

DATE: March 26, 2012
To: Dockets Office, California Energy Commission
FROM: Lois Navarrot
SUBJECT: Complaint and Investigation of CalCERTS, Inc., Docket-No. 12-CAI-01

ENCLOSED PLEASE FIND: (1) Answer of CalCERTS, Inc. to Complaint and Request for Investigation
(2) Declaration of Michael Charles Bachand in Support of CalCERTS Answer to Patrick Davis and Erik Hoover's Complaint and Request for Investigation of CalCERTS, Inc.

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**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF CALIFORNIA**

In the Matter of:

**Complaint and Request for
Investigation of CalCERTS, Inc.**

DOCKET NO. 12-CAI-01

**ANSWER OF CALCERTS, INC. TO COMPLAINT AND REQUEST FOR
INVESTIGATION**

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At its core, Mr. Davis and Mr. Hoover's (collectively, the "Petitioners") Complaint Against and Request for Investigation of CalCERTS, Inc.¹ ("CalCERTS, Inc.") is an attack on the integrity and efficacy of the Home Energy Rating Program² ("HERS Regulations"). The HERS Regulations were created to protect the consumer by promoting accurate home energy ratings through training, certification, and quality assurance procedures. Without these safeguards, the program is superfluous and the public is at risk. As certified HERS Raters, the Petitioners had a legal and contractual obligation not to submit untrue, inaccurate, or incomplete rating information. The Petitioners breached their obligations and, by extension, the public trust. Acting in accord with the very purpose of the HERS Regulations, and in a manner that was consistent with its contractual rights, CalCERTS first suspended and then decertified the Petitioners. The Petitioners now request that their decertifications be revoked. In doing so, the Petitioners are asking the California Energy Resources Conservation and Development Commission (the "Commission") to ratify their fraudulent conduct and avoid its statutory mandate of consumer protection.

In order to deflect the Commission's attentions from their transgressions, the Petitioners attack the decertification on the basis they were not afforded due process. However, this argument relies on a flawed premise, which is that CalCERTS is a state actor. In fact, the

¹ Received by the Office of Chief Counsel on February 15, 2012, filed in the Docket Unit on February 24, 2012, Docket No. 12-CAI-01.

² The Commission's regulations are codified at 20 California Code of Regulations §§ 1670, *et seq.* and in the Home Energy Rating System Technical Manual, CEC-400-2008-012-CMF; 2008 Building Energy Efficiency Standards for Residential and Nonresidential Buildings, CEC-400-2008-001-CMF; 2008 Reference Appendices CEC-400-2008-004-CMF; 2008 Residential Compliance Manual; CEC-400-2008-016-CFM.

Commission purposefully designed the HERS Program to be implemented by private entities, specifically recognizing the private entities providing these services at the time the regulations were adopted. The HERS Regulations require two different and independent categories of private entities be involved in any home energy rating in order to provide the homeowners and renters with an independent check upon the accuracy of the rating. The HERS Regulations formally establish these two independent and private entities as “providers” and “raters.”

Providers are organizations that administer a home energy rating system in compliance with the HERS Regulations.³ Providers, certified by the Commission, protect the integrity of energy rating services by being independent of and supervising the home energy raters.⁴ CalCERTS is a private corporation certified as a provider by the Commission to, among other things, conduct training and certification for individuals who conduct home energy ratings, consistent with the HERS Regulations. The Petitioners are raters. Raters are persons who have been trained, tested, and certified by a provider to perform one or more of the functions or procedures used to develop home energy ratings, audits, field verifications or diagnostic testing.⁵ The Petitioners attended CalCERTS training and were certified as raters by CalCERTS. CalCERTS formally delineates the relationship between itself and its raters in contracts reviewed and approved by the Commission for consistency with the HERS Regulations.

As a certified provider, CalCERTS is required to, and does, have a quality assurance program and a complaint response system. Quality assurance programs are worthless if a provider cannot take action to remove raters providing false and misleading ratings to homeowners. Thus, pursuant to its Commission-approved contracts with prospective HERS raters, CalCERTS may decertify raters who fail to provide accurate and truthful ratings. On several occasions prior to the instant controversy, CalCERTS has decertified raters. (See **Attachment A**, *Disciplinary Actions taken against HERS Raters and prospective HERS Raters by HERS Providers* <http://www.energy.ca.gov/HERS/documents/disciplinary_actions.pdf> [as of March 15, 2012].) .)

In this instance, CalCERTS received complaints regarding the work performed by Petitioners. CalCERTS conducted quality assurance reviews of Petitioners and found egregious

³ 20 CCR § 1671.

⁴ 20 CCR §1673(j).

⁵ 20 CCR § 1671.

and fraudulent representations in their work. As a result of the quality assurance reviews, CalCERTS initiated its internal procedures to decertify the Petitioners as CalCERTS raters. As a private corporation, CalCERTS was not required to provide the Petitioners with the level of due process asserted. Nevertheless, because CalCERTS has a corporate and ethical incentive to ensure that raters are treated fairly, sufficient process was afforded. Petitioners were given notice and an opportunity to be heard.

Petitioners now challenge the HERS Regulations and ask this Commission to compel CalCERTS to certify them despite their submission of fraudulent rating information, in violation of their regulatory and contractual obligations. Without the ability to decertify raters pursuant to a contract that this Commission approved, CalCERTS is placed in an untenable position, unable to act in the face of egregious conduct. If CalCERTS does not have the ability to protect consumers from fraudulent home raters, then the Commission must.

In order to protect the public from fraudulent ratings and maintain the integrity of the Home Energy Rating Program, CalCERTS respectfully requests the Commission take the following action:

1. Affirm that providers certified under Title 20, Chapter 4, Article 8, Section 1674 of the California Code of Regulations maintain the right to decertify raters and enforce the provisions of their Rater Agreements relative to their own certification program.
2. Maintain the decertifications of Mr. Hoover and Mr. Davis during the pendency of this Complaint proceeding.
3. Affirm the decertifications of Mr. Hoover and Mr. Davis, and affirm the decertifications of all HERS Raters previously published by the Commission, and
4. Initiate a Complaint and Request for Investigation of Valley Duct Testing, a division of JaaR Sales, Inc., pursuant to 20 Cal. Code Regs. §§ 1675(b) and 1230.

Pursuant to 20 Cal. Code Regs. § 1233(a), CalCERTS provides this response (the “Answer”) to Erik Hoover’s and Patrick Davis’s Complaint Against and Request for Investigation of CalCERTS, Inc. This Answer begins by responding directly to the specific facts alleged in the Complaint. Next, the Answer describes the legislative mandated independent relationship between the provider, CalCERTS, and its raters. Then, the Answer provides a detailed description of the complaints received by and investigation conducted by CalCERTS leading up to the decertification of Petitioners. Finally, the Answer addresses the erroneous

conclusion in the Complaint that Petitioners have the same due process rights in their contractual relationship with CalCERTS as they might have with a state agency.

I. ADMISSIONS AND DENIALS OF MATERIAL FACTS CONTAINED IN THE COMPLAINT

Pursuant to 20 C.C.R 1233(b)(2), CalCERTS admits and denies the material allegations in the Complaint at section III(a)-(i), as follows:⁶

- A. CalCERTS admits that Petitioners were certified as HERS raters in 2009.
- B. CalCERTS admits that complaint(s) were received with regard to Petitioners and their employer, Valley Duct Testing, as more specifically discussed herein.
- C. CalCERTS admits that Petitioners were suspended based on their quality assurance failures.
- D. CalCERTS admits that Petitioners were interviewed and that no audio recordings were conducted.
- E. CalCERTS admits that Petitioners' quality assurance failures were discussed during their respective interviews.
- F. CalCERTS admits that Petitioners were contacted by email following the interviews.
- G. CalCERTS admits that Petitioners were decertified on or about January 20, 2012.
- H. CalCERTS admits that Petitioners' attorney was provided with details regarding the quality assurance failure.
- I. CalCERTS alleges that the content of the cited correspondence speaks for itself.

II. THE HOME ENERGY RATING PROGRAM ESTABLISHED INDEPENDENT PRIVATE ENTITIES TO ENSURE THE PUBLIC RECEIVES TRUTHFUL AND ACCURATE RATINGS

In 1992 the Legislature decided to encourage homeowners and renters to implement cost effective energy efficiency measures. (SB 1207, stat. 1992.) The program required efficiency measures to be assessed for their ability to effectively reduce energy use, and for homeowners to be informed of the reasonable cost estimates of energy savings. (*Id.*) The legislation was codified, and Public Resources Code Section 25942 empowered the Commission to establish the statewide HERS Program. The statute specifically required the program criteria to include

⁶ To the extent not specifically admitted or denied, each material allegation in the Complaint is generally denied.

“training and certification procedures for home raters and quality assurance procedures to *promote accurate ratings and protect consumers.*” Pub. Res. Code § 25942(a)(3) (emphasis added). Paramount to the home energy rating system was accurate home energy ratings.

In adopting this legislation the Legislature recognized and encouraged the existing private entities providing energy efficiency evaluations to continue providing this service to the public. But, the new program required these entities to become certified. Therefore, the legislation required private entities that were in the business of rating homes prior to July 1, 1994, to be certified.⁷ (SB 1207, stat. 1992.) The Commission required certification of raters by independent private entities called providers. Providers must be certified by the Commission and are regulated by the Commission under Title 20, Chapter 4, Article 8, Sections 1670–1675 of the California Code of Regulations, (the “HERS Regulations”). Since implementation of the HERS Program, the Commission has certified three providers: CHEERS, certified in 1992; CalCERTS, certified in 2003; and CBPCA, certified in 2007.

A. CalCERTS Is A Private Commission-Certified Provider

CalCERTS is a private corporation certified by the Commission as a HERS provider. CalCERTS provides a home energy rating system that includes its proprietary data base. As a provider, CalCERTS trains and certifies home raters.⁸ CalCERTS is obligated to ensure that its certified raters provide true and accurate ratings.⁹ In order to fulfill its obligation to ensure true and accurate ratings, CalCERTS operates a quality assurance program and responds to complaints.¹⁰

In order to understand the quality assurance program and CalCERTS response to complaints, this Answer first describes the actions taken by raters. Raters under the HERS program inspect homes to ensure that new construction and alterations of existing homes meet the Building Energy Efficiency Standards set forth in Title 24 of the California Code of Regulations.¹¹ HERS Raters perform numerous tests, referred to as field verification and

⁷ This date was subsequently extended to January 1, 1996. Pub. Res. Code. §25942(c).

⁸ 20 Cal Code Regs §1673(a) .

⁹ 20 Cal. Code Regs. §1673(b).

¹⁰ 20 Cal. Code Regs § 1673(i).

¹¹ 20 Cal. Code Regs. § 1672.

diagnostic testing, on different “measures” related to energy efficiency. For example, raters will test a home’s air-condition system and inspect the home’s insulation. Once an inspection is completed, the rater enters the data into a registry that generates an energy rating or certification of compliance. The rater signs a statement under penalty of perjury assuring that the information he or she enters into the registry is true and accurate.

The HERS Regulations require specific quality assurance programs.¹² CalCERTS has a designated quality assurance manger and staff that conduct quality assurance reviews. When CalCERTS performs quality assurance reviews on its raters, the reviewer¹³ independently rates a home already inspected by the rater. The results of the quality assurance review are then compared to the results reported by the rater. The HERS Regulations require reporting deficiencies to the rater registry maintained by the Commission.¹⁴

CalCERTS is also required to have a system to receive complaints.¹⁵ CalCERTS is required to respond and resolve complaints related to ratings, field verifications, and diagnostic testing services and reports. CalCERTS initiated an investigation of the Petitioners after receiving a complaint.¹⁶

B. The CalCERTS Certified Rater Agreement Requires True and Accurate Ratings

The HERS Regulations require CalCERTS to have an approved contract with its raters that requires the raters to provide true and accurate ratings.¹⁷ CalCERTS has a Commission approved CalCERTS Certified Rater Agreement. The Petitioners each executed a Rater Agreement. (See Attachments B and C, respectively *Davis CalCERTS Certified Rater Agreement* and *Hoover CalCERTS Certified Rater Agreement*, collectively “Rater Agreement”.) According to the Rater Agreement CalCERTS may reprove, suspend for a period not to exceed

¹² 20 Cal. Code of Regs § 1673(i).

¹³ The qualifications of Quality Assurance Reviewers are reviewed by the Commission. (See 20 Cal. Code Regs. § 1673(i)(1).)

¹⁴ 20 Cal Code of Regs. § 1673(l)(3).

¹⁵ 20 Cal. Code of Regs § 1762(i)(5).

¹⁶ Petitioners argue that since they failed their quality assurance reviews they are *entitled* to the additional quality control provisions under section 1673(i)(3), applicable in instances where a rater fails a *routine* quality assurance evaluation. (See Complaint at p. 1.) The Petitioners did not fail routine quality assurance reviews, but failed numerous quality assurance reviews specifically targeted to resolve a complaint received under section 1673(i)(5), alleging fraud.

¹⁷ 20 Cal. Code Regs. § 1673(b).

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 Agreement at §§ III.B, F.)

C. The CalCERTS Subscription Agreement Requires True and Accurate Data

In addition to a Rater Agreement, CalCERTS' raters also enter into a CalCERTS Subscription Agreement. (See Attachments D and E, respectively *Davis CalCERTS Subscription Agreement* and *Hoover CalCERTS Subscription Agreement*, collectively "Subscription Agreement".) The Subscription Agreement establishes the terms upon which a rater may have access to CalCERTS' Commission-approved proprietary registry. The Subscription Agreement is the means by which CalCERTS protects its proprietary interest in its training program, online services, and reputation, by designating the terms for use of CalCERTS' intellectual property. (See Subscription Agreement at §§ C, D.) The Subscription Agreement can be terminated by a subscriber's willful failure to provide true and accurate data and information. (*Id.* at § F (4).) The Petitioners each executed a Subscription Agreement.

D. CalCERTS Received a Complaint Regarding Petitioners' Employer

In September of 2011, William Barrett complained to CalCERTS about conduct he had personally witnessed while working at Valley Duct Testing as a HERS rater. Mr. Barrett alleged that Valley Duct Testing raters were deliberately falsifying ratings to the detriment of homeowners, reporting that homes were Title 24 compliant when they were not. Mr. Barrett indicated that this practice was encouraged by Valley Duct Testing to help contractors pass HERS inspections and generate more business for Valley Duct Testing. Mr. Barrett claimed that he had personally witnessed raters falsifying data.¹⁸

E. CalCERTS' Investigated the Complaint Prior to Taking Action Against the Petitioners

Based on Mr. Barrett's complaint, CalCERTS began an investigation. On September 21, 2011, CalCERTS interviewed Mr. Barrett, questioning his allegations against Valley Duct Testing. Mr. Barrett described multiple instances where Valley Duct Testing raters deliberately falsified ratings. Mr. Barrett described how raters were encouraged to issue passing ratings for contractors even for homes in violation of Title 24.

¹⁸ CalCERTS had, up until the time of filing this answer, protected Mr. Barrett's anonymity. Mr. Barrett has agreed to the use of his name for this answer, and has agreed to testify if a hearing is warranted.

On October 3, 2011, CalCERTS conducted a quality assurance review on ratings entered by Mr. Barrett to determine Mr. Barrett's accuracy when rating homes. Mr. Barrett passed the quality assurance review.

Soon thereafter, CalCERTS decided to formally investigate the complaint issued by Mr. Barrett.¹⁹ CalCERTS began identifying homes rated by Valley Duct Testing raters and began performing quality assurance reviews on these homes to investigate the allegations of fraud.

This investigation is still ongoing.²⁰ To date, three Valley Duct Testing raters have been placed on probation subject to increased quality assurance reviews, and two raters, the Petitioners, have been decertified. The details leading to the decertification of Mr. Hoover and Mr. Davis follow below.

1. Quality Assurance Reviews of Petitioners' Rated Homes Resulted in Significant and Substantial Discrepancies

When ratings reported by Petitioners were compared to ratings generated by CalCERTS' Quality Assurance Team ("QA Team"), *significant* and *substantial* discrepancies were revealed.²¹ Many of these discrepancies substantiated the allegations in Mr. Barrett's complaint. Duct leakage, refrigerant charge and airflow, and insulation were some of the most significant measures falsified by Petitioners. A description of these measures has been provided for context.

Duct Leakage: Duct leakage measures test a home's ability to effectively cool and heat the home. If duct leakage is inaccurately reported, a home-owner may be unaware that energy is being wasted, channeling conditioned air into the attic or other areas of the home that provide no benefit. More importantly, if duct leakage is inaccurately measured, contaminants such as mold, dust, and exhaust may be sucked into a home's airflow system, potentially harming the health and property

¹⁹ This was not the first complaint against Valley Duct Testing received by CalCERTS. In 2010, CalCERTS received a complaint against John Flores and Valley Duct Testing that was resolved with the temporary suspension of Mr. Flores, the president of Valley Duct Testing. The terms of the suspension were published by the Commission at: http://www.energy.ca.gov/HERS/documents/disciplinary_actions.pdf

²⁰ CalCERTS is required by the regulations to resolve all complaints issued through CalCERTS' Complaint Response System. (See 20 Cal. Code. Regs. §§ 1672(i)(5), and 1675(b).) To resolve this complaint, CalCERTS asks the Commission to initiate a Commission-sponsored Complaint and Request for Investigation of Valley Duct Testing, a division of Jaar Sales, Inc., pursuant to 20 Cal. Code. Regs. §§ 1675, 1230.

²¹ The data and photographs documenting these discrepancies are provided in the attached declaration of Michael Charles Bachand, CalCERTS' Quality Assurance Manager.

of the homeowner. If duct leakage is above a specified target the home fails this measure and the contractor will be required to better seal the ducts.²²

Refrigerant Charge & Air Flow: Refrigerant charge measures test whether there is sufficient refrigerant in an air-conditioning unit to properly cool a home. Airflow measures determine the air-conditioning unit's ability to effectively distribute air throughout the home. A series of tests gage these measures. One of the tests is to verify the presence of Temperature Measurement Access Holes (TMAHs). If the holes are present the raters use a temperature split test to measure refrigerant charge and airflow. If TMAHs are not present, a rater might be able to use a flow hood test to test airflow, dependant on the condition of the home. HERS raters also verify the presence and functionality of the Thermal Expansion Valve (TXV), a device used to regulate refrigerant in the air-condition unit. When these measures are falsified, energy is wasted and systems are kept from working as intended by the manufacturer. Fraudulent ratings conceal the problem, and the systems are left unrepaired.

Insulation: Quality Insulation Installation (QII) measures require the home to be inspected with regards to insulation installation. QII requires the home to be inspected during framing to ensure that the home has been sealed against air leakage, and again after the insulation has been installed. Raters ensure that insulators post the appropriate insulation documentation required by law. Insulation is very expensive, and the raters must verify that insulators have provided the quantity and quality of insulation purchased. Insulators are required to install rulers to verify that enough insulation has been installed in the home.

²² Duct leakage has significant financial consequences for the homeowner, wasting energy every time the home is heated or cooled. Yet, fixing duct leakage is a simple and inexpensive process for the contractor. Once the HERS Rater informs the contractor that duct leakage is high, the contractor can use tape or putty to better seal the ducts. A relatively inexpensive fix for the contractor can conserve significant resources over the life of a home.

a. Quality Assurance Review Revealed that Mr. Davis Falsified Test Results

The QA Team reviewed six properties rated by Mr. Davis.²³ At five of these properties Mr. Davis failed to correctly report duct leakage, providing the homes a passing rating when the homes were not Title 24 compliant. Mr. Davis repeatedly failed to correctly identify homes as new construction, setting erroneous and less stringent target numbers for duct leakage that could allow the home to pass inspection. Compared to the duct leakage measurements generated by the QA Team, Mr. Davis's numbers were off by a significant factor; double digits when the margin of error for this test is plus or minus 3 percent of the actual measurement.²⁴ For example, in order for a particular home²⁵ to pass duct leakage it needed to have leakage measured below 150 cfm. Mr. Davis reported duct leakage of 146 cfm for the home. The quality assurance review reported 224 cfm for the same home. The discrepancy between these two numbers directly corresponds to whether the home was Title 24 compliant or not.

Mr. Davis failed to accurately report the refrigerant charge and air flow of the homes he rated. Mr. Davis lied about the presence of TMAHs and the tests he used to measure air flow. The quality assurance reviewer was unable to find any TMAHs at the locations where Mr. Davis indicated the holes were present.²⁶ Mr. Davis reported that he used temperature split tests to measure air flow at the home, but without the TMAHs, this test is impossible to implement. Mr. Davis repeatedly failed to accurately measure the TXV, passing the system when it was not Title 24 compliant. Mr. Davis's measurements for TXV were sometimes off by more than a factor of two.

The QA Team also found that Mr. Davis failed to measure and report insulation correctly. Mr. Davis lied about the number of rulers present in the attic and the depth of the insulation. Mr. Davis's rating passed the home with regards to the insulation measures. However, the quality assurance review revealed that the insulator did not properly install the insulation and did not provide sufficient insulation for the home.

²³ A detailed description of each of the QA reviews is provided in the attached declaration of Michael Charles Bachand, CalCERTS' Quality Assurance Manager.

²⁴ See 2008 Reference Appendices; CEC-400-2008-004-CMF at RA3-2.

²⁵ The address for this example is 1135 Poplar Street, tested on 11/29/2011 and 12/09/2011 respectively.

²⁶ Mr. Davis applied stickers to plenums to mark the TMAHs. When the quality assurance reviewer removed the stickers to locate the holes no holes were found. Mr. Davis admitted to installing TMAHs for contractors; however, raters are not permitted to install the TMAHs.

In total, the QA Team found five of the six reviewed properties rated by Mr. Davis were falsely certified as Title 24 compliant.²⁷

b. Quality Assurance Review Revealed that Mr. Hoover Falsified Test Results

The QA Team reviewed four properties rated by Mr. Hoover.²⁸ At one property with two air-conditioning systems, Mr. Hoover twice failed to accurately report duct leakage. On the first system, Mr. Hoover reported duct leakage at 71 cfm, with a target of 72 cfm. The quality assurance reviewer recorded duct leakage of 165 cfm, more than double the amount recorded by Mr. Hoover. On the second system, Mr. Hoover reported duct leakage of 47 cfm with a target of 48 cfm. The quality assurance reviewer recorded duct leakage at 121 cfm, again more than double the amount recorded by the rater.²⁹ Mr. Hoover passed the contractor as to duct leakage by 1 cfm on both systems, despite the fact that neither system was Title 24 compliant. Mr. Hoover failed to accurately report duct leakage at two of the four homes reviewed. He also failed to correctly identify homes as new construction, setting erroneous and less stringent target numbers for duct leakage.

Mr. Hoover failed to accurately report the refrigerant charge and air flow of the homes he rated. Mr. Hoover lied about the presence of TMAHs and the tests he used to measure air flow. Mr. Hoover also failed to accurately measure TXVs; passing homes with regards to these measures that were clearly not Title 24 compliant. For example, Mr. Hoover reported one TXV measurement at 15 degrees with a target of between 3 and 26 degrees.³⁰ The quality assurance review revealed that the TXV measurement was 34.6 degrees, far outside of the target range and more than double of that reported by Mr. Hoover. The system at this home was clearly not in compliance with Title 24.

The QA Team also found that Mr. Hoover failed to measure and report insulation correctly. Mr. Hoover did not ensure that the proper insulation certifications were posted in the homes. He set erroneous insulate depth targets and recorded false measurements indicating that

²⁷ Mr. Davis is a prolific rater. This margin of error is significant for a rater allegedly performing 60–80 ratings a month.

²⁸ A detailed description of each of the QA reviews is provided in the attached declaration of Michael Charles Bachand, CalCERTS' Quality Assurance Manager.

²⁹ As mentioned above the standard margin of error permissible is plus or minus 3 percent of the actual measurement. (See 2008 Reference Appendices; CEC-400-2008-004-CMFA RA3-2.)

³⁰ The address for this example is 334 Malbec Court, tested on 8/08/2011 and 10/28/2011.

that home met those targets. Mr. Hoover also set erroneous weight targets for insulation and recorded false weight measurements indicating the insulation met those targets. Mr. Hoover failed to accurately report every QII measure reviewed by the QA Team.

In total, the QA Team found four of the four reviewed properties rated by Mr. Hoover were falsely certified as Title 24 compliant.³¹

2. CalCERTS Decertified Petitioners as Part of the Complaint Resolution

On December 16, 2011, CalCERTS notified Mr. Hoover and Mr. Davis that they had failed several quality assurance reviews. The notification identified the addresses at which the Petitioners had failed reviews. The Petitioners were notified that they had been placed on a fifteen (15)-day suspension, and were asked to contact CalCERTS within those 15 days to schedule a meeting to discuss the failures. CalCERTS implemented the temporary suspension in order to mitigate the harm to consumers while waiting for a meeting with Petitioners. CalCERTS was hopeful that during the meetings, the issues leading to the failures would be revealed and addressed. The Petitioners were informed to bring their records and documents to the meetings.³²

a. Mr. Davis – Hearing & Decertification Process

Mr. Davis did not schedule his meeting with CalCERTS until January 4, 2012. When Mr. Davis arrived at his meeting he presented a confidentiality agreement provided to him by John Flores, president of Valley Duct Testing, that indicated Mr. Davis could not talk openly with the CalCERTS QA Team about rating work conducted at homes other than those listed in the notice letter. (*See Confidentiality Agreement*, Decl. Michael Charles Bachand at ¶ 34, Exh. 10.)

During the meeting Mr. Davis was asked to explain the discrepancies between his ratings and those conducted by the CalCERTS QA Team. Mr. Davis was encouraged to ask questions about the reviews, and of the QA Team. Mr. Davis indicated that he performs 60–80 inspections a month, with up to 25 in a week during the summer months. Mr. Davis indicated that he has

³¹ Mr. Hoover is a prolific rater, submitting as many as five ratings for a single day. This margin or error is significant for a rater allegedly performing such a high quantity of ratings.

³² Documents related to the decertification of Petitioners have been included as Exhibits to the Declaration of Michael Charles Bachand, CalCERTS' Quality Assurance Manager.

sufficient time to complete his work and that he was confident in his abilities as a rater.³³ The meeting lasted approximately three hours. During this time, Mr. Davis was unable to explain the discrepancies between his ratings and those conducted by the QA Team. (*See QA Action Report*, Decl. Michael Charles Bachand at ¶ 36, Exh. 11.)

After the January 4, 2012 meeting, the CalCERTS QA Team met to discuss Mr. Davis. The QA Team decided to continue Mr. Davis's suspension and perform two additional quality assurance reviews. These additional reviews supported decertification, indicating that Mr. Davis was entering patently false data into CalCERTS' registry.

On January 17, 2012, CalCERTS offered Mr. Davis an opportunity to submit any additional questions, comments or materials upon which to base their review. Mr. Davis did not submit any additional materials pertaining to the issues discussed.

On January 30, 2012, CalCERTS notified Mr. Davis that he would no longer be certified by CalCERTS. In the notification letter CalCERTS specified the basis for its decision.

b. Mr. Hoover - Hearing & Decertification Process

Mr. Hoover did not schedule his meeting with CalCERTS until January 6, 2012. At the meeting Mr. Hoover was given the opportunity to explain the discrepancies between his ratings and those conducted by the CalCERTS QA Team. Mr. Hoover was encouraged to ask questions about the reviews, and of the QA Team. Mr. Hoover indicated that he might do five ratings per day, over 12 working hours and that he is confident in his abilities as a rater. This meeting lasted approximately two hours. During this time, Mr. Hoover was unable to explain the discrepancies between his ratings and those conducted by the QA Team. (*See QA Action Report*, Decl. Michael Charles Bachand at ¶ 61, Exh. 21.)

After the January 6, 2012 meeting, the CalCERTS QA Team met to discuss Mr. Hoover. The QA Team continued Mr. Hoover's suspension while reviewing the results of the interview.

On January 18, 2012 CalCERTS offered Mr. Hoover an opportunity to submit any additional questions, comments or materials, upon which to base the review. Mr. Hoover did not submit any additional materials.

On January 30, 2012 CalCERTS notified Mr. Hoover that he would no longer be certified by CalCERTS. In the notification letter CalCERTS specified the basis for its decision.

³³ The QA Team asked questions regarding confidence to gauge whether additional training could effectively improve the rater's performance.

3. Other Valley Duct Testing Raters

In addition to Mr. Hoover and Mr. Davis, CalCERTS performed quality assurance on three other HERS Raters employed by Valley Duct Testing: Mr. Daniel Sidhu, Ms. Jennifer McFall, and Mr. Donald Scott White. These raters also failed quality assurance reviews; however, their failures were less egregious than those of Mr. Hoover and Mr. Davis. Individually, Mr. Sidhu, Ms. McFall, and Mr. White were asked to meet with the CalCERTS QA Team and were given the opportunity to explain their failures. Each of these three raters presented sufficient information during their interviews to indicate that additional instruction or training might improve their accuracy. As a result, Mr. Sidhu, Ms. McFall and Mr. White are presently subject to increased quality assurance reviews.

F. CalCERTS has Received Unsubstantiated Complaints From Valley Duct Testing

On January 20, 2012, CalCERTS received a complaint from Mr. Haddock, legal counsel representing John Flores and Valley Duct Testing, a division of JaaR Sales, Inc. In this letter Mr. Haddock complained that the investigation of “Valley Duct Testing HERS raters” was unlawful, and that CalCERTS had deprived raters due process. Mr. Haddock did not address any of the substantive reasons for the investigations or decertifications. (See **Attachment F**, *January 20, 2012 Haddock Letter*.)

CalCERTS responded to Mr. Haddock’s letter on February 8, 2012, providing a detailed description of the process and evidence that led to the decertifications of Mr. Hoover and Mr. Davis. CalCERTS, in the spirit of cooperation, agreed to refrain from submitting the decertifications to the Commission while Mr. Hoover and Mr. Davis were given another opportunity to provide information or documents they believed were material to the decertifications. Petitioners did not provide any additional information.³⁴

On February 15, 2012, Mr. Haddock sent CalCERTS another letter, this time asserting a right to challenge the quality assurance data and threatening civil litigation. (See **Attachment G**, *February 15, 2012 Haddock Letter*.) Mr. Haddock followed the letter with an email requesting

³⁴ CalCERTS also provided Mr. Haddock details regarding the quality assurance failure of Mr. Sidhu, Ms. McFall, and Mr. White. These documents were produced on February 9, 2012.

that the public notices of quality assurance failures for Mr. Sidhu, Ms. McFall, and Mr. White be removed from CalCERTS' website.³⁵ (See **Attachment H**, *February 28, 2012 Haddock email*.)

On March 6, 2012, CalCERTS sent Mr. Haddock copies of all data generated as part of the decertifications of Mr. Hoover and Mr. Davis, and all of the information generated during the quality assurance reviews of Mr. Sidhu, Ms. McFall, and Mr. White. This information included raw data from the registry and field notes and photographs collected during inspections.³⁶

CalCERTS has not submitted the decertifications to the Commission, and requests guidance from the Commission on how to proceed in light of this Complaint and the threatened civil action.

G. Providers have Submitted and the Commission has Published Decertifications of Raters

Prior to the decertifications of Petitioners, CalCERTS had decertified five raters. These five decertifications were independently issued by CalCERTS, with the details of the decertifications submitted to the Commission once the decision to decertify was finalized. It is CalCERTS' understanding that the Commission reviewed the decertifications before publishing the information on the Commission's website. (See **Attachment A**, *Disciplinary Actions taken against HERS Raters and prospective HERS Raters by HERS Providers*

<http://www.energy.ca.gov/HERS/documents/disciplinary_actions.pdf> [as of March 15, 2012].) Other HERS Providers have also decertified raters. (*Id.*) Since 2007, CHEERS has decertified seven raters, and CBPCA has decertified one.

III. PETITIONERS UNSUBSTANTIATED LEGAL CLAIMS SHOULD BE REJECTED BY THE COMMISSION

Petitioners' Complaint makes loose constitutional arguments without any supporting analysis or facts. The Complaint alleges CalCERTS is a government entity and must thereby provide Petitioners with enhanced due process rights. As described below, CalCERTS does not meet any of the tests to be considered a state entity. Petitioners can exercise their contractual rights against CalCERTS but do not have expanded due process rights.

³⁵ CalCERTS refused this request.

³⁶ CalCERTS does not typically release this type of information to raters. This information is confidential and could be used to undermine quality assurance reviews in the future.

A. CalCERTS is Not A State Actor and Therefore, Expanded Due Process Requirements Do Not Apply

Petitioners assert that the due process requirements of the Fourteenth Amendment of the United States Constitution, and by extension the California Constitution apply to the egregious conduct leading to the decertifications of Mr. Hoover and Mr. Davis. Petitioners argue that because CalCERTS is a certified provider, CalCERTS is “administering” the HERS Program and is by extension a governmental entity. This flawed argument would deem anyone regulated or certified by the government a governmental entity subject to the same constitutional limitations as state action. (*See* Complaint p. 6.) That is simply not what the law requires in order to find state action.

B. The Commission Did Not Perform the Investigations of the Complaint or Execute the Decertifications

Petitioners support their erroneous proposition by citing to two cases; *Lugar v. Edmondson Oil Co.* (1982) 457 U.S. 922, and *Adams v. Department of Motor Vehicles* (1974) 11 Cal. 3d 146; without explaining how the cases apply in this instance. (*See* Complaint p. 6.) In *Lugar*, the court explicitly stated that when an allegation of a due process violation is issued against a private party, the allegation must include *facts* to prove that the private party is a “state actor” otherwise “private parties could face constitutional litigation whenever they seek to rely on some state rule governing their interactions” with others. (*Lugar, supra*, 457 U.S. at 936.) Petitioners fail to demonstrate that *Lugar* applies by failing to make the factual showing required. Furthermore, Petitioners cannot show that CalCERTS is a state actor. CalCERTS is a private corporation that is only certified by the Commission. CalCERTS trains and certifies raters. Only upon CalCERTS’ submission can the raters be listed on the Commission’s website. CalCERTS is required to have a system to receive complaints and must respond to them, but how that is performed is left to CalCERTS.

CalCERTS performs its own investigation and is solely responsible for meeting the requirements of its status as a provider. CalCERTS uses its proprietary rating model and software that CalCERTS is solely responsible to protect. The Commission has not participated in the training, certification, or complaint processes leading to the decertification of Mr. Hoover or Mr. Davis. Furthermore, the decertification of each individual only applies to CalCERTS’ home rating process. Other companies could file to qualify as providers and would be

responsible for training, certifying and conducting complaint investigations of raters. Therefore, CalCERTS action to decertify Petitioners does not meet the requirements of *Lugar* and cannot be considered a state action.

Petitioners cite to *Adams* to prove that CalCERTS is a state actor. In *Adams* the California Supreme Court held that a statute allowing a lien to be executed, permitting the involuntary sale of a vehicle without affording the owner an opportunity for a hearing, was a deprivation of due process since the lien was executed by the California Department of Motor Vehicles. (*Adams, supra*, 11 Cal. 3d. at pp. 152, 157.) The court held that because the “deprivation procedure is administered” by the state, the challenged statutory scheme required due process protections. (*Id.*) The court made clear that it was addressing only the constitutional requirements of the statute, and was not addressing the private repossession of vehicles through contract. (*Id.* at 157.) These facts are not dispositive when applied to CalCERTS.

Here, Petitioners are not challenging the statutory scheme that underlines the HERS Regulations; nor are they challenging the constitutionality of the HERS Regulations. Rather, Petitioners have attacked CalCERTS’ actions to investigate complaints and decertify Petitioners directly. Petitioners take issue with CalCERTS’ decertification process; however, they provide no analysis to demonstrate CalCERTS’ action was taken in concert with the Commission or that any “joint participation with the state” warrants constitutional protections. (See *Lugar, supra*, 457 U.S. at 938 (holding that private party’s joint action with state officials to accomplish prejudgment deprivation of property interest was state action).)

C. CalCERTS Is Not a State Actor

Under the common law, CalCERTS’ decertifications of Mr. Hoover and Mr. Davis are presumed *not* to be state action since CalCERTS is a private party. (See *Sutton v. Providence St. Joseph Med. Ctr.*, (9th Cir. 1999) 192 F. 3d 826, 835.) Despite CalCERTS’ close relationship with the Commission it cannot be presumed to be a state actor. (See *Jackson v. Metropolitan Edison Co.*, (1974) 419 U.S. 345, at pp. 357 (“A state's mere regulation of the exercise of a private power allowed by the state law and which is exercised solely on the basis of the power and without compulsion from the state, does not convert the actor's conduct into state action”).) Petitioners must show more than CalCERTS’ reliance on and compliance with the HERS Regulations.

In order for Petitioners to show that the decertifications of Mr. Hoover and Mr. Davis warranted due process, they must first prove a deprivation of a right created by the state and, second, they must show that the deprivation was caused by someone appropriately characterized as a “state actor.” (*Lugar, supra*, 457 U.S. at pp. 923, 939.) There are four tests commonly used to determine whether a private party is a state actor “(1) public function, (2) joint action, (3) governmental compulsion or coercion, and (4) governmental nexus.” (*Sutton, supra*, 192 F.3d. at pp. 835-836.)

Under the *public function test*, Petitioners must show that the function at issue in their complaint is “both traditionally and exclusively governmental.” (*Kirtley v. Rainey* (9th Cir. 2003) 326 F. 3d 1088, 1093 citing to *Lee v. Katz* (9th Cir. 2002) 276 F. 3d 550, 554-555.) “The public function doctrine is carefully and narrowly defined.” (*Johnson v. Knowles* (9th Cir. 1997) 113 F. 3d 1114, 1118 citing to *Flagg Brothers, Inc. v. Brooks* (1978) 436 U.S. 149 at 158.) Public functions have been limited to deeply traditional functions such as electing public officials and the regulation of public speech. (*Id.*, see also *Katz, supra*, 276 F. 3d at 557.) CalCERTS’ function is to train and certify energy raters. Neither of these functions has ever been held to be a traditional and exclusive government function, therefore the test does not apply.

Under the *joint action test*, Petitioners must show that the Commission has “so far insinuated itself into a position of interdependence” with CalCERTS that the Commission must be recognized as a joint participant in the decertifications. (See *Kirtley, supra*, 326 F. 3d at 1093, citing to *Parks Sch. Of Bus., Inc. v. Symington* (9th Cir. 1995) 51 F. 3d 1480, 1486.) Petitioners cannot prove this interdependence because the Commission has played *no role* in the decertifications of Mr. Hoover or Mr. Davis. As explained by the Commission, in a letter to Petitioners dated January 11, 2012, the Commission does not participate in rater discipline. (See **Attachment I**, *January 11, 2012 Letter from Mr. Dennis Beck, Senior Staff Counsel California Energy Commission*.) The decertifications of Mr. Hoover and Mr. Davis were issued by CalCERTS, independent of any involvement from the Commission. Further the decertifications are *only effective* relative to CalCERTS’ certification. Whether the Commission decides to publish the decertifications, or bar Mr. Hoover and Mr. Davis from working with other providers, such as CHEERS or CBPCA, are decisions in which CalCERTS has no role. There

has been no joint action by the Commission and CalCERTS relative to the decertifications of Mr. Hoover or Mr. Davis to satisfy the joint action test.

Under the *government compulsion or coercion test*, Petitioners must show that the Commission exercised “coercive influence” over CalCERTS to such an extent that CalCERTS’ actions are governmental actions. (*Kirtly, supra*, 326 F. 3d at 1094.) Under this test, a regulation or statute is not sufficient to prove coercive influence over CalCERTS.³⁷ (*Sutton, supra* 192 F. 3d at 843 (“government compulsion, without more, is [not] sufficient to deem a truly private entity a governmental actor...plaintiffs must establish some other nexus”).) Petitioners must show that there was “willful participation in a joint activity” by CalCERTS and the state. (*Id.*) Petitioners cannot do this, since as described above the Commission was not involved in the decertifications of Mr. Hoover and Mr. Davis.

In *Blume v. Yaretsky*, (1982) 457 U.S. 991, the Supreme Court held that although the government mandated private hospitals to make assessments discharging Medicaid patients, because the assessments were based on “judgments made by private parties according to professional standards” the judgments were not actions of the state. (*Id.* at pp. 1005–1010.) Similarly, CalCERTS has established its own standards to determine whether raters are exercising truthfulness required under the rater agreements. (*See* 20 Cal. Code Regs. § 1673(b).) Whereas the Commission requires that providers assess raters’ ability to comply with the regulations, the Commission did not compel the decertifications. CalCERTS independently initiated the investigation that verified Mr. Hoover and Mr. Davis were intentionally submitting false data to the detriment of homeowners. CalCERTS independently decided to decertify Mr. Hoover and Mr. Davis. Petitioners cannot show that the Commission required anything more of CalCERTS than adherence to the regulations governing providers.

And finally, under the *governmental nexus test*, Petitioners must show “there is a such close nexus between the State and the challenged action that the seemingly private behavior may be fairly attributable as that of the State itself.” (*Kirtley, supra*, 326 F. 3d at 1095, citing to *Brentwood Acad. v. Tennessee Secondary Sch. Athletic Ass’n*, 531 U.S. 288, 295.) This test requires the state to be “so far insinuated into a position of interdependence with the private party that [the state] was a joint participant in the enterprise.” (*Rowell v. Valley Health Systems* (N.D.

³⁷ This test addresses precisely the flawed arguments proposed by Complainants. By following the HERS Regulations, CalCERTS has not converted itself into a governmental entity.

Cal. 2010) 2010 WL 4236797 at 3, citing to *Jackson, supra*, 419 U.S. 345 at 351.) “In *Jackson*, the Court found that “a heavily regulated utility with at least something of a governmentally protected monopoly” did not have a sufficiently close nexus with the state to consider the utility’s action to be under color of state law.” (*Id.*) Similar to the utility in *Jackson*, CalCERTS cannot operate without approval of the Commission, but the roles of the state and CalCERTS are separate.

CalCERTS’ role as a provider is distinct from that of the state. (*See Kirtly, supra*, 326 F. 3d at 1095 (a guardian appointed by the state to be an child-advocate, who is paid by the state and regulated by state law is not a state actor because the role is distinct from that of the state).) The HERS Regulations clearly establish what is required of providers, under section 1673, with the oversight role of the Commission defined under section 1675. The only nexus, if any, between CalCERTS and the Commission is solely one of public policy. Everyone involved in the HERS Program, to include raters, are bound by the public policy requirements of section 1672(m).

Petitioners have not and cannot establish CalCERTS as a state actor, subject to the same constitutional requirements as a state agency. Because CalCERTS is a private entity, the due process protections challenged by Petitioners do not apply to the decertification of Mr. Hoover and Mr. Davis. Nevertheless, as the facts show, and as discussed below in section III. E, both Mr. Hoover and Mr. Davis were both afforded due process.

D. Petitioners’ Rights Must Be Asserted Through The Principles of Contract

CalCERTS’ certification of Petitioners was contingent upon Petitioners entering into and abiding by the terms of the rater agreement and subscription agreement. These agreements obligated the raters to input data that is true, accurate, and complete into CalCERTS’ registry. CalCERTS’ right to define the terms of their certification is clearly not against public policy since it supported by the authorizing statute and is moral. (*See Cal. Civ. Code §1667, see also Spangenberg v. Spangenberg* (1st Dist. 1912) 19 Cal. App. 439, 447 (a contract will not be adjudged void, as against public policy, unless it contravenes public policy as declared by statute or by judicial decisions, or unless it injures the public).)

Petitioners may argue that the provisions of the contract limit their ability to work as HERS raters; however, this argument assumes too much. CalCERTS’ rights under the agreements are relative only to CalCERTS’ certification program and subscriber services.

CalCERTS has no authority to bar Mr. Hoover and Mr. Davis from working as energy raters or home inspectors. The affect of the decertification is that Petitioners simply cannot claim that CalCERTS has certified them attesting to their honesty and accuracy as raters.

Petitioners are not unprotected under these agreements. The implied covenants of good faith and fair dealings apply to these agreements, and protect raters from the types of bad-faith dealings alleged. (*Kransco v American Empire Surplus Lines Ins. Co.* (2000) 23 Cal. 4th 390, 400.) Disputes arising out of these contracts should be resolved privately. If Petitioners believe that CalCERTS has acted in bad faith, they are not precluded from seeking remedies associated with a breach of contract claim.³⁸

E. Due Process Requirements Were Met Although No Fundamental Right At Stake

For due process to apply, Petitioners must have a fundamental right at stake. Petitioners have masked CalCERTS' contractual right to terminate the certifications, which warrants Petitioners' ability to accurately rate homes *and* CalCERTS' contractual right to terminate Petitioners access to the online registry, as their vested right to work as home energy raters. This cannot be so. Under California law it is possible for a non-traditional right to become protected, but only if it is sufficiently vested. (*See Bixby v Pierno* (1971) 4 Cal. 3d 130.) Vestedness is determined by evaluating the extent to which the right was already possessed, or owned by the person claiming the right. (*Id.* at 146.) Petitioners cannot claim a right to CalCERTS' approval of them as raters since CalCERTS maintained all rights to withdraw their approval through contract. (*See Rater Agreements at § III.B, F.*) Moreover, Petitioners certainly cannot claim a right to use CalCERTS' protected intellectual property, the CalCERTS registry, since CalCERTS retained all rights and privileges associated with this property. (*See Subscription Agreement at § C, D.*) Under these circumstances, Petitioners have no vested right subject to due process protections.

F. Petitioners Were Given Notice and An Opportunity to Be Heard

Due process is met, as long as there is "reasonable notice" and a "reasonable opportunity to be heard." (*Ford Dealers Assn. v. Department of Motor Vehicles*, (1982) 32 Cal. 3d 347, 367 ("Due process mandates do not necessarily require that the exacting rules of procedure employed

³⁸ Complainants may be held to the mediation and arbitration clauses within these contracts.

in the criminal courts be applied to license revocation procedures.”) see also *People v. Dean*, (4th Dist. 2009) 174 Cal. App. 4th 186, 204 (due process does not require any particular form, and is not comprised of a specific set of rules).) In the Complaint, there are numerous cases cited to support the specific processes Petitioners desire; however, Petitioners have not addressed the fact that both Mr. Hoover and Mr. Davis were given notice and an opportunity to be heard sufficient under the law.

1. CalCERTS Provided Notice to Petitioners

To meet the requirements of due process notice must be “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.” (*See Conservatorship of Moore* (4th Dist. 1986) 185 Cal. App. 3d 718, 725 quoting *Mullane v. Central Hanover Bank Tr. Co.* (1950) 339 U.S. 306.) On December 16, 2011, Mr. Hoover and Mr. Davis were notified by email that they had failed specific quality assurance reviews. Petitioners were provided the addresses of homes where their data conflicted with data gathered by the QA Team.³⁹ Petitioners were asked to schedule a meeting with CalCERTS to discuss the failures. The information included in the emails to Mr. Hoover and Mr. Davis is precisely the type of information required of notice. Petitioners were told specifically which ratings their decertifications were hinged upon prior to their meetings with the QA Team.

Petitioners argue that the level of detail in the notice letters was not sufficient to constitute notice. (Complaint at p. 4.) However, notice must only be “reasonable” and “inform those affected” of the pendency of an action. (*Id.* at 725–726.) The notices contained the addresses of homes where the Petitioners failed to provide accurate information. Petitioners knew what measures were tested at each home, because they entered the data. Petitioners had access to the CalCERTS’ registry through their employer and could have reviewed the details of their ratings at any time prior to their meetings with CalCERTS. Further, Petitioners should have had field notes and documents for each of the homes they rated. By indicating which homes and ratings would be discussed, sufficient notice was given.

Petitioners also argue that the notice, being issued in conjunction with the temporary suspension, violated due process. This is not so. When the public interest is at stake post

³⁹ At the time the notices were issued the Petitioners had full access to all of their data and ratings through the CalCERTS registry.

deprivation hearings are sanctioned. (*Bostean v. Los Angeles Unified School Dist.* (2nd Dist. 1998) 63 Cal. App. 4th 95, 112 (teacher involuntarily suspended prior to hearing).) Under circumstances protective of the public, due process is met so long as there is the opportunity for a reasonable post deprivation hearing. (*City of Los Angeles v. David* (2003) 538 U.S. 715 (thirty-day delay before hearing to return vehicle held constitutional); *Federal Deposit Ins. Corp. v. Mallen* (1988) 486 U.S. 230 (Ninety days for post-suspension hearing regarding bank employment did not violate due process).) In this instance, a post deprivation hearing was offered immediately upon suspension.

CalCERTS issued the notices of quality assurance failures in conjunction with a “temporary suspension” in order to protect consumers. CalCERTS was ready and available to meet with the Petitioners immediately upon serving them with the notice letters. Any delay in process is attributable solely to Mr. Hoover and Mr. Davis failing to schedule timely meetings.

Petitioners also argue that they are entitled to a copy of the complaint that has led to the ongoing investigation of Valley Duct Testing. Petitioners do not cite to any provision in law, or under the HERS Regulations that entitle them to a copy of Mr. Barrett’s complaint. CalCERTS did not decertify the Petitioners based solely upon Mr. Barrett’s complaint. CalCERTS performed field investigations of homes rated by Mr. Hoover and Mr. Davis. CalCERTS determined Mr. Hoover and Mr. Davis had entered false information into the data base and provided false home ratings. Mr. Hoover and Mr. Davis were decertified based on the patently false information they were entering into the CalCERTS’ registry not the complaint that led to the investigation. Petitioners were informed of the specific homes and ratings upon which their decertifications are based prior to their meeting with CalCERTS. As stated above, this is sufficient to meet the constitutional requirements for notice.⁴⁰

2. CalCERTS Provided a Hearing for Mr. Davis and Mr. Hoover

The due process requirements for a hearing require that persons be afforded an opportunity to be heard and to defend themselves, in front of an impartial decisions maker. (*See Humphreys v City and County of San Francisco* (1st Dist. 1928) 92 Cal. App. 69; *Golden Day Schools, Inc. v State Dept. of Educ.* (2nd Dist. 2000) 83 Cal. App. 4th 695.) In California, many

⁴⁰ Mr. Barrett’s complaint came in through the Complaint Response System, required under the HERS Regulations to protect consumers. (*See* 20 Cal. Code Regs. §1673(i).) CalCERTS requests the Commission advise providers as to whether complainants’ identities may be kept confidential.

administrative adjudications follow the provisions of the California Administrative Procedures Act, which allow for informal hearings when a hearing is not required by statute. (*See* Cal. Gov. Code § 1145.10.) Informal hearing may satisfy the due process requirement providing an opportunity to be heard. (*See* Cal. Gov. Code § 11445.10(b)(1).)

The HERS Regulations do not require providers to conduct formal hearings to determine whether raters are in compliance with their rater agreements. Rather, the HERS Regulations only require that rater agreements be approved by the Commission, and are silent as to how the agreements will be enforced. Without a requirement for a formal hearing, CalCERTS appropriately offered Mr. Hoover and Mr. Davis an informal hearing with the opportunity to be heard.⁴¹

Both Mr. Davis and Mr. Hoover met with CalCERTS to discuss their quality assurance failures. Petitioners were asked to explain the discrepancies between their ratings and the ratings collected during the quality assurance reviews, and were encouraged to ask questions of the QA Team. After the meeting, and after some time of review and reflection, CalCERTS provided Petitioners a second opportunity to ask questions or submit materials. Mr. Hoover and Mr. Davis were either unwilling or unable to provide information that would explain their quality assurance failures. Their refusal to take advantage of the opportunity to defend themselves does not erase the fact the both raters were afforded a hearing.

3. An Informal Hearing Was Warranted

Petitioners may argue that they are entitled to a formal hearing, citing to Cal. Gov. Code § 1145.20(b)(4), claiming that Mr. Hoover and Mr. Davis were licensees, entitled to formal judicial proceedings. However, there is a difference between a professional license, regulated by the California Business and Professions Code, and the type of proprietary certification offered by CalCERTS.

CalCERTS as a provider trains HERS Raters to inspect homes and rate homes relative to the energy efficiency standards set forth in Title 24 of the California Code of Regulations. CalCERTS enters into agreements with raters that establish the terms of the certification. CalCERTS also then allows the raters to use CalCERTS' proprietary program to complete the rating process. Unlike a professional license which is administered by a board and regulated

⁴¹ The Commission has approved of the use of CalCERTS informal hearing process in the past. Therefore, the hearing was also warranted under Cal. Gov. Code §11445.20(b)(5).

pursuant to California's Business and Professions Code, CalCERTS certification is relative only to the agreement between CalCERTS and the rater. CalCERTS has no authority to bar raters from seeking certification from other HERS Providers. CalCERTS decertification only bars Petitioners from CalCERTS proprietary program. Therefore, by offering an informal hearing, similar to those outlined in Cal. Gov. Code § 1145.10, due process was met.

G. Common Law Requirements of Fair Procedure Were Met

Up until recently, there were three HERS Providers certified by the Commission operating in the State of California. Due to the decision of CHEERS to stop operating, CalCERTS is presently the only provider training raters with regards to new construction.⁴² Although the common law of fair procure does not apply to private corporations, such as CalCERTS, because at this time there is a limited number of certified providers in the HERS industry, CalCERTS will address the doctrine of fair procedures to show compliance.

"California courts have long recognized a common law right to fair procedure protecting individuals from arbitrary exclusion or expulsion from private organizations which control important economic interests." (*Wilson v. San Luis Obispo County Democratic Cent. Committee* (2009) 175 Cal. App. 4th 489, 501.) The rule has only been applied to a "limited category of private associations such as labor unions or professional and trade associations" because of their "monopolistic position in a given field of employment." (*Pinsker v. Pacific Coast Society of Orthodontists*, (1974) 12 Cal. 3rd 541, 551.) Under the rule "such a private organization's actions must be both substantively rational and procedurally fair." (*Wilson, supra*, 175 Cal. App. 4th at 502.) What constitutes a fair procedure is neither fixed nor judicially prescribed. (*Id.* at 501.) For example, written responses may satisfy the role of a hearing or opportunity to be heard. (*Id.* at 502 citing to *Kurz v. Federation of Petanque U.S.A.*, (2006) 146 Cal. App. 4th 136, 147.)

CalCERTS has made every effort to address rater discipline in a substantially rational and procedurally fair manner. CalCERTS investigated the work of five Valley Duct Testing raters, and provided the same type of quality assurance review on each rater. All of the raters were given written notice of their failures, and an opportunity to explain the discrepancies between their rating and those collected by the quality assurance team.

⁴² Both CalCERTS and CBPCA are certified to train and certify raters for alterations.

In some instances, both Mr. Hoover and Mr. Davis entered data into the rating program that could not be correct based upon a field investigation. These failures included instances where sampling holes did not exist to support the tests they claimed to have conducted. Neither Mr. Hoover nor Mr. Davis could explain their quality assurance failures and stated that they had confidence in their abilities to rate homes accurately. Unlike the raters placed on probation, Mr. Hoover and Mr. Davis offered no indication that their ability to rate homes could be improved with additional training, instruction or supervision. CalCERTS was left with no choice but to decertify these raters, and explained its decision in writing. The process leading to decertification was substantively rational and procedurally fair.

H. Consumer Protection, a Mandate of the HERS Program, Must Be Supported By the Commission and the Industry

California Public Resources Code section 25942 empowered the Commission 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).) CalCERTS has taken the responsibility of consumer protection seriously. The investigation of the Valley Duct Testing raters has cost CalCERTS thousands⁴³ of dollars in material costs and staff resources. CalCERTS has invested in this process because of its duty under the regulations, but more so because the integrity of the HERS Program is at stake. CalCERTS can not be asked to stand alone, without support from the Commission and others in the HERS industry, when faced with conduct that is patently harmful to consumers.

Mr. Hoover and Mr. Davis intentionally entered false data into CalCERTS’ registry, providing enough basis for decertification. Yet, Mr. Hoover and Mr. Davis did far more than lie. Petitioners helped defraud homeowners paying value for homes compliant with Title 24. They intentionally concealed conditions from homeowners that could lead to health risks resulting from poor or contaminated air flow. They generated ratings for homes that in no way reflected the home’s true ability to meet energy standards set by the State of California; denying

⁴³ This amount does not include the costs of responding to this Complaint or responding to the numerous letters issued by Mr. Haddock and Valley Duct Testings.

homeowners the energy savings intended by the HERS Program, and allowing California's natural resources to be needlessly wasted.

CalCERTS welcomes the Commission to examine the process by which it reviews its raters. Yet, these processes must be evaluated in conjunction with the strong public policy mandate of consumer protection, explicit in the authorizing statute of the HERS Program.

IV. THE COMMISSION MUST UPHOLD ITS MANDATE TO ENSURE HOME ENERGY RATINGS PROVIDE ACCURATE AND TRUTHFUL INFORMATION TO CONSUMERS

Petitioners attack the integrity and efficacy of the HERS Regulations while culpable of the very wrongs the regulations were designed to address. As opposed to challenging the Commission and the structure of the HERS Regulations, Petitioners have attacked a private company demanding procedures that require far more than any private company can afford.

Petitioners are clearly in breach of the CalCERTS Certified Rater Agreement and CalCERTS Subscription Agreement. CalCERTS' investigation to determine whether Petitioners were in breach was thoughtful and fair. Mr. Hoover and Mr. Davis were given notice of their quality assurance failures, and were provided an opportunity to respond. CalCERTS cannot be asked to provide more than this without changing the entire scope of their duties as a provider under the regulations.

Respectfully submitted,
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By: 

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Attorneys for CalCERTS, Inc.

V. 20 CFR 1231(B)(8) DECLARATION

Pursuant to 20 CFR § 1231(b)(8), 1233, under penalty of perjury, we the undersigned hereby declare that to the best of our knowledge the facts contained herein are true and correct.

Dated: March 26, 2012

CALCERTS, INC

By: Michael E. Bachand
Michael E. Bachand
President, CalCERTS, Inc.

STATE OF CALIFORNIA
State Energy Resources
Conservation and Development Commission

In the Matter of:

Docket No. 12-CAI-01

Complaint and Request for Investigation of CalCERTS, Inc.

DECLARATION OF SERVICE
(3/23/12)

RESPONDENT

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SONS**

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PUBLIC ADVISER**

**Jennifer Jennings Public
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CERTIFICATE OF FILING

I, Lois Navarrot declare that on March 26, 2012, I served and filed copies of the attached declaration of **ANSWER OF CALCERTS, INC. TO COMPLAINT AND REQUEST FOR INVESTIGATION**, accompanied by a copy of the most recent *Proof of Service* list (most recent version is located on the proceeding's web page) with the Docket Unit OR with the presiding committee member of the proceeding. The document has been sent to the Commission AND the applicant, as well as the other parties in this proceeding (as shown on the *Proof of Service* list), in the following manner:

(Check all that Apply)

FOR SERVICE TO THE APPLICANT AND ALL OTHER PARTIES:

_____ sent electronically to all email addresses on the Proof of Service list;

 X by personal delivery or by depositing in the United States mail at Sacramento, CA, with first-class postage thereon fully prepaid and addressed as provided on the *Proof of Service* list above to those addresses **NOT** marked "email preferred." Due to the size of this document, cd copies have been delivered to those preferring email service.

AND

FOR FILING WITH THE ENERGY COMMISSION:

_____ sending an one electronic copy, emailed to the address below (preferred method);

OR

 X delivering an original and one cd (per the Docket Office's request), as follows:

CALIFORNIA ENERGY COMMISSION -
Attn: Docket No. 12-CAI-01
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

I declare under penalty of perjury that the foregoing is true and correct.



Lois Navarrot

Date 3/26/12

ATTACHMENT A

Disciplinary Actions taken against HERS Raters and prospective HERS Raters by HERS Providers
As of December 19, 2011

Under the HERS Regulations, HERS Providers are responsible for certifying and overseeing HERS Raters. The information contained in this document reflects the actions taken by a HERS Provider against the named HERS Rater (or applicant), and such information has been provided to the Energy Commission by that HERS Provider. For additional information regarding an action taken, contact the HERS Provider directly (www.CalCERTS.com; www.CBPCA.org; www.CHEERS.org).

Rater/Applicant Name	DBA	HERS Provider	Certification #	Action Taken by HERS Provider	Reason for Decertification or other action by HERS Provider	Date Decertified, Denied Certification, or Other Action
Kevin Davis	K Davis Certification	CalCERTS	CC2004709	Decertification	Conflict of interest; non-payment of fees	10-Jul-07
Rod Gonzales	ESC	CalCERTS	CC2004273	Decertification	Conflict of interest; fraudulent documentation	25-Mar-08
Anne-Marie Pringle		CBPCA		Decertification	Fraudulent documentation	7-Feb-10
Adam Lau		CHEERS		Decertification	Failed to report data to the registry	3-May-10
Christopher Stark		CHEERS	N/A	Barred from certification through CHEERS	Application rejected for posing as a HERS Rater prior to certification	20-May-10
Michael Ybarra	Crown Heating & Air conditioning	CHEERS	CCN48736438	Decertification	Conflict of interest	17-Jun-10
Jeremiah Ellis		CHEERS (applying for CalCERTS)	CCN59254677	Barred from certification through CalCERTS, barred from use of CalCERTS data registries.	A CHEERS rater seeking CalCERTS certification, CalCERTS has permanently revoked permission to use the CalCERTS data registry; for unethical activities.	22-Nov-10
Mark Silva		N/A	N/A	Barred from use of CalCERTS data registries.	CalCERTS has permanently revoked permission to use the CalCERTS data registry, and any registries operated by CalCERTS partners or subsidiaries, such as USNRG.com and USNRG.net; for unethical activities.	12-Nov-10
Miguel Jimenez	AMC/AIR	CHEERS	CCN26492942	Decertification	Improper use of CHEERS Registry	18-Mar-11
Marc Haas	Haasy's Home Energy	CHEERS	CCNMH678828	Decertification	Improper use of CHEERS Registry	18-Mar-11
Ryan Figueroa	RDF Certified Raters	CHEERS	CCN91262911	Decertification	Improper use of CHEERS Registry	18-Mar-11
Bill Landress	Landress Enterprises	CHEERS	CCN27725803	Decertification	Improper use of CHEERS Registry	18-Mar-11
William Conwell	Cool Breeze Heating and Air Conditioning	CHEERS	CCNWC725867	Decertification	Improper use of CHEERS Registry	18-Mar-11
John Flores	Valley Duct Testing	CalCERTS	CC2004321	Barred from use of CalCERTS data registries for a period of six months, from 4-Apr-11 through 4-Oct-11. <i>(This term has been reduced by 3 months, so access to the CalCERTS Registry was reactivated effective 5-Jul-11)</i>	Improper sample grouping and improper documentation	4-Apr-11 through 4-Oct-11 <i>(revised end date-through 4-July-11)</i> .
Dennis Haskett	Haskett Sales	CalCERTS	CC2005155	Decertification	Falsification of QII inspections and HERS verification forms	18-May-11
Rhonda Johnson	Premier Energy Ratings	CalCERTS	CC2005554	Decertification	Multiple violations of Title 20, Article 4, Section 1672	4-Oct-11
Barry Ben Yakov	Goodman Air Conditioning and Heating	CalCERTS	CC2004650	Decertification	Falsification of RCA inspections and HERS verification forms	9-Dec-11

ATTACHMENT 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).

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

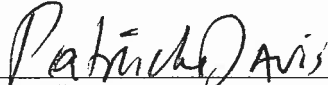
made by or on behalf of any Party except those covenants and agreements embodied in this Agreement.

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

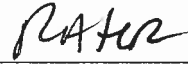
SUBSCRIBER:



Signature



Print Name



Title



Date

CalCERTS, Inc.:

Signature

Michael E. Bachand

Print Name

President

Title

Date

Acknowledgement of Rater Certification Status

To: Raters Attending Training Classes prior to CalCERTS formal approval:

CalCERTS, Inc. is an approved HERS Provider for the 2005 Standards, but the CEC requires that ALL HERS PROVIDERS must be RE-CERTIFIED for the 2008 Standards. CEC has ruled that a Rater MAY NOT be certified until the Rater successfully passes a commission approved exam after certification of the provider. CalCERTS, Inc. anticipates receiving certification in late November. NO OTHER PROVIDERS WILL BE APPROVED AHEAD OF THIS, EITHER.

In order to get everyone TRAINED in time, CEC has approved CalCERTS, Inc. to administer training, subject to CEC final approval. The CEC is in the process of reviewing the training. It is possible that CEC will develop a uniform test that ALL raters from ALL providers would have to take in order to demonstrate competence. CalCERTS, Inc. would have input into the composition of the test, but would not control all its contents or questions or formatting.

The CEC has decided that a commission approved exam will need to be administered after certification of the provider 1673 (a) 7. It is possible that the test you will take during this class will be approved as adequate, in which case successful candidates will be certified as soon as CalCERTS, Inc. is certified. If, on the other hand, candidates are required to take an additional test later, CalCERTS, Inc. will provide easily accessible opportunities in many locations, statewide, and there will be no additional fee.

Even with the possibility of having to take a proctored exam a little later, CalCERTS, Inc. and SBSI determined that this would still be the best and fastest way to get people through the training and testing in order to be ready when CalCERTS, Inc. is certified. We regret this inconvenience, but you can rest assured that CalCERTS, Inc. is not being singled out in this matter since all Providers are in the same situation.

Also, a reminder that the 2008 Update Class does NOT contain the training for doing the Refrigerant Charge and Airflow Verification using gauges connected to the coolant lines. That class will be separate and requires the candidate to have an EPA certification to connect gauges to coolant lines. CalCERTS, Inc. will endeavor to set up convenient locations for this training throughout the State, but these arrangements have not been concluded yet. This means that even though a rater is certified for the 2008 Compliance Classification, Raters will only be able to do the non-invasive method of RCA Verification until they also get the regular training and their EPA Certification.

Please sign below acknowledging that you have read and understand these conditions. If you have any questions or need more clarification, ask the Instructor in your class.

CalCERTS, Inc. appreciates your understanding on this issue and we look forward to continuing our relationship with you in the years to come.

I, Patrick Davis, have read and understand the above
Print Name Above
statements and I will comply with all requirements as set forth herein.

Signed:  Date: 12/12/09

ATTACHMENT C

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).

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



Print Name

Michael E. Bachand

Print Name

Title
12/12/2009

Date

President

Title

Date



Title 24 HERS Provider
California Energy Commission Approved
ENERGY STAR® Provider
Department of Energy Approved
CalCERTS®
www.calcerts.com

EMAIL: office@calcerts.com

PHONE: 916.985.3400

FAX: 916.985.3402

31 Natoma St., Ste. 120

Folsom, CA, 95630

TITLE 24 RESIDENTIAL HERS

RATER ADDENDUM

THIS ADDENDUM, effective as of the date of last signature below, is by and between **California Certified Energy Rating And Testing Services ("CalCERTS®")** and:

Erik Hoover (Calcerts Rater)

THIS IS AN INITIAL CalCERTS® RATER CERTIFICATION ADDENDUM ☒

THIS IS A RENEWAL CalCERTS™ RATER CERTIFICATION ADDENDUM ☐

THIS IS IN ADDITION TO AN EXISTING RATER CERTIFICATION ☐

Existing Provider Certification Information:

Provider: CHEERS

Certification Number or ID: _____

Expiration Date of Certification: _____

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).

Rating or Rate means a representation on a 0 to 100 scale of the annual source energy efficiency of a home as specified in California Code of Regulations, Title 20 Chapter 4, Article 8, 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.

WHEREAS, CalCERTS™ **RATER** has submitted a Rater Application, completed Title-24/Residential New Construction Rater Training, has completed all required continuing education, and has passed the Title-24/Residential New Construction Rater Certification Test; or the CalCERTS™ Challenge Test, if already certified by another approved Provider and NOW, THEREFORE, in consideration of the mutual covenants set forth herein, CalCERTS™ and CalCERTS™ **RATER** agree as follows:

1. CalCERTS™ **RATER** warrants that the recitals set forth above are true and correct.
2. CalCERTS™ **RATER** shall comply with the attached CalCERTS™ Subscription Agreement. The term of this Addendum shall co-exist with the term of the CalCERTS™ Subscription Agreement.
3. CalCERTS™ **RATER** shall comply with all CalCERTS™ policies and procedures. All current policies are stated herein or attached hereto, and all new and revised policies and procedures shall be sent to CalCERTS™ **RATER**.
4. As a condition of CalCERTS™ **RATER**'s 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 and Rater Addendum. 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.


5. CalCERTS™ **RATER** shall comply with all CalCERTS™ Quality Assurance Procedures and Performance Requirements detailed herein. 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.
 - A. **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.
 - B. **Field Verification and Diagnostic Testing:** CalCERTS™ **RATER** shall provide field verification and diagnostic testing of energy efficiency improvements as a condition for those improvements to qualify for Title 24 building energy performance standards compliance credit. CalCERTS™ **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. CalCERTS™ **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.
 - C. **Field Checks of CalCERTS™ RATER:** CalCERTS™ shall annually evaluate the greater of one home or one percent of CalCERTS™ **RATER**'s annual total of homes for which field verification and diagnostic testing services were provided. CalCERTS™ shall independently repeat the field verification and diagnostic testing to check whether field verification and diagnostic testing was accurately completed by CalCERTS™ **RATER**, and determine whether information was completely collected and reported.
6. CalCERTS™ **RATER** shall comply with all applicable federal, state and local laws and regulations.
7. CalCERTS™ **RATER** shall **personally** complete all required field verification and diagnostic testing; THESE ACTIVITIES MAY NOT BE PERFORMED BY ANYONE ELSE. CalCERTS™ **RATER** agrees to provide true, accurate and complete **ratings**, field verification and diagnostic testing.
8. CalCERTS™ **RATER** may use the CalCERTS™ Title-24/New Residential Construction Training Manual ("Manuals"); Training Materials ("Materials"); User's Guides ("Guides"), and/or any supporting Proprietary Information under the following terms and conditions:
 - A. CalCERTS™ **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.
 - B. CalCERTS™ **RATER** agrees that CalCERTS™ **RATER** obtains no rights in the Manuals, Materials, Guides, or Proprietary Information, except to use them specifically in accordance with this Agreement.
 - C. "Proprietary Information" shall mean CalCERTS™'s confidential information, trade secrets and know-how embodied in the Manuals, Materials and Guides and not generally known or available to the public, including but not limited to, data communication processes and systems design.
 - D. 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. CalCERTS™ **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.
9. CalCERTS™ **RATER** may not do the following:
 - A. Make copies of the Manual;
 - B. Alter, remove or conceal any copyright or trademark notice on the Manual; or
 - C. Assign or transfer any rights to use the Manual, Guides or Proprietary Information except as set forth in this Addendum and the Subscription Agreement
10. 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™.

11. CalCERTS™ **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.
12. CalCERTS™ **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 Addendum.
13. CalCERTS™ **RATER** may not **rate** or perform a field verification or diagnostic test on any home in which CalCERTS™ **RATER** has any financial interest, including, but not limited to the following:
 - A. Property in which **RATER** has a direct or indirect ownership;
 - B. Property in which **RATER** has a financial interest of any kind; or
 - C. 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.
14. CalCERTS™ **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.
15. Upon written notice to CalCERTS™, CalCERTS™ **RATER** may terminate this Addendum at any time.
16. TERMINATION OF THIS AGREEMENT RESULTS IN DECERTIFICATION OF CalCERTS™ **RATER**, THEREBY TERMINATING CalCERTS™ **RATER**'S ABILITY TO RATE, TEST, INSPECT OR VERIFY ENERGY EFFICIENCY INSTALLATIONS. DECERTIFICATION WILL CANCEL THE CalCERTS™ **RATER**'S ABILITY TO REGISTER RATINGS RESULTS VIA THE CalCERTS™ ONLINE DATABASE SERVICE.
17. **Decertification Procedures:** CalCERTS™ may, upon the verified complaint in writing of any person, investigate the actions of CalCERTS™ **RATER** and may temporarily suspend or permanently revoke, the certification of CalCERTS™ **RATER** who is guilty of, or commits one or more of the acts or omissions constituting grounds for disciplinary action under this Addendum.
 - A. CalCERTS™ may reprove, suspend for a period not to exceed two years, or decertify any CalCERTS™ **RATER** who is found to have committed one or more of the following acts:
 - i. Failure of CalCERTS™ **RATER** to comply with any of the terms and conditions of this Addendum, the Subscriber Agreement or any other agreement between CalCERTS™ **RATER** and CalCERTS™.
 - ii. CalCERTS™ **RATER**'s conviction of a felony.
 - iii. Disciplinary action of CalCERTS™ **RATER** by the Contractors State License Board or any like authority.
 - iv. Willful failure of CalCERTS™ **RATER** to provide a true, accurate and complete **rating**, field verification or diagnostic testing.
 - v. Pattern of failure of CalCERTS™ **RATER** to provide a true, accurate and complete **rating**, field verification, diagnostic testing or data entry, whether willful or not.
 - vi. Two or more complaints about CalCERTS™ **RATER** from **ratings** customers, or potential customers.
 - vii. CalCERTS™ **RATER**'s failure to promptly pay any amounts due CalCERTS™
 - viii. Misrepresentation of CalCERTS™ **RATER**'s relationship with CalCERTS™, or
 - ix. Any act or failure to act which, in CalCERTS™'s opinion, harms its name or reputation.
18. This Addendum shall automatically terminate upon the occurrence of any of the following events:
 - A. CalCERTS™ **RATER** or CalCERTS™ **RATER**'s business is adjudged bankrupt;
 - B. CalCERTS™ **RATER** or CalCERTS™ **RATER**'s business is placed in the hands of a receiver;

- C. CalCERTS™ **RATER** or CalCERTS™ **RATER**'s business makes an assignment for the benefit of creditors;
- D. CalCERTS™ **RATER** or CalCERTS™ **RATER**'s business takes the benefit of any insolvency act; or
- E. CalCERTS™ **RATER** or CalCERTS™ **RATER**'s business is liquidated or dissolved.
19. CalCERTS™ **RATER** shall return to CalCERTS™ all material received from CalCERTS™S within ten (10) days of the date of the first to occur of any of the above-described events or any termination notice.
20. CalCERTS™ **RATER** shall act hereunder solely as an independent contractor.
21. CalCERTS™ **RATER** shall not represent himself/herself to be an employee or agent of CalCERTS™.
22. CalCERTS™ **RATER** may indicate that CalCERTS™ **RATER** is a CalCERTS™ CERTIFIED **RATER**.
23. CalCERTS™ **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 **ratings** or any other services for **rating** customers, including all expenses, costs, settlements, judgments, awards, and legal fees incurred by CalCERTS™ in defense or settlement of such claims.
24. This Addendum may not be assigned by CalCERTS™ **RATER**.
25. This Addendum shall be governed by and construed in accordance with the laws of the State of California.
26. CalCERTS™ **RATER** acknowledges that CalCERTS™ **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.
27. CalCERTS™ **RATER** understands the Regulations and agrees to provide home energy **ratings**, field verification services and diagnostic testing services in compliance with the Regulations.
28. This Addendum and all attachments which are incorporated herein by reference cancels and supersedes all prior CalCERTS™ TITLE-24/RESIDENTIAL NEW CONSTRUCTION RATER ADDENDUM(s) between the parties, sets forth the entire understanding of the parties with respect to the subject matter herein, and shall not be amended, modified or waived except in a writing signed by both parties.
29. CalCERTS™ **RATER** acknowledges that CalCERTS™ **RATER** has read this Addendum, understands it and agrees to be bound by its terms and conditions.

The undersigned CalCERTS™ **RATER** and CalCERTS™ authorized agent declare, pursuant to California Code of Regulations Title 20 Chapter 4, Article 8, Section 1673(i), under penalty of perjury they are independent entities from each other as well as independent entities from the builder and from the subcontractor installer of energy efficiency improvements which are to be field verified or diagnostically tested.

SUBSCRIBER:



Signature
Erik Hoover

Print Name

Title
8/20/08

Date

CalCERTS:

Signature
Michael E. Bachand

Print Name
President

Title

Date

Acknowledgement of Rater Certification Status

To: Raters Attending Training Classes prior to CalCERTS formal approval:

CalCERTS, Inc. is an approved HERS Provider for the 2005 Standards, but the CEC requires that ALL HERS PROVIDERS must be RE-CERTIFIED for the 2008 Standards. CEC has ruled that a Rater MAY NOT be certified until the Rater successfully passes a commission approved exam after certification of the provider. CalCERTS, Inc. anticipates receiving certification in late November. NO OTHER PROVIDERS WILL BE APPROVED AHEAD OF THIS, EITHER.

In order to get everyone TRAINED in time, CEC has approved CalCERTS, Inc. to administer training, subject to CEC final approval. The CEC is in the process of reviewing the training. It is possible that CEC will develop a uniform test that ALL raters from ALL providers would have to take in order to demonstrate competence. CalCERTS, Inc. would have input into the composition of the test, but would not control all its contents or questions or formatting.

The CEC has decided that a commission approved exam will need to be administered after certification of the provider 1673 (a) 7. It is possible that the test you will take during this class will be approved as adequate, in which case successful candidates will be certified as soon as CalCERTS, Inc. is certified. If, on the other hand, candidates are required to take an additional test later, CalCERTS, Inc. will provide easily accessible opportunities in many locations, statewide, and there will be no additional fee.

Even with the possibility of having to take a proctored exam a little later, CalCERTS, Inc. and SBSI determined that this would still be the best and fastest way to get people through the training and testing in order to be ready when CalCERTS, Inc. is certified. We regret this inconvenience, but you can rest assured that CalCERTS, Inc. is not being singled out in this matter since all Providers are in the same situation.

Also, a reminder that the 2008 Update Class does NOT contain the training for doing the Refrigerant Charge and Airflow Verification using gauges connected to the coolant lines. That class will be separate and requires the candidate to have an EPA certification to connect gauges to coolant lines. CalCERTS, Inc. will endeavor to set up convenient locations for this training throughout the State, but these arrangements have not been concluded yet. This means that even though a rater is certified for the 2008 Compliance Classification, Raters will only be able to do the non-invasive method of RCA Verification until they also get the regular training and their EPA Certification.

Please sign below acknowledging that you have read and understand these conditions. If you have any questions or need more clarification, ask the Instructor in your class.

CalCERTS, Inc. appreciates your understanding on this issue and we look forward to continuing our relationship with you in the years to come.

I, Erik Hoove, have read and understand the above
Print Name Above
statements and I will comply with all requirements as set forth herein.

Signed:  Date: 12/12/09

Energy Star



Title 24



USNRQ



C.E.C

www.calcerts.com

• 31 Natoma Street, Suite 120 • Folsom, CA • 916.985.3400 • info@calcerts.com •

ATTACHMENT D

CalCERTS, Inc. Subscription Agreement

TYPE OF SUBSCRIPTION -----CHECK APPROPRIATE BOX:

- Rater-Owner:** ☒ Fill out sections I and II below and sign the signature page. Rater will be paying certificate fees.
- Rater-Employee:** ☒ Fill out section I below. Must be accompanied by a Subscription Agreement with Section II filled out and signed by Employer.
- Rater Employer:** ☒ Employer must fill out Section II below. Employer will be paying certificate fees.
- Non-Rater User:** ☐ Fill out Section II below, Employer must sign.

SECTION I

Certificate Holder's Information (ALL items required)

Name PATRICK DAVIS

Home Address 5837 TWEEDSMuir DRIVE
ROCKLIN CA 95677

Email prdwis31@gmail.com

Phone 916 624 2092

Mobile Phone 916 316 4595

Are You Currently Certified With Another Provider? [☒ yes] [] no
If Yes, Provider Cheris Certificate # _____ Exp Date _____

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

SECTION II
Billing Customer Information (ALL items required)

Company Name Valley Duct Testing
Company Address 6345 Retina Ave
Laklin CA 95877

Business Email golferjohn@starkstream.net
Contact John Flores
Contact's Title President
Billing Email golferjohn@starkstream.net
Billing Contact John Flores
Phone 916 624 2092
Fax 916 624 3352

THIS AGREEMENT, effective as of the date of last signature below, is by and between CalCERTS, Inc.® (CalCERTS aka California Certified Energy Rating and Testing Services), an S Corporation in the State of California and an approved HERS Provider organization that administers a home energy rating system in compliance with California Code of Regulations Title 20 Chapter 4, Article 8, Section 1670-1675, and ("SUBSCRIBER") a person, entity or organization that is a customer, user, rater, Title 24 Consultant, Utility Company, Building Department, Contractor, Realtor®, or a combination of one or more of these, or other user approved by CalCERTS, to use the online database service for data input, retrieval, searching or any other features provided on the CalCERTS website now or in the future. The purpose of this Agreement is to establish the terms and conditions governing Subscriber's use of the CalCERTS online database service and conform this relationship to the California Code of Regulations Title 20 Chapter 4, Article 8, Section 1670-1675.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, CalCERTS and Subscriber agree as follows:

A. Terms of Payment

1. A Subscriber is a person or entity whose business is that of providing home energy ratings and/or audits and field verification and diagnostics, or information related to audits and ratings that is or employs at least one Certified Rater.
2. A person or entity is not a Subscriber until CalCERTS has received and acknowledged the receipt of the initial Subscription Fee, and a signed Agreement and approved by CalCERTS.
3. Subscriber shall abide by the terms and conditions of this Agreement and pay all amounts due CalCERTS in accordance with the CalCERTS Fee Schedule established by volume or other criteria as may from time to time be negotiated between Subscriber and CalCERTS, Inc.
4. All invoices are Due and Payable Upon Receipt.
5. Subscriber will pay an annual Subscription fee in an amount not less than \$120.00. Subscriber must pay the fee annually thereafter to remain active.
6. CalCERTS reserves the right to charge interest on all unpaid and past due balances at the rate of 1.5% per month (18% per year) until paid. NOTE: Payments will be applied to your most current invoice first.
7. Subscription fee is subject to change without notice and is non-refundable.
8. A Subscriber, whether a person or an entity, may be refused access to the website due to delinquent payments at the sole discretion of CalCERTS without notice to the delinquent Subscriber.

B. Terms of Use By Subscriber

1. A Subscriber may designate other Users to enter data, use software or make payments through the CalCERTS online services.
2. Users designated by Subscriber may or may not be employees of the Subscriber.
3. Subscriber is responsible for the conduct and access of all users.
4. Subscriber must obtain a separate and unique login and password from CalCERTS for each identified User that is under Subscriber's supervision.
5. Subscriber shall be responsible for ensuring their designated Users comply with the terms and conditions of this Agreement.
6. Subscriber warrants that the information set forth in the recitals set forth above is true and correct.

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

7. Subscriber shall comply with all Addendums, Information Forms, Affidavits if any, Code of Ethics Statements, Pricing Policy and Fee Schedules provided by CalCERTS.
8. Subscriber shall comply with all current CalCERTS policies described herein. Any new, amended, and/or revised policies shall be sent to Subscriber via email. **Notice of amended or revised policies is deemed to have been received by Subscriber by email and no further notice must be given.** Initial NO Subscriber shall provide CalCERTS with his/her current telephone number, email address and mailing address, notifying CalCERTS within ten days of any changes of mailing address, email or telephone number.
9. Subscriber shall comply with all applicable federal, state, and local laws and regulations.
10. The term of this Agreement shall co-exist with all agreements, addendums and attachments between Subscriber, Subscribers Raters and CalCERTS.

C. Terms of Use of CalCERTS Intellectual Property By Subscriber

Upon payment of the subscription fees set forth herein and the agreement to abide by the terms of use, the Subscriber shall have access to CalCERTS online services, supporting documents, trademarks and software and support so long as this agreement is maintained and not terminated.

Trademarks:

1. CalCERTS grants to Subscriber a non-exclusive, terminable license to use certain trademarks of CalCERTS, namely "CalCERTS Certified Rater" as a Certification Mark to indicate to the public that Subscriber is currently certified by CalCERTS to conduct home energy ratings, audits, and/or field verification and diagnostics and the flying star logo.
 - i. Examples of its use include, but are not limited to, the following: Patches on clothing to be worn by Raters; business cards; stationery; identification cards; advertisements; and marketing materials.
 - ii. Note: The CalCERTS service mark cannot be used alone. It must be accompanied by either the name of a Rater or used in conjunction with a Rating business.

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The Subscriber shall not represent, imply or connote in any way to the public that it uses the Certification Marks for any goods or services other than Certified Rater Services or on a CalCERTS rated building. Subscriber may indicate that Subscriber is a CalCERTS Subscriber to the public.

2. "CalCERTS Registered Home" is another service mark owned by CalCERTS, Inc. CalCERTS has developed this special version of its trademark/service mark for the exclusive use of Subscribers who have an executed CalCERTS Subscriber's Agreement. Note: This service mark can be used only on, near, or in reference to a home, that has been rated by a CalCERTS Certified Rater. Examples of its use include, but are not limited to, the following: window decals, real estate advertisements, yard signs, sign hangers on "for sale" signs, flags, banners and marketing materials.
3. The Subscriber shall not use any trademark that imitates or is similar to the "CalCERTS," "CalCERTS Certified Rater" or "CalCERTS Registered Home" marks or any part thereof. Nor shall it use as a trademark any word, symbol, character, or set of words, symbols, or characters that in any language would be confusingly similar thereto, be it optical, acoustical or conceptual. Improper use of the CalCERTS trademarks and materials will be grounds for termination of this Subscription Agreement at the option of CalCERTS.
4. Upon termination or expiration of this Agreement, Subscriber shall cease using, reproducing, advertising, marketing and distributing any material using the CalCERTS trademarks as soon as is commercially feasible.
5. Use of CalCERTS's name in Subscriber's printed material must be approved in advance in writing by the CalCERTS President or designated authorized party. Except that printed material distributed solely to the employees or members of the entity producing the material, commonly known as "in house material" will be permitted. The entity may NOT distribute this material to its customers unless they have followed the procedures and conditions set forth herein.

Copyrighted Media Materials:

1. CalCERTS grants to Subscriber a non-exclusive, terminable license to use the "copyrighted materials" of CalCERTS including CalCERTS User's Guides ("Guides"), Online Tutorials, Training Materials, Videos or Supplementary Printed Materials, Collateral Marketing

Materials and/or any supporting Proprietary Information produced from time to time by CalCERTS. CalCERTS also grants a limited right to copy and distribute paper or electronic copies of CalCERTS Training Materials or Collateral Marketing Materials, Informational Material and other documents made available to Subscriber under this agreement for public distribution. CalCERTS also grants a limited non-exclusive, terminable license to incorporate the CalCERTS copyright works, in whole or in part, into derivative works for Subscribers own use and distribution throughout California upon final approval of CalCERTS. Such derivative works remain the property of CalCERTS.

2. Subscriber agrees that the Guides, Online Tutorials, Training Materials, Videos or Supplementary Printed Materials, Collateral Marketing Materials and Proprietary Information are the intellectual property of CalCERTS, are owned exclusively by CalCERTS, and are protected by the copyright laws of the United States. Subscriber agrees that Subscriber obtains no rights in the Guides, online Tutorials, Training Materials, Videos or Supplementary Printed Materials, Collateral Marketing Materials 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 Guides, online Tutorials, Training Materials, Videos or Supplementary Printed Materials, Collateral Marketing Materials and not generally known or available to the public, including but not limited to, data communication processes and systems design.
4. The Guides, Online Tutorials, Training Materials, Videos or Supplementary Printed Materials, Collateral Marketing Materials and Proprietary Information may only be used by CalCERTS Subscribers who shall keep strictly confidential the Guides online Tutorials, Training Materials, Videos or Supplementary Printed Materials, Collateral Marketing Materials and Proprietary Information, and Subscriber acknowledges that the Guides online Tutorials, Training Materials, Videos or Supplementary Printed Materials, Collateral Marketing Materials and Proprietary Information constitute valuable property and work product of CalCERTS; that any breach of the confidentiality obligations hereunder may

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cause CalCERTS irreparable harm and damage; and that all confidentiality obligations hereunder shall survive any expiration or termination of this Agreement.

5. Subscriber may not assign or transfer any rights to use the Guides Online Tutorials, Training Materials, Videos or Supplementary Printed Materials, Collateral Marketing Materials or Proprietary Information, except as set forth in this Agreement upon approval of CalCERTS.
6. Form of Copyright Notice for all CalCERTS materials and all derivative materials will be as follows:

© Copyright 2009 (CalCERTS). All Rights Reserved.

7. The copyright notice should be used if both of the following tests are met and in accordance with the approval procedures adopted by CalCERTS:
 - i. The work was created by or for CalCERTS; and
 - ii. The work is owned by CalCERTS
8. On written work, place the copyright notice on the cover or the first page after the cover. On a computer program, place the copyright notice on a label affixed to the disk and on a label affixed to the envelope or box, which holds the disk. Also, place the notice within the title of the program at the beginning of the program so that it is visible on the user's screen. If "c" in a circle is not available, for example on a computer program, delete it from the notice. The year in the notice is the year of creation of the work.
9. Procedure for Approval: The Subscriber's printed material must be submitted to the CalCERTS President or other designated authorized party for approval. Subscriber will be notified in writing whether the printed material submitted with any CalCERTS trademarks or service marks is approved. Subscriber agrees that the printed materials including CalCERTS trademarks, copyright materials and other intellectual property of CalCERTS will not be used by Subscriber until approved by CalCERTS as a Subscriber.
10. CalCERTS shall have the right, without prior approval from, or notice to Subscriber, 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.

D. CalCERTS Database and Software Usage, Restrictions and Guidelines

1. CalCERTS' online database service and software are provided on an "as is, as available" basis. Due to CalCERTS' relationship with on-line networks, CalCERTS gives no warranty, expressed or implied, for the online database services provided, including without limitation, warranty of the merchantability and warranty of fitness for a particular purpose. This disclaimer of warranty expressly disclaims any right to reimbursement for direct or consequential losses, including but not limited to losses of income, due to disruption of service by provider or its service providers.
2. SUBSCRIBER expressly agrees that use of the CalCERTS' online database service and software is done so at Subscriber's sole risk. CalCERTS, its employees, affiliates, agents, third party information providers, merchants, licensors or the like, indicate CalCERTS's online service may be interrupted and is not likely to be error free. CalCERTS makes no warranty as to the results that may be obtained from the use of the CalCERTS online database service or software.
3. Under no circumstances, shall CalCERTS, its agents or anyone else involved in creating, producing or distributing CalCERTS's online database service or software be liable for any direct, indirect, incidental, special or consequential damages that result from the use of or inability to use CalCERTS's online database service or software; or that result from mistakes, omissions, interruptions, deletion or loss of files or data, errors, defects, delays in operation, or of performance, whether or not limited to acts of God, communication failure, theft, destruction or unauthorized access to CalCERTS's records, programs or services. Subscriber maintains sole responsibility for data backups and restoration. Subscriber hereby acknowledges that this paragraph shall apply to all content on CalCERTS's online database service or software usage.
4. Use of any information obtained by way of CalCERTS is at Subscriber's own risk. Connection speed represents the speed of a connection and does not represent guarantees of available end-to-end bandwidth.
5. CalCERTS disclaims liability for any damages arising from Subscriber's use of CalCERTS online database service or software. CalCERTS disclaims liability for Subscriber's data, files, or

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directories residing on CalCERTS's equipment or its providers' equipment. Subscriber is solely responsible for maintaining data, file, and directory structure back-ups.

6. Notwithstanding the above, Subscriber's exclusive remedies for all damages, losses and causes of actions whether in contract, tort, including negligence or otherwise, shall not exceed the aggregate dollar amount which Subscriber paid during the annual term of this Agreement.
7. CalCERTS makes no representations, warranties, or assurances that Subscriber's equipment will be compatible with CalCERTS's services.

E. CalCERTS Waiver of Use of Materials

1. CalCERTS DOES NOT WARRANT THE APPLICABILITY, PROFITABILITY OR ANY USEFULNESS, WHATSOEVER, OF THIS SERVICE AS IT RELATES TO THE SUBSCRIBER'S BUSINESS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CalCERTS DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH REGARD TO THE GUIDE, PRINTED MATERIALS AND ONLINE DATABASE SERVICE.
2. To the extent permitted by applicable law, in no event shall CalCERTS be liable for any damages whatsoever (including but not limited to, without limitation, damages for loss of profits, loss of business information, business interruption, good will or any other financial loss) arising out of the use of or inability to use any work product of CalCERTS including but not limited to, the Manual, printed materials as noted above, and the CalCERTS online services, even if CalCERTS has been advised of the possibility of such damages.

F. Termination of Agreement

Upon written notice to CalCERTS, Subscriber may terminate this Agreement at any time.

Upon written notice to Subscriber, CalCERTS may terminate this Agreement upon the occurrence of any of the following events:

1. Failure of Subscriber to comply with any of the terms and conditions of this Agreement or any other agreement between Subscriber and CalCERTS;

2. SUBSCRIBER is convicted of a felony;
3. SUBSCRIBER'S disciplinary action by the Contractors State License Board or any like authority;
4. Willful failure of a Subscriber to provide true and accurate data and information;
5. SUBSCRIBER'S failure to promptly pay any amounts due CalCERTS;
6. Misrepresentation of Subscriber's relationship with CalCERTS;
7. Any act or failure to act by Subscriber which, in CalCERTS's opinion, harms its name or reputation of CalCERTS.
8. Subscriber or Subscriber's business is adjudged bankrupt, placed in the hands of a receiver, makes an assignment for the benefit of creditors, takes the benefit of any insolvency act, or is liquidated or dissolved.

G. Upon Termination of Agreement

SUBSCRIBER 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 termination events or receipt of any termination notice from CalCERTS.

H. Hold Harmless Clause

SUBSCRIBER 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 services for rating for customers, or services for performing 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.

I. California State Codes and Regulations

This Agreement shall be governed by and construed in accordance with the laws of the State of California. California Code of Regulations Title 20 Chapter 4, Article 8, Section 1670-1675 shall govern any conflicts.

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SUBSCRIBER acknowledges that Subscriber ~~has read~~ California Code of Regulations, Title 20, Chapter 4, Article 8, Sections 1670-1675. Initial MM

J. Dispute Resolution

1. Mediation: Subscriber and CalCERTS agree to mediate any dispute or claims arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action. Mediation fees, if any, shall be divided equally among the parties involved. If, for any dispute or claim to which this paragraph applies, any party commences an action without first attempting to resolve the matter through mediation; or refuses to mediate after a request has been made, then that party shall not be entitled to recover attorney's fees, even if they would otherwise be available to that party in any such action. THIS MEDIATION PROVISION APPLIES ~~WHETHER~~ OR NOT THE ARBITRATION PROVISION IS INITIALED. Initial MM.
2. Arbitration of Disputes: Subscriber and CalCERTS agree that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration. The arbitrator shall be a retired judge or justice, or an attorney with at least five (5) years experience, unless the parties mutually agree to a different arbitrator, who shall render an award in accordance with substantive California Law. In all other respects, the arbitration shall be conducted in accordance with Part III, Title 9 of the California Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered in any court having jurisdiction. The parties shall have the right to discovery in accordance with the Code of Civil Procedure §1283.05.
3. NOTICE: BY INITIALING THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE ARBITRATION OF DISPUTES PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY

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INCLUDED IN THE ARBITRATION OF DISPUTES PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE.

I have read and understand the foregoing and agree to submit disputes arising out of the matters included in the arbitration of disputes provision to neutral arbitration.

Subscriber's Initials: PD

4. In the event it is necessary for CalCERTS to file legal action to enforce this agreement, the prevailing party in such action shall be entitled to recover all costs and expenses incurred in connection with such legal action, including reasonable attorney fees and court costs.
5. If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

K. Miscellaneous Provisions

1. This Agreement and any attachments which are incorporated herein by reference cancels and supersedes all prior CalCERTS TITLE-24/RESIDENTIAL NEW CONSTRUCTION SUBSCRIPTION AGREEMENT(s) between the parties, sets forth the entire understanding of the parties with respect to the subject matter herein. No other agreement, statement or promise made on or before the effective date of this Agreement will be binding on the parties.
2. This agreement shall not be amended, modified, or waived except in writing signed by both parties. This Agreement may not be assigned by Subscriber.
3. Entire Agreement. This Agreement contains the parties' entire agreement and supersedes any prior oral or written agreements between them with respect to the subject matter contained herein. There are no representations, agreements, arrangements, or understandings (oral or written) between the parties relating to the subject matter of this Agreement which are not fully expressed herein.

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4. Governing Law. This Agreement, together with the parties' respective rights and obligations hereunder, shall be governed by and construed in accordance with the laws of the State of California.
5. Severability. If a court of competent jurisdiction finds any provision in this Agreement to be invalid or unenforceable, such invalidity or unenforceability shall not affect the remainder of the Agreement; the provision shall be deemed severed therefrom and the remainder of the Agreement shall remain valid and enforceable in accordance with its terms and of full force and effect.
6. Counterparts. This Agreement may be executed in two (2) or more counterparts and all counterparts so executed shall for all purposes constitute one agreement, binding on all parties.

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

SUBSCRIBER:



Signature

Parude Davis

Print Name

~~CEO - RATER~~ CEO - RATER

Title

12/12/09

Date

CalCERTS, Inc.:

Signature

Michael E. Bachand

Print Name

President

Title

Date

ATTACHMENT E

CalCERTS, Inc. Subscription Agreement

TYPE OF SUBSCRIPTION -----CHECK APPROPRIATE BOX:

- Rater-Owner:** ☐ Fill out sections I and II below and sign the signature page. Rater will be paying certificate fees.
- Rater-Employee:** ☒ Fill out section I below. Must be accompanied by a Subscription Agreement with Section II filled out and signed by Employer.
- Rater Employer:** ☐ Employer must fill out Section II below. Employer will be paying certificate fees.
- Non-Rater User:** ☐ Fill out Section II below, Employer must sign.

SECTION I

Certificate Holder's Information (ALL items required)

Name Erik Hoover

Home Address 7245 Mountainside Dr
Citrus Heights, CA 95621

Email ehoover79@yahoo.com

Phone 916-769-0598

Mobile Phone _____

Are You Currently Certified With Another Provider? [☒] yes [] no
If Yes, Provider CHEERS Certificate # _____ Exp Date _____

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SECTION II
Billing Customer Information (ALL items required)

Company Name Valley Duct Testing
Company Address 6345 Rainier Ave
Rocklin, CA 95677

Business Email golferjohn@starstream.net
Contact John Flores
Contact's Title Owner
Billing Email golferjohn@starstream.net
Billing Contact John Flores
Phone 624 2092
Fax 624 3352

THIS AGREEMENT, effective as of the date of last signature below, is by and between CalCERTS, Inc.® (CalCERTS aka California Certified Energy Rating and Testing Services), an S Corporation in the State of California and an approved HERS Provider organization that administers a home energy rating system in compliance with California Code of Regulations Title 20 Chapter 4, Article 8, Section 1670-1675, and ("SUBSCRIBER") a person, entity or organization that is a customer, user, rater, Title 24 Consultant, Utility Company, Building Department, Contractor, Realtor®, or a combination of one or more of these, or other user approved by CalCERTS, to use the online database service for data input, retrieval, searching or any other features provided on the CalCERTS website now or in the future. The purpose of this Agreement is to establish the terms and conditions governing Subscriber's use of the CalCERTS online database service and conform this relationship to the California Code of Regulations Title 20 Chapter 4, Article 8, Section 1670-1675.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, CalCERTS and Subscriber agree as follows:

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A. Terms of Payment

1. A Subscriber is a person or entity whose business is that of providing home energy ratings and/or audits and field verification and diagnostics, or information related to audits and ratings that is or employs at least one Certified Rater.
2. A person or entity is not a Subscriber until CalCERTS has received and acknowledged the receipt of the initial Subscription Fee, and a signed Agreement and approved by CalCERTS.
3. Subscriber shall abide by the terms and conditions of this Agreement and pay all amounts due CalCERTS in accordance with the CalCERTS Fee Schedule established by volume or other criteria as may from time to time be negotiated between Subscriber and CalCERTS, Inc.
4. All invoices are Due and Payable Upon Receipt.
5. Subscriber will pay an annual Subscription fee in an amount not less than \$120.00. Subscriber must pay the fee annually thereafter to remain active.
6. CalCERTS reserves the right to charge interest on all unpaid and past due balances at the rate of 1.5% per month (18% per year) until paid. NOTE: Payments will be applied to your most current invoice first.
7. Subscription fee is subject to change without notice and is non-refundable.
8. A Subscriber, whether a person or an entity, may be refused access to the website due to delinquent payments at the sole discretion of CalCERTS without notice to the delinquent Subscriber.

B. Terms of Use By Subscriber

1. A Subscriber may designate other Users to enter data, use software or make payments through the CalCERTS online services.
2. Users designated by Subscriber may or may not be employees of the Subscriber.
3. Subscriber is responsible for the conduct and access of all users.
4. Subscriber must obtain a separate and unique login and password from CalCERTS for each identified User that is under Subscriber's supervision.
5. Subscriber shall be responsible for ensuring their designated Users comply with the terms and conditions of this Agreement.
6. Subscriber warrants that the information set forth in the recitals set forth above is true and correct.

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7. Subscriber shall comply with all Addendums, Information Forms, Affidavits if any, Code of Ethics Statements, Pricing Policy and Fee Schedules provided by CalCERTS.
8. Subscriber shall comply with all current CalCERTS policies described herein. Any new, amended, and/or revised policies shall be sent to Subscriber via email. **Notice of amended or revised policies is deemed to have been received by Subscriber by email and no further notice must be given.** Initial _____ Subscriber shall provide CalCERTS with his/her current telephone number, email address and mailing address, notifying CalCERTS within ten days of any changes of mailing address, email or telephone number.
9. Subscriber shall comply with all applicable federal, state, and local laws and regulations.
10. The term of this Agreement shall co-exist with all agreements, addendums and attachments between Subscriber, Subscribers Raters and CalCERTS.

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2. "CalCERTS Registered Home" is another service mark owned by CalCERTS, Inc. CalCERTS has developed this special version of its trademark/service mark for the exclusive use of Subscribers who have an executed CalCERTS Subscriber's Agreement. Note: This service mark can be used only on, near, or in reference to a home, that has been rated by a CalCERTS Certified Rater. Examples of its use include, but are not limited to, the following: window decals, real estate advertisements, yard signs, sign hangers on "for sale" signs, flags, banners and marketing materials.
3. The Subscriber shall not use any trademark that imitates or is similar to the "CalCERTS," "CalCERTS Certified Rater" or "CalCERTS Registered Home" marks or any part thereof. Nor shall it use as a trademark any word, symbol, character, or set of words, symbols, or characters that in any language would be confusingly similar thereto, be it optical, acoustical or conceptual. Improper use of the CalCERTS trademarks and materials will be grounds for termination of this Subscription Agreement at the option of CalCERTS.
4. Upon termination or expiration of this Agreement, Subscriber shall cease using, reproducing, advertising, marketing and distributing any material using the CalCERTS trademarks as soon as is commercially feasible.
5. Use of CalCERTS's name in Subscriber's printed material must be approved in advance in writing by the CalCERTS President or designated authorized party. Except that printed material distributed solely to the employees or members of the entity producing the material, commonly known as "in house material" will be permitted. The entity may NOT distribute this material to its customers unless they have followed the procedures and conditions set forth herein.

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Materials and/or any supporting Proprietary Information produced from time to time by CalCERTS. CalCERTS also grants a limited right to copy and distribute paper or electronic copies of CalCERTS Training Materials or Collateral Marketing Materials, Informational Material and other documents made available to Subscriber under this agreement for public distribution. CalCERTS also grants a limited non-exclusive, terminable license to incorporate the CalCERTS copyright works, in whole or in part, into derivative works for Subscribers own use and distribution throughout California upon final approval of CalCERTS. Such derivative works remain the property of CalCERTS.

2. Subscriber agrees that the Guides, Online Tutorials, Training Materials, Videos or Supplementary Printed Materials, Collateral Marketing Materials and Proprietary Information are the intellectual property of CalCERTS, are owned exclusively by CalCERTS, and are protected by the copyright laws of the United States. Subscriber agrees that Subscriber obtains no rights in the Guides, online Tutorials, Training Materials, Videos or Supplementary Printed Materials, Collateral Marketing Materials 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 Guides, online Tutorials, Training Materials, Videos or Supplementary Printed Materials, Collateral Marketing Materials and not generally known or available to the public, including but not limited to, data communication processes and systems design.
4. The Guides, Online Tutorials, Training Materials, Videos or Supplementary Printed Materials, Collateral Marketing Materials and Proprietary Information may only be used by CalCERTS Subscribers who shall keep strictly confidential the Guides online Tutorials, Training Materials, Videos or Supplementary Printed Materials, Collateral Marketing Materials and Proprietary Information, and Subscriber acknowledges that the Guides online Tutorials, Training Materials, Videos or Supplementary Printed Materials, Collateral Marketing Materials and Proprietary Information constitute valuable property and work product of CalCERTS; that any breach of the confidentiality obligations hereunder may

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cause CalCERTS irreparable harm and damage; and that all confidentiality obligations hereunder shall survive any expiration or termination of this Agreement.

5. Subscriber may not assign or transfer any rights to use the Guides Online Tutorials, Training Materials, Videos or Supplementary Printed Materials, Collateral Marketing Materials or Proprietary Information, except as set forth in this Agreement upon approval of CalCERTS.
6. Form of Copyright Notice for all CalCERTS materials and all derivative materials will be as follows:

© Copyright 2009 (CalCERTS). All Rights Reserved.

7. The copyright notice should be used if both of the following tests are met and in accordance with the approval procedures adopted by CalCERTS:
 - i. The work was created by or for CalCERTS; and
 - ii. The work is owned by CalCERTS
8. On written work, place the copyright notice on the cover or the first page after the cover. On a computer program, place the copyright notice on a label affixed to the disk and on a label affixed to the envelope or box, which holds the disk. Also, place the notice within the title of the program at the beginning of the program so that it is visible on the user's screen. If "c" in a circle is not available, for example on a computer program, delete it from the notice. The year in the notice is the year of creation of the work.
9. Procedure for Approval: The Subscriber's printed material must be submitted to the CalCERTS President or other designated authorized party for approval. Subscriber will be notified in writing whether the printed material submitted with any CalCERTS trademarks or service marks is approved. Subscriber agrees that the printed materials including CalCERTS trademarks, copyright materials and other intellectual property of CalCERTS will not be used by Subscriber until approved by CalCERTS as a Subscriber.
10. CalCERTS shall have the right, without prior approval from, or notice to Subscriber, 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.

D. CalCERTS Database and Software Usage, Restrictions and Guidelines

1. CalCERTS' online database service and software are provided on an "as is, as available" basis. Due to CalCERTS' relationship with on-line networks, CalCERTS gives no warranty, expressed or implied, for the online database services provided, including without limitation, warranty of the merchantability and warranty of fitness for a particular purpose. This disclaimer of warranty expressly disclaims any right to reimbursement for direct or consequential losses, including but not limited to losses of income, due to disruption of service by provider or its service providers.
2. SUBSCRIBER expressly agrees that use of the CalCERTS' online database service and software is done so at Subscriber's sole risk. CalCERTS, its employees, affiliates, agents, third party information providers, merchants, licensors or the like, indicate CalCERTS's online service may be interrupted and is not likely to be error free. CalCERTS makes no warranty as to the results that may be obtained from the use of the CalCERTS online database service or software.
3. Under no circumstances, shall CalCERTS, its agents or anyone else involved in creating, producing or distributing CalCERTS's online database service or software be liable for any direct, indirect, incidental, special or consequential damages that result from the use of or inability to use CalCERTS's online database service or software; or that result from mistakes, omissions, interruptions, deletion or loss of files or data, errors, defects, delays in operation, or of performance, whether or not limited to acts of God, communication failure, theft, destruction or unauthorized access to CalCERTS's records, programs or services. Subscriber maintains sole responsibility for data backups and restoration. Subscriber hereby acknowledges that this paragraph shall apply to all content on CalCERTS's online database service or software usage.
4. Use of any information obtained by way of CalCERTS is at Subscriber's own risk. Connection speed represents the speed of a connection and does not represent guarantees of available end-to-end bandwidth.
5. CalCERTS disclaims liability for any damages arising from Subscriber's use of CalCERTS online database service or software. CalCERTS disclaims liability for Subscriber's data, files, or

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directories residing on CalCERTS's equipment or its providers' equipment. Subscriber is solely responsible for maintaining data, file, and directory structure back-ups.

6. Notwithstanding the above, Subscriber's exclusive remedies for all damages, losses and causes of actions whether in contract, tort, including negligence or otherwise, shall not exceed the aggregate dollar amount which Subscriber paid during the annual term of this Agreement.
7. CalCERTS makes no representations, warranties, or assurances that Subscriber's equipment will be compatible with CalCERTS's services.

E. CalCERTS Waiver of Use of Materials

1. CalCERTS DOES NOT WARRANT THE APPLICABILITY, PROFITABILITY OR ANY USEFULNESS, WHATSOEVER, OF THIS SERVICE AS IT RELATES TO THE SUBSCRIBER'S BUSINESS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CalCERTS DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH REGARD TO THE GUIDE, PRINTED MATERIALS AND ONLINE DATABASE SERVICE.
2. To the extent permitted by applicable law, in no event shall CalCERTS be liable for any damages whatsoever (including but not limited to, without limitation, damages for loss of profits, loss of business information, business interruption, good will or any other financial loss) arising out of the use of or inability to use any work product of CalCERTS including but not limited to, the Manual, printed materials as noted above, and the CalCERTS online services, even if CalCERTS has been advised of the possibility of such damages.

F. Termination of Agreement

Upon written notice to CalCERTS, Subscriber may terminate this Agreement at any time.

Upon written notice to Subscriber, CalCERTS may terminate this Agreement upon the occurrence of any of the following events:

1. Failure of Subscriber to comply with any of the terms and conditions of this Agreement or any other agreement between Subscriber and CalCERTS;

2. SUBSCRIBER is convicted of a felony;
3. SUBSCRIBER'S disciplinary action by the Contractors State License Board or any like authority;
4. Willful failure of a Subscriber to provide true and accurate data and information;
5. SUBSCRIBER'S failure to promptly pay any amounts due CalCERTS;
6. Misrepresentation of Subscriber's relationship with CalCERTS;
7. Any act or failure to act by Subscriber which, in CalCERTS's opinion, harms its name or reputation of CalCERTS.
8. Subscriber or Subscriber's business is adjudged bankrupt, placed in the hands of a receiver, makes an assignment for the benefit of creditors, takes the benefit of any insolvency act, or is liquidated or dissolved.

G. Upon Termination of Agreement

SUBSCRIBER 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 termination events or receipt of any termination notice from CalCERTS.


H. Hold Harmless Clause

SUBSCRIBER 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 services for rating for customers, or services for performing 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.

I. California State Codes and Regulations

This Agreement shall be governed by and construed in accordance with the laws of the State of California. California Code of Regulations Title 20 Chapter 4, Article 8, Section 1670-1675 shall govern any conflicts.

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SUBSCRIBER acknowledges that Subscriber has read California Code of Regulations, Title 20, Chapter 4, Article 8, Sections 1670-1675. Initial 

J. Dispute Resolution

1. Mediation: Subscriber and CalCERTS agree to mediate any dispute or claims arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action. Mediation fees, if any, shall be divided equally among the parties involved. If, for any dispute or claim to which this paragraph applies, any party commences an action without first attempting to resolve the matter through mediation; or refuses to mediate after a request has been made, then that party shall not be entitled to recover attorney's fees, even if they would otherwise be available to that party in any such action. THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED.


Initial .

2. Arbitration of Disputes: Subscriber and CalCERTS agree that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration. The arbitrator shall be a retired judge or justice, or an attorney with at least five (5) years experience, unless the parties mutually agree to a different arbitrator, who shall render an award in accordance with substantive California Law. In all other respects, the arbitration shall be conducted in accordance with Part III, Title 9 of the California Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered in any court having jurisdiction. The parties shall have the right to discovery in accordance with the Code of Civil Procedure §1283.05.

3. NOTICE: BY INITIALING THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE ARBITRATION OF DISPUTES PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY

INCLUDED IN THE ARBITRATION OF DISPUTES PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE.

I have read and understand the foregoing and agree to submit disputes arising out of the matters included in the arbitration of disputes provision to neutral arbitration.

Subscriber's Initials: .

4. In the event it is necessary for CalCERTS to file legal action to enforce this agreement, the prevailing party in such action shall be entitled to recover all costs and expenses incurred in connection with such legal action, including reasonable attorney fees and court costs.
5. If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

K. Miscellaneous Provisions

1. This Agreement and any attachments which are incorporated herein by reference cancels and supersedes all prior CalCERTS TITLE-24/RESIDENTIAL NEW CONSTRUCTION SUBSCRIPTION AGREEMENT(s) between the parties, sets forth the entire understanding of the parties with respect to the subject matter herein. No other agreement, statement or promise made on or before the effective date of this Agreement will be binding on the parties.
2. This agreement shall not be amended, modified, or waived except in writing signed by both parties. This Agreement may not be assigned by Subscriber.
3. Entire Agreement. This Agreement contains the parties' entire agreement and supersedes any prior oral or written agreements between them with respect to the subject matter contained herein. There are no representations, agreements, arrangements, or understandings (oral or written) between the parties relating to the subject matter of this Agreement which are not fully expressed herein.

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Home Energy Rating System (HERS) Provider

4. Governing Law. This Agreement, together with the parties' respective rights and obligations hereunder, shall be governed by and construed in accordance with the laws of the State of California.
5. Severability. If a court of competent jurisdiction finds any provision in this Agreement to be invalid or unenforceable, such invalidity or unenforceability shall not affect the remainder of the Agreement; the provision shall be deemed severed therefrom and the remainder of the Agreement shall remain valid and enforceable in accordance with its terms and of full force and effect.
6. Counterparts. This Agreement may be executed in two (2) or more counterparts and all counterparts so executed shall for all purposes constitute one agreement, binding on all parties.

SUBSCRIBER acknowledges that Subscriber 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
12/12/2009

Date

President

Title

Date



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

EMAIL: office@calcerts.com
PHONE: 916.985.3400
FAX: 916.985.3402
31 Natoma St, Ste. 120
Folsom, CA 95630

TITLE-24/RESIDENTIAL HERS SUBSCRIPTION AGREEMENT

TYPE OF SUBSCRIPTION: (Check all that apply)

Rater ☒

Multiple Rater ☐ Attach List of Additional Users

Builder ☐

Title 24 Consultant ☐

Utility ☐

Other ☐ If "Other", please describe: _____

THIS AGREEMENT, effective as of the date of last signature below, is by and between CALIFORNIA CERTIFIED ENERGY RATING AND TESTING SERVICES ("CalCERTS™"), a sole proprietorship and Provider organization that administers a home energy rating system in compliance with California Code of Regulations Title 20 Chapter 4, Article 8, Section 1670-1675, and ("SUBSCRIBER") a person, entity or organization that is a customer, approved by CalCERTS™, to use the online database service for data input, retrieval, searching or any other features provided on the CalCERTS™ website now or in the future: The purpose of this Agreement is to establish the terms and conditions governing SUBSCRIBER's use of CalCERTS™ online database service and conform this relationship with the California Code of Regulations Title 20 Chapter 4, Article 8, Section 1670-1675.

Valley Duct Testing

Business Name/Employer Name

Erik Hoover

Primary User

7245 Mountainside Dr

Address

Citrus Hts

City

CA

State

95621

Zip

916-769-0598

Phone

Fax

ehoover79@yahoo.com

Email (Required)

6345 Rainier Ave

Billing Address (if different)

Rocklin

City

CA

State

95677

Zip

916-624-2092

Phone

Fax

golferjohn@starstream.net

Email (Required)

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, CalCERTS™ and SUBSCRIBER agree as follows:

- A. SUBSCRIBER warrants that the information set forth in the recitals set forth above is true and correct.
 - B. SUBSCRIBER shall comply with all attached CalCERTS™ Addendums and CalCERTS™ Fee Schedule. SUBSCRIBER shall abide by the terms and conditions of the CalCERTS™ Subscriber Agreement and pay all amounts due CalCERTS™ in accordance with the CalCERTS™ Fee Schedule. The term of this Agreement shall co-exist with all addendums and attachments hereto.
 - C. SUBSCRIBER shall comply with all current CalCERTS™ policies described herein. Any new, amended, and/or revised policies shall be sent to SUBSCRIBER via email. SUBSCRIBER shall provide CalCERTS™ with his/her current telephone number, email address and mailing address, notifying CalCERTS™ within two days of any changes of mailing address, email or telephone number.
 - D. SUBSCRIBER shall comply with all applicable federal, state, and local laws and regulations.
 - E. SUBSCRIBER may use any CalCERTS™ User's Guides ("Guides"), and/or any supporting Proprietary Information under the following terms and conditions:
 - 1. SUBSCRIBER agrees that the Guides, and Proprietary Information are owned exclusively by CalCERTS™, and are protected by the copyright laws of the United States. SUBSCRIBER agrees that SUBSCRIBER obtains no rights in the Guides, or Proprietary Information, except to use them specifically in accordance with this Agreement.
 - 2. "Proprietary Information" shall mean CalCERTS™'s confidential information, trade secrets and know-how embodied in the Guides and not generally known or available to the public, including but not limited to, data communication processes and systems design.
 - 3. The Guides and Proprietary Information may only be used by CalCERTS™ SUBSCRIBERS who shall keep strictly confidential the Guides and Proprietary Information, and SUBSCRIBER acknowledges that the Guides and Proprietary Information constitute valuable property and work product of CalCERTS™; 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.
 - 4. SUBSCRIBER may not assign or transfer any rights to use the Guides or Proprietary Information, except as set forth in this Agreement.
 - F. CalCERTS™ is a trademark and service mark owned by California Certified Energy Rating and Testing Services and is registered with the United States Patent and Trademark Office.
 - G. The Trademarks and Service Marks of CalCERTS™ may only be used by SUBSCRIBERS as follows:
 - 1. Form of Copyright Notice:

© Copyright 2003 California Certified Energy Rating and Testing Services (CalCERTS™). All Rights Reserved.
 - 2. The copyright notice should be used if both of the following tests are met and in accordance with the approval procedures set forth in Paragraph H:
 - i. The work was created by or for CalCERTS™; and
 - ii. The work is owned by CalCERTS™.
 - 3. On written work, place the copyright notice on the cover or the first page after the cover. On a computer program, place the copyright notice on a label affixed to the disk and on a label affixed to the envelope or box, which holds the disk. Also, place the notice within the title of the program at the beginning of the program so that it is visible on the user's screen. If "c" in a circle is not available, for example on a computer program, delete it from the notice. The year in the notice is the year of creation of the work.
 - 4. CalCERTS™ Certified Rater is a service mark owned by California Certified Energy Rating and Testing Services. CalCERTS™ has developed this special version of its trademark/service mark for the exclusive use of certified Raters who have an executed CalCERTS™ Subscriber Agreement and Rater Addendum.
 - i. Examples of its use include, but are not limited to, the following: Patches on clothing to be worn by Raters; business cards; stationery; identification cards; advertisements; and marketing materials.
- Note: This service mark cannot be used alone. It must be accompanied by either the name of a Rater or used in conjunction with a Rating business (see paragraph 5).
- 5. CalCERTS™ Registered Home is a service mark owned by California Certified Energy Rating and Testing Services. CalCERTS™ has developed this special version of its trademark/service mark for the exclusive use of SUBSCRIBERS who have an executed CalCERTS™ Subscriber Agreement.

Note: This service mark can be used only on, near, or in reference to a home, that has been rated by a CalCERTS™ Certified Rater. Examples of its use include, but are not limited to, the following: real estate advertisements, yard signs, sign hangers on "for sale" signs, flags, banners and marketing materials.

6. Names of businesses should not be so similar to CalCERTS™ or California Certified Energy Rating and Testing Services as to mislead or cause confusion among consumers or potential consumers. Subscribers with business names deemed too similar to CalCERTS™ or California Certified Energy Rating & Testing Services, shall, at the discretion of CalCERTS™ immediately cease and desist from the use thereof, unless they can clearly establish that there is not sufficient similarity to be construed as being a part of CalCERTS™.

H. SUBSCRIBER agrees the name CalCERTS™ may only be used in printed material by SUBSCRIBER as follows:

1. Use of CalCERTS™'s name in printed material must be approved in advance in writing by the CalCERTS™ President or designated authorized party. Except that printed material distributed solely to the employees or members of the entity producing the material, commonly known as "in house material" will be permitted. The entity may NOT distribute this material to its customers unless they have followed the procedures in paragraph H.2.

2. Procedure for Approval: The printed material must be submitted to the CalCERTS™ President or other designated authorized party for approval. SUBSCRIBER will be notified in writing whether the printed material submitted with any CalCERTS™ trademarks or service marks is approved.

3. CalCERTS™ shall have the right, without prior approval from, or notice to SUBSCRIBER, 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™.

I. CalCERTS™ DOES NOT WARRANT THE APPLICABILITY, PROFITABILITY OR ANY USEFULNESS, WHATSOEVER, OF THIS SERVICE AS IT RELATES TO THE SUBSCRIBER'S BUSINESS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CalCERTS™ DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH REGARD TO THE GUIDE AND ONLINE DATABASE SERVICE

J. To the extent permitted by applicable law, in no event shall CalCERTS™ be liable for any damages whatsoever (including but not limited to, without limitation, damages for loss of profits, loss of business information, business interruption, good will or any other financial loss) arising out of the use of or inability to use any work product of CalCERTS™ including but not limited to, the Manual and the CalCERTS™ online services, even if CalCERTS™ has been advised of the possibility of such damages.

K. CalCERTS™ 's online database service is provided on an "as is, as available" basis. Due to CalCERTS™'s relationship with on line networks, CalCERTS™ gives no warranty, expressed or implied, for the online database services provided, including without limitation, warranty of the merchantability and warranty of fitness for a particular purpose. This disclaimer of warranty expressly disclaims any right to reimbursement for direct or consequential losses, including but not limited to losses of income, due to disruption of service by provider or its providers.

1. SUBSCRIBER expressly agrees that use of CalCERTS™ 's online database service is at SUBSCRIBER's sole risk. CalCERTS™, its employees, affiliates, agents, third party information providers, merchants, licensors or the like, indicate CalCERTS™ 's online database service may be interrupted and is not likely to be error free. CalCERTS™ makes no warranty as to the results that may be obtained from the use of the online database service.

2. Under no circumstances, including negligence, shall CalCERTS™, its agents or anyone else involved in creating, producing or distributing CalCERTS™ 's online database service be liable for any direct, indirect, incidental, special or consequential damages that result from the use of or inability to use CalCERTS™ 's online database service; or that results from mistakes, omissions, interruptions, deletion or loss of files or data, errors, defects, delays in operation, or of performance, whether or not limited to acts of God, communication failure, theft, destruction or unauthorized access to CalCERTS™ 's records, programs or services. SUBSCRIBER maintains sole responsibility for data backups and restoration. SUBSCRIBER hereby acknowledges that this paragraph shall apply to all content on CalCERTS™ 's online database service.

3. Use of any information obtained by way of CalCERTS™ is at SUBSCRIBER's own risk. Connection speed represents the speed of a connection and does not represent guarantees of available end-to-end bandwidth.

4. CalCERTS™ disclaims liability for any damages arising from SUBSCRIBER's use of CalCERTS™ online database service. CalCERTS™ disclaims liability for SUBSCRIBER's data, files, or directories residing on CalCERTS™ 's equipment or its providers' equipment. SUBSCRIBER is solely responsible for maintaining data, file, and directory structure back-ups.

5. Notwithstanding the above, SUBSCRIBER's exclusive remedies for all damages, losses and causes of actions whether in contract, tort, including negligence or otherwise, shall not exceed the aggregate dollar amount which SUBSCRIBER paid during the term of this Agreement.

6. CalCERTS™ makes no representations, warranties, or assurances that SUBSCRIBER's equipment will be compatible with CalCERTS™ 's services.

L. Upon written notice to CalCERTS™, SUBSCRIBER may terminate this Agreement at any time.

M. Upon written notice to SUBSCRIBER, CalCERTS™ may terminate this Agreement upon the occurrence of any of the following events:

1. Failure of SUBSCRIBER to comply with any of the terms and conditions of this Agreement or any other agreement between SUBSCRIBER and CalCERTS™
2. SUBSCRIBER'S conviction of a felony
3. SUBSCRIBER'S disciplinary action by the Contractors State License Board or any like authority
4. Willful failure of a SUBSCRIBER to provide a true and accurate data and information
5. SUBSCRIBER'S failure to promptly pay any amounts due CalCERTS™
6. Misrepresentation of SUBSCRIBER's relationship with CalCERTS™
7. Any act or failure to act by SUBSCRIBER which, in CalCERTS™'s opinion, harms its name or reputation

N. This Agreement shall automatically terminate upon the occurrence of any of the following events: SUBSCRIBER or SUBSCRIBER's business is adjudged bankrupt, placed in the hands of a receiver, makes an assignment for the benefit of creditors, takes the benefit of any insolvency act, or is liquidated or dissolved.

O. SUBSCRIBER 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 from CalCERTS™.

P. SUBSCRIBER shall act hereunder solely as an independent contractor. SUBSCRIBER shall not represent himself/herself to be an employee or agent of CalCERTS™ SUBSCRIBER may indicate that SUBSCRIBER is a CalCERTS™ SUBSCRIBER.

Q. SUBSCRIBER 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 services for rating or other customers, including all expenses, costs, settlements, judgments, awards, and legal fees incurred by CalCERTS™ in defense or settlement of such claims.

R. This Agreement may not be assigned by SUBSCRIBER.

S. This Agreement shall be governed by and construed in accordance with the laws of the State of California. California Code of Regulations Title 20 Chapter 4, Article 8, Section 1670-1675 shall govern any conflicts.

T. SUBSCRIBER acknowledges that SUBSCRIBER has read California Code of Regulations, Title 20, Chapter 4, Article 8, Sections 1670-1675.

U. This Agreement and all attachments which are incorporated herein by reference cancels and supersedes all prior CalCERTS™ TITLE-24/RESIDENTIAL NEW CONSTRUCTION SUBSCRIPTION AGREEMENT(s) between the parties, sets forth the entire understanding of the parties with respect to the subject matter herein. No other agreement, statement or promise made on or before the effective date of this Agreement will be binding on the parties.

V. This agreement shall not be amended, modified, or waived except in writing signed by both parties.

W. Dispute Resolution:

1. Mediation: SUBSCRIBER and CalCERTS™ agree to mediate any dispute or claims arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action. Mediation fees, if any, shall be divided equally among the parties involved. If, for any dispute or claim to which this paragraph applies, any party commences an action without first attempting to resolve the matter through mediation, or refuses to mediate after a request has been made, then that party shall not be entitled to recover attorney's fees, even if they would otherwise be available to that party in any such action. THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED.

2. Arbitration of Disputes: SUBSCRIBER and CalCERTS™ agree that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration. The arbitrator shall be a retired judge or justice, or an attorney with at least five (5) years experience, unless the parties mutually agree to a different arbitrator, who shall render an award in accordance with substantive California Law. In all other respects, the arbitration shall be conducted in accordance with Part III, Title 9 of the California Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered in any court having jurisdiction. The parties shall have the right to discovery in accordance with the Code of Civil Procedure §1283.05.

X. NOTICE: BY INITIALING THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE ARBITRATION OF DISPUTES PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE ARBITRATION OF DISPUTES PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE.

Subscriber's Initials:

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



Print Name _____

Title

Date _____

Michael E. Bachand

President

ATTACHMENT F

Mike Bachand

From: David Haddock <dave@davidhaddocklegal.com>
Sent: Friday, January 20, 2012 7:55 AM
To: Charlie Bachand; Mike Bachand; Mark Wiese
Cc: dbeck@energy.state.ca.us
Subject: CalCERTS, Inc. and Lack of Due Process

Dear Sirs,

I am an attorney who represents Mr. John Flores and Valley Duct Testing. From this point forward, I will be involved in any efforts by you to interfere with their rights to earn a living as HERS raters. Accordingly, if you have any further inquiries about Mr. Flores, Valley Duct Testing, or any of its employees, or the work done by them, please direct those inquiries to me. I will comply with every lawful request.

I understand that you have already received a copy of my e-mail to employees and commissioners of the California Energy Commission regarding the unlawful and unconstitutional way you impose discipline on HERS raters. Two employees of Valley Duct Testing have now been suspended from work for more than a month. This suspension was imposed without notice, meaning that it was effective before they were notified, and before they had a reasonable opportunity to address any charges against them. Despite already attending a meeting with you, these employees have still not been provided with a clear and plain statement of the charges against them. Yet their suspension continues unabated. It has been extended by you for no apparent reason weeks past the time these employees answered all of your questions. You are now inquiring into work and procedures unrelated to the limited number of addresses that you initially notified them about. This is totally unacceptable.

I demand that you immediately cease imposing discipline in this way. Because CalCERTS, Inc. is exercising delegated government power in an area of government control, CalCERTS, Inc. is governed by the U.S. and state constitutions which prohibit interference with vested rights, such as the right of HERS raters to use their professional licenses to earn a living, without reasonable notice and a reasonable opportunity for a hearing. Fairly simple changes to your procedures could be made that would comply with constitutional demands. I would be happy to help you develop and implement those changes. If you are unwilling to make the necessary changes voluntarily, I will be forced to use the power of the courts to force appropriate reforms.

At a minimum, the right of HERS raters to work may not be interfered with until AFTER they have been provided with a plain statement describing their alleged wrongdoing, and an opportunity to address the charges before a neutral fact finder. You are not permitted to punish HERS raters for mistakes that were not made by them. For example, your current practice of maintaining the suspensions of some Valley Duct Testing employees until your investigation of other Valley Duct Testing HERS raters has been completed is totally unlawful.

If complaints have been made about any HERS raters, they are entitled to receive a copy of the complaints, so they can adequately address the charges. If CalCERTS, Inc. has received any complaints about John Flores, Valley Duct Testing, or its employees, I demand that you provide me with a copy of the complaints immediately.

My hope as always is that you will willingly make the changes the law requires. In anticipation of the likelihood that you will not, I ask you again to direct all further inquiries regarding John Flores, Valley Duct Testing, or its employees, to me. If your current unlawful practices are not immediately ceased, and if substantive changes are not made within seven days of this e-mail, I will proceed with further efforts to enforce the rights of my clients.

Sincerely,
David Haddock

Attorney at law

--

David Haddock
David Haddock Legal
P. O. Box 2501
Citrus Heights, CA 95611
(916) 420-5802
Fax: (916) 725-6000
dave@davidhaddocklegal.com

This communication may contain confidential and/or privileged material for the sole use of the intended recipient(s). Any review, use, distribution or disclosure by others is strictly prohibited. If you are not the intended recipient (or authorized to receive for the recipient), please contact the sender and delete all copies of this message.

ATTACHMENT G

DAVID HADDOCK LEGAL
P. O. BOX 2501
CITRUS HEIGHTS, CA 95611
VOICE: (916) 420-5802
FAX: (916) 725-6000
DAVE@DAVIDHADDOCKLEGAL.COM

February 15, 2012

DOWNEY BRAND LLP
Attorney for CalCERTS, Inc.
Andrew L. Collier
621 Capitol Mall, 18th Floor
Sacramento, CA 95814

Via Email & U.S. Mail

Re: CalCERTS, Inc. HERS Decertification of Erik Hoover and Patrick Davis

Dear Mr. Collier,

Thank you for your letter to me dated February 8, 2012, and for the explanation of your client's decision to decertify my clients Erik Hoover and Patrick Davis as HERS raters. I do not share your opinion that the decertifications were proper. I believe the HERS regulations specify precisely what actions CalCERTS, or any other provider, must take if a HERS rater fails some aspect of quality assurance review. In particular, 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. No provision of the authorizing statute, or the regulations themselves, allows CalCERTS to depart from this policy. CalCERTS is bound by it, and my clients are entitled to rely upon it.

CalCERTS has apparently taken the position that when it determines, in its sole discretion, that a QA failure is egregious, establishes a pattern, or is not rectifiable, it may ignore and entirely depart from the procedure the regulations demand and impose any penalty it chooses. I presume that if any legal authority supported this particular position, you would have cited it in your February 8 letter to me. In arguing that CalCERTS' contracts with my clients authorize CalCERTS to decertify Hoover and Davis, you are implicitly claiming that CalCERTS' private agreements with third parties allow them to avoid the application of the law. This is a remarkable position to take. Again, if any legal authority supports this position, I invite you to provide me with citations to it. CalCERTS simply lacks the statutory and regulatory authority to decertify a HERS rater, especially in so precipitous a fashion as was done here.

Certainly CalCERTS' contracts with HERS raters will not be interpreted to supersede the HERS regulations, given that by their own terms the contracts are made expressly subject to those regulations. However, the contracts will be interpreted to require CalCERTS to act reasonably, and not arbitrarily.¹ CalCERTS has not established any objective standards defining when a HERS rater's actions are egregious, establish a pattern, or are not rectifiable. Neither the QA

¹ "In every contract there is an implied covenant of good faith and fair dealing that neither party will do anything which injures the right of the other to receive the benefits of the agreement." *Brown v. Superior Court*, 34 Cal. 2d 559, 564 (1949).

disposition documents you sent to me, nor any other CalCERTS document I am aware of includes any discussion of the meaning of these terms, or what particular facts justify CalCERTS' conclusion that they apply to my clients. Moreover, the contracts do not grant CalCERTS the broad and independent discretion it apparently claims to draw these conclusions on any basis it chooses. For all of these reasons, it is CalCERTS that has breached the contracts by acting unreasonably, and in bad faith. This will subject CalCERTS to liability.

As I have also emphasized in all of my correspondence with you, CalCERTS is bound by the constitutional strictures of due process. 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 an agency of state government. Though CalCERTS asserts an independent right to contract with HERS raters, even that right depends upon Title 20 § 1673(c), which requires CalCERTS to make such contracts. CalCERTS in fact makes its contracts with raters expressly subject to the HERS regulations. When CalCERTS disciplines HERS raters, it claims to be enforcing the HERS regulations. 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.²

² These significant entanglements with a state agency also mean that when CalCERTS takes away my clients' professional certifications without due process, it acts "under color of state law" to deprive my clients of their civil rights. This also subjects CalCERTS to liability under 42 U.S.C. § 1983.

Complying with the requirements of due process is not an extreme burden. My clients ask only that CalCERTS act decently. The recipe for this is simple: Perform QA review according to written standards that everyone can understand. If someone complains about a HERS rater, give the rater a copy of the complaint. If QA evaluation turns up conflicting data, give the HERS raters the data, so they can try to figure out what went wrong. Before interfering with a HERS rater's ability to earn a living, give the rater a meaningful opportunity to defend himself (rather than an interrogation). In order to make sure that mistakes aren't made in imposing such severe discipline as this, provide some sort of opportunity to appeal. It wouldn't take much to comply with due process. But CalCERTS did none of these things. My clients ask for no more than what every person would want.

The data provided by CalCERTS to date is inadequate. Please provide copies of any complaints that have been submitted about my clients, including Erik Hoover, Patrick Davis, Dan Sidhu, Jennifer McFall, Donald White, John Flores and Valley Duct Testing. In addition, I have included with this letter a spreadsheet describing specific numerical data relating to the alleged QA failures. Please provide this data for all QA reviews that have been completed relating to my clients. This data is required for my clients to meaningfully determine what mistakes, if any, were made by them, and the extent of the errors made by the CalCERTS QA tester.

CalCERTS has breached its contracts with my clients by acting unreasonably and in bad faith. It has violated my clients' civil right to due process under 42 U.S.C. § 1983. If CalCERTS publishes its decision to decertify my clients before due process has been provided, it will also defame them, and subject itself to additional liability. My clients have also lost significant income due to CalCERTS' unlawful acts, income that they will look to CalCERTS to restore.

My hope, as always, is that CalCERTS will choose willingly to provide my clients and all HERS raters the procedural assurances the law requires, so that further legal process is not necessary to resolve these disagreements. I renew my offer to support any effort by CalCERTS to develop new procedures that comply with the law. I have good reason to believe that a very broad selection of HERS raters throughout the state agree that the time has come for CalCERTS to begin administering this important program fairly. I invite cooperation in this important task.

Thank you for your prompt attention to this matter.

Sincerely,



David Haddock
Attorney at law

Rater Additional Information Required to Supply by CalCerts

Rater	Address	QA Findings	QA Items (Need Exact Results)	QA Exact Results
Erik Hoover	334 Malbec	Failed Superheat	Suction Pressure	
			Suction Temperature	
			Evaporator Saturation Temperature	
			Outdoor Temp.	
			Superheat	
		Failed Duct Leakage	Duct Leakage	
	15987 Crescent Park	Building Leakage	Building Leakage	
		Failed QII	Thickness or Insulation (R38)	
			Weight of Insulation (R38)	
		High EER Fail	ARI Cert to prove Fail	
	800 Ferry Launch	Building Leakage	Building Leakage	
		QII Fail	Thickness or Insulation (R38)	
			Weight of Insulation (R38)	
	9531 Richdale	Failed Duct Leakage (Sys. 1)	System Leakage System #1	
		RCV Fail (Sys. 1)	Liquid Pressure System #1	
			Liquid Temperature System #1	
			Cond. Saturation Temp System #1	
			Outdoor Temp. System #1	
			Subcooling	
		Airflow Fail (Sys. 1)	Airflow System #1	
		Fan Watt Draw Fail (Sys. 1)	Fan Watt Draw System #1	
		Failed Duct Leakage (Sys. 2)	System Leakage System #2	
		Airflow Fail (Sys. 2)	Airflow System #2	
		RCV Fail (Sys. 2)	Liquid Pressure System #2	
			Liquid Temperature #2	
			Cond. Saturation Temp System #2	
			Outdoor Temp. System #2	
			Subcooling	
		Superheat Fail System #2	Suction Pressure System #2	
			Suction Temperature System #2	
			Evaporator Saturation Temp. System #2	
			Superheat System #2	
		Airflow Fail System #2	Airflow System #2	
		Fan Watt Draw Fail (Sys. 2)	Fan Watt Draw System #2	

Rater Additional Information Required to Supply by CalCerts

[illegible]

Rater Additional Information Required to Supply by CalCerts

Rater	Address	QA Findings	QA Items (Need Exact Results)	QA Exact Results

[illegible]

ATTACHMENT H

Gatlin, Shelby

From: David Haddock [dave@davidhaddocklegal.com]
Sent: Tuