification, renewal, extension, or waiver is sought, unless made in writing and signed on behalf of such Party. Each Party to this Agreement acknowledges that no representations, inducements, promises, or agreements have been

CalCERTS, inc.
www.CalCERTS.com
Home Energy Rating System (HERS) Provider

made by or on behalf of any Party except those covenants and agreements embodied in this Agreement.

H. RATER acknowledges that RATER has read this Agreement, understands it and agrees to be bound by its terms and conditions.


SUBSCRIBER:




Signature



Print Name



Title



Date

CalCERTS, Inc.:

Signature



Print Name



Title

Date

Exhibit C

February 8, 2012

VIA U.S. MAIL AND ELECTRONIC MAIL

David Haddock
P.O. Box 2501
Citrus Heights, CA 95611
dave@davidhaddocklegal.com

Re: **Valley Duct Testing Raters Mr. Hoover & Mr. Davis**

Dear Mr. Haddock,

This letter is in response to your letters of January 20, 2012 and February 2, 2012.

The Public Resources Code and HERS Regulations

California Public Resources Code section 25942 empowered the California Energy Commission ("CEC") to establish criteria for adopting a statewide home energy rating program for residential dwellings. Those criteria were specifically to include "training and certification procedures for home raters and quality assurance procedures to *promote accurate ratings and protect consumers.*" Pub. Resources Code § 25942(a)(3) (emphasis added). The program criteria are embodied in Title 20, Chapter 4, Article 8, sections 1670-1675 of the California Code of Regulations (the "HERS Regulations").

CalCERTS, Inc. is a private corporation that has been certified by the CEC to administer home energy rating systems in compliance with the HERS Regulations. 20 Cal. Code of Regs. §§ 1671, 1674.

As a certified Provider, CalCERTS is required to, and does, have a quality assurance program. 20 Cal. Code of Regs. § 1673(i). Related, CalCERTS is also required to, and does, have a complaint response system. 20 Cal. Code of Regs. § 1673(i)(5). The quality assurance program and the complaint response system are critical to the statutory mandate of "promoting accurate ratings and protecting consumers." Pub. Resources Code § 25942(a)(3).

Raters Legal and Contractual Obligations to Comply with HERS Regulations

As certified Raters, Mr. Hoover and Mr. Davis (collectively, the "Raters") were under an obligation to "not knowingly provide untrue, inaccurate, or incomplete rating information or report rating results that were not conducted in compliance with" the HERS Regulations. 20 Cal. Code of Regs. §1672(m).

As a Provider, CalCERTS is required to have an agreement with each certified Rater which, among other things, obligates the Rater to provide home energy rating and field verification and diagnostic services in compliance with the HERS Regulations and, specifically, to "provide true, accurate, and complete data collection, analysis, ratings, and field verifications." 20 Cal. Code of Regs. § 1673(b)(2).

CalCERTS has such an agreement—a CalCERTS Certified Rater Agreement—with both Mr. Hoover and Mr. Davis (respectively, the "Hoover Rater Agreement" and the "Davis Rater Agreement," and collectively, the "Rater Agreements"). Copies of the Rater Agreements are enclosed as Exhibits A and B.

The Rater Agreements obligate the Raters to comply with the HERS Regulations including, without limitation, section 1672(m). See Rater Agreements at § II(C), (E)(2), etc.

Consistent with section 1672(m) of the HERS Regulations, the Rater Agreements provide that CalCERTS may revoke, suspend for a period not to exceed two years, or permanently decertify any Rater who willfully fails to provide true, accurate, and complete rating, field verification, diagnostic testing or data entry in compliance with the HERS Regulations. See Rater Agreements at § III.B, F.

The Rater Agreements further provide that in the event of termination of the agreement, the Rater shall be decertified.

The Raters Violated HERS Regulations and Breached the Rater Agreements

In September 2011 CalCERTS received a complaint about Mr. Hoover and Mr. Davis. As required by the HERS Regulations CalCERTS investigated the complaint which included CalCERTS' quality assurance reviewers conducting field investigations. Through these investigations it became apparent that Mr. Hoover and Mr. Davis were in violation of the HERS Regulations and in breach of the Rater Agreements.

Mr. Hoover violated the HERS Regulations and breached the Hoover Rating Agreement. Specifically, Mr. Hoover *repeatedly* failed to accurately measure and report duct leakage and failed to accurately determine the duct leakage target. Mr. Hoover *repeatedly* certified homes as compliant with Title 24 of the California Code of Regulations based on refrigerant charge verifications that were either never conducted or falsified. The details for the refrigerant charge verifications are outlined in the decertification letter, enclosed as Exhibit C. Mr. Hoover also

failed to accurately determine and measure insulation depth, density, and density target. Mr. Hoover recorded holes for the static pressure probes as present when upon inspection none were identified. A copy of a Quality Assurance Disposition Report for Mr. Hoover is enclosed as **Exhibit D**.

Mr. Davis likewise violated the HERS Regulations and breached the Davis Rating Agreement. Specifically, Mr. Davis *repeatedly* failed to accurately measure duct leakage, failed to accurately determine the duct leakage target, and failed to verify sealing of all accessible leaks and visual verification when required. Mr. Davis *repeatedly* certified homes as compliant with Title 24 of the California Code of Regulations based on refrigerant charge verifications that were either never conducted or falsified. The details for the refrigerant charge verifications are outlined in the decertification letter, enclosed as **Attachment E**. A copy of a Quality Assurance Disposition Report for Mr. Davis is enclosed as **Exhibit F**.

Both Mr. Hoover and Mr. Davis, *under penalty of perjury*, repeatedly submitted home energy ratings that were unquestionably inaccurate and thus harmful to the homeowners.

The Decertifications Were Proper

As noted above, CalCERTS has a contractual right to decertify the Raters pursuant to the Rater Agreements, as approved by the CEC. See Raters Agreements at section III, IV. Neither of your letters address your clients' contractual obligations and CalCERTS contractual rights in the event of breach and/or termination of the Rater Agreements.

Additionally, CalCERTS has authority to decertify the Raters in order to maintain the integrity of the HERS program and to protect consumers consistent with the express purpose of Public Resources Code section 25942(3), and the HERS Regulations.

Your claim of a violation of due process is inconsistent with the express provisions of the Rater Agreements. It is also inconsistent with the fact that CalCERTS is a private corporation and thus not subject to the due process requirements attendant with state action. Neither of your letters contain any legal authority on this subject, but we would be pleased to review any case law that you believe supports your position.

Nonetheless, Mr. Hoover and Mr. Davis were in fact afforded a fundamentally fair procedure. In accordance with CalCERTS' internal quality assurance protocol and disciplinary procedures, CalCERTS told Mr. Hoover and Mr. Davis which homes failed the quality assurance reviews, and afforded Mr. Hoover and Mr. Davis the opportunity to respond. CalCERTS diligently investigated all reasonable explanations for the quality assurance failures. CalCERTS has devoted extensive resources to the investigations of Mr. Hoover and Mr. Davis.

Erik Hoover

On December 16, 2011, Mr. Hoover was contacted by CalCERTS and informed that he had failed a quality assurance review initiated in response to a complaint. This letter notified Mr. Hoover that he would be on temporary suspension pending a meeting to determine why Mr. Hoover was failing to accurately report ratings. The letter identified four homes rated by Mr. Hoover that failed the quality assurance reviews. *See Exhibit G.*

Mr. Hoover scheduled his meeting with CalCERTS on January 6, 2012. During this meeting, Mr. Hoover was given the opportunity to explain the discrepancies between his ratings and those conducted by CalCERTS' quality assurance reviewers. This meeting lasted approximately two hours. Mr. Hoover was unable to explain the discrepancies.

After the January 6, 2012, meeting CalCERTS conducted an additional review of Mr. Hoover's work and rating data. After this additional review the CalCERTS quality assurance team met and determined based on the evidence that Mr. Hoover's quality assurance failures were egregious and established a pattern of conduct that could not be rectified by additional training or probation.

On January 18, 2012, CalCERTS offered Mr. Hoover an opportunity to submit any additional questions or comments upon which to base their review. *See Exhibit H.* Mr. Hoover did not submit any additional questions or comments.

On January 30, 2012, CalCERTS notified Mr. Hoover of its decision to decertify Mr. Hoover, effectively terminating the Hoover Rater Agreement. *See Exhibit C.* As required by the HERS Regulations, CalCERTS must notify the CEC of Mr. Hoover's decertification and the details of the investigation.

Patrick Davis

On December 16, 2011, Mr. Davis was contacted by CalCERTS and informed that he had failed a quality assurance review initiated in response to a complaint. This letter notified Mr. Davis that he would be on temporary suspension pending a meeting to determine why Mr. Davis was failing to accurately report ratings. The letter identified three homes rated by Mr. Davis that failed the quality assurance reviews. *See Exhibit I.*

Mr. Davis scheduled his meeting with CalCERTS on January 4, 2012. During this meeting, Mr. Davis was given the opportunity to explain the discrepancies between his ratings and those conducted by CalCERTS' quality assurance reviewers. This meeting lasted approximately three hours. Mr. Davis was unable to explain the discrepancies.

After the January 4, 2012, meeting CalCERTS conducted an additional review of Mr. Davis's work and rating data. After this additional review the CalCERTS quality assurance team met and

determined based on the evidence that Mr. Davis' quality assurance failures were egregious and established a pattern of conduct that could not be rectified by additional training or probation.

On January 17, 2012, CalCERTS offered Mr. Davis an opportunity to submit any additional questions or comments upon which to base their review. See Exhibit J. Mr. Davis did not submit any additional questions or comments.

On January 30, 2012, CalCERTS notified Mr. Davis of their decision to decertify Mr. Davis, effectively terminating the Davis Rater Agreement. See Exhibit D. As required by the HERS Regulations, CalCERTS must notify the CEC of Mr. Davis' decertification and the details of the investigation.

Publication of Decertification

Our review of the HERS Regulations suggests that there is no appeal process relative to the decertification process. However, any person is entitled to bring a complaint regarding a violation of the HERS Regulations as provided in section 1230, et seq. of Title 20 of the California Code of Regulations. 20 Cal. Code of Regs. §1675(b).

Additionally, and as noted in the CEC's correspondence of January 11th, if your clients believe that it would be appropriate to add or change the HERS Regulations, including those provisions that relate to complaint response systems, quality assurance, or appeals, that may be initiated pursuant to the rulemaking process available under the Administrative Procedures Act.

CalCERTS is willing to refrain from publishing the decertifications pending our receipt and review of any additional information or documents that you believe are material to the Raters decertifications. Please provide this to us no later than February 15, 2012. At this point, the Rater Agreements remain terminated and Mr. Hoover and Mr. Davis will remain suspended and may not operate using the CalCERTS' Rater Certification based on their violations of the HERS Regulations.

Please call with any questions.

Very truly yours,

DOWNEY BRAND LLP



Andrew L. Collier

cc: Dennis Beck (via electronic mail)
Michael Bachand (via electronic mail)
Jane Luckhardt, Shelby Gatlin (Firm)

Exhibit D

From: Charlie Bachand
Sent: Friday, December 16, 2011 3:33 PM
To: 'ehoover79@yahoo.com'; Mark Wiese
Subject: QA Review

Erik Hoover,

This letter is to inform you that you failed a QA review. As a result you have been placed on a 15 day suspension. Please contact CalCERTS within this 15 day period to schedule a meeting to discuss this matter. Failure to contact CalCERTS within this timeframe will result in decertification.

You failed QA inspections at the following addresses:

334 Malbec Ct, Stockton, CA

15987 Crescent Pk, Lathrop, CA

800 Ferry Launch, Lathrop, CA

9531 Richdale, Orangevale, CA

You will be given the opportunity to present your records and documentation when meeting with CalCERTS.

Sincerely,

Charlie Bachand
Senior Analyst
CalCERTS, Inc.
Email: charlie@calcerts.com
Office: 916-985-3400
Fax: 916-985-3402

2/4/2012

Exhibit E

From: Charlie Bachand
Sent: Friday, December 16, 2011 3:49 PM
To: 'prdavis@liberty.edu'; Mark Wiese
Subject: QA Review

Patrick Davis,

This letter is to inform you that you failed a QA review. As a result you have been placed on a 15 day suspension. Please contact CalCERTS within this 15 day period to schedule a meeting to discuss this matter. Failure to contact CalCERTS within this timeframe will result in decertification.

You failed QA inspections at the following addresses:

346 Malbec Ct, Stockton, CA

519 Merlot, Stockton, CA

425 Merle, Stockton, CA

In addition, we will need to discuss all of your rating activity on 4/20/2011.

You will be given the opportunity to present your records and documentation when meeting with CalCERTS.

Sincerely,

Charlie Bachand
Senior Analyst
CalCERTS, Inc.
Email: charlie@calcerts.com
Office: 916-985-3400
Fax: 916-985-3402

2/4/2012

Exhibit F

January 30, 2012

Erik Hoover
7245 Mountainside Drive
Citrus Heights, CA 95621

Dear Mr. Hoover,

A Quality Assurance investigation by CalCERTS, Inc. has determined that your actions as a California HERS Rater are in violation of Title 24 and/or Title 20. Therefore CalCERTS, Inc. is decertifying you as a rater, effective immediately. This will not prevent you from accessing the registry as an installer if you are also an installer.

Our QA process found multiple failures at multiple addresses concerning verification of Duct Leakage and Refrigerant Charge. Failures include:

1. Duct Leakage Verification - multiple failures
 - a. Failure to correctly measure Duct Leakage.
 - b. Failure to correctly determine Duct Leakage target.
2. Refrigerant Charge verification - multiple failures.
 - a. You incorrectly certified homes as compliant with Title 24 by verifying the presence of TMAHs. Our QA Rater was able to determine that, in some cases, the TMAHs you certified as present were, in fact, not there.
 - b. You verified airflow using Temperature Split when no TMAHs were present to do so.
 - c. Failure to correctly verify functioning TXV.
3. QII
 - a. Failure to correctly determine insulation depth and density target.
 - b. Failure to correctly measure insulation depth and density.
4. Cooling Coil Airflow
 - a. Recorded HSPPs as present when none were.

We have determined that these failures are egregious, establish a pattern, and are not rectifiable. As required by Title 20, CalCERTS, Inc will also notify the California Energy Commission that you have been decertified, along with the details of our investigation.

Regards,

Charlie Bachand
Senior Analyst
CalCERTS, Inc

Exhibit G

January 30, 2012

Patrick Davis
6345 Rainier Ave
Rocklin, CA 95677

Dear Mr. Davis,

A Quality Assurance investigation by CalCERTS, Inc. has determined that your actions as a California HERS Rater are in violation of Title 24 and/or Title 20. Therefore CalCERTS, Inc. is decertifying you as a rater, effective immediately. This will not prevent you from accessing the registry as an installer if you are also an installer.

Our QA process found multiple failures at multiple addresses concerning verification of Duct Leakage and Refrigerant Charge. Failures include:

1. Duct Leakage Verification - multiple failures
 - a. Failure to correctly measure Duct Leakage.
 - b. Failure to correctly determine Duct Leakage target.
 - c. Failure to verify Sealing of All Accessible Leaks and Visual Verification when required.
2. Refrigerant Charge verification - multiple failures.
 - a. You incorrectly certified homes as compliant with Title 24 by verifying the presence of TMAHs. Our QA Rater was able to determine that, in some cases, the TMAHs you certified as present were, in fact, not there.
 - b. Stickers were placed indicating TMAHs where none were drilled.
 - c. You verified airflow using Temperature Split when no TMAHs were present to do so. Our QA Rater determined that there was inadequate airflow using a flow hood.
 - d. Failure to correctly verify functioning TXV.

We have determined that these failures are egregious, establish a pattern, and are not rectifiable.

As required by Title 20, CalCERTS, Inc. will also notify the California Energy Commission that you have been decertified, along with the details of our investigation.

Regards,

Charlie Bachand
Senior Analyst
CalCERTS, Inc.

Exhibit H



Title 24 HERS Provider
CEC Approved
ENERGY STAR® Provider
Department of Energy Approved
CalCERTS®

EMAIL: office@calcerts.com

PHONE: 916.985.3400

FAX: 916.985.3402

11 Natoma St. Ste. 140

Folsom, CA 95630

Quality Assurance Program

CalCERTS™ New Construction Training and Certification Program

All individuals trained by CalCERTS™ to provide Title-24 field verification services for the Alternative Calculation Method of the 2001 Energy Efficiency Standards must successfully complete an approved Title-24 Residential New Construction Training and Certification Program. Their performance will be continuously monitored through this Quality Assurance Program. The Quality Assurance Program has three components:

- Initial Rater QA
- Documentation QA
- Onsite Field QA

Note: The CEC requires that Raters, even if already certified by another approved Provider must be monitored in the same way as the Initial Rater.

Quality Assurance Procedures

1. Initial Rater QA For New Raters

All Raters that successfully complete the CalCERTS™ Title-24/Residential New Construction Training, and then subsequently activate their certification are required to:

- Notify CalCERTS™ in writing before conducting their first field verification and diagnostic test.
- Have a CalCERTS™ QA representative accompany them on two field tests within the first six months of becoming certified. This requirement is part of the training and certification process.
- Have their first five data sets reviewed and analyzed by a CalCERTS™ QA representative. This requirement is part of the QA process.

The CalCERTS™ QA representative will complete a written report detailing the results of this QA review, will provide a copy to the Rater, and will submit a copy to be included in the Rater's permanent file.

2. Document Review

This type of QA involves the review of the CF-4R and other related documents reviewed or completed by the Rater, and all other data collected while conducting the onsite field verification and diagnostic test. This type of analysis will be completed on a random and as needed basis for experienced Raters.

All Raters are required to provide the CalCERTS™ QA representative with all data collection forms and field notes within 72 hours of written request.

The CalCERTS™ QA representative will complete a written report detailing the results of this QA review, will provide a copy to the Rater, and will submit a copy to be included in the Rater's permanent file.

3. Onsite Field QA Inspections

The QA onsite inspection represents the main component of the CalCERTS™ QA program. The Onsite Field QA consists of the CalCERTS™ QA representative visiting the site and observing the Rater perform the onsite field verification and diagnostic testing. The purpose of this type of QA is to insure that the correct procedures are being followed in the verification and testing process, and to provide instant feedback to the Rater.

When a Rater is due for this type of QA, CalCERTS™ will notify the Rater and require them to provide their verification and diagnostic testing schedule within a specified period of time. The CalCERTS™ QA representative will meet the Rater onsite to:

Observe the onsite verification and diagnostic test

Independently verify the test results for accuracy

4. Frequency of Field QA Inspections

A CalCERTS™ QA representative will field verify one home rating annually, or 1% of the homes tested by the rater annually. It is anticipated that this would be done within 10 days of the 100th tested home registration in the CalCERTS™ Registry.

The CalCERTS™ QA representative will complete a written report detailing the results of this QA review. A copy will be provided to the Rater, and will be included in the Rater's permanent file.

5. Customer Complaints:

A CalCERTS™ QA representative will respond to all customer and builder complaints, and decide on the proper disposition of the complaint. All records: concerning complaints received by CalCERTS™ will be retained and included in the Rater's permanent file. The CalCERTS™ QA representative will respond to the complaint within 24 hours. The QA response will vary depending on not only the type of complaint, but possibly the number of similar complaints, or other circumstances that reflect on the Rater's work product. The QA response may result in retraining, continuing education or even decertification of the Rater.

6. Update Training and Re-Certification

Raters that have not performed field verification *and* diagnostic testing for a period of one year will be required to re-certify by completing updated training and examination. The Rater must be re-certified before providing field verification and diagnostic testing services. Re-certification may be done by taking the challenge test. The Initial QA Review will also be conducted as stated above.

RATER hereby acknowledges that RATER has read this Agreement, understands it, and agrees to comply with its procedures in accordance with Section 5, paragraphs A, B, and C, of the Rater Addendum.

RATER: _____ DATE: _____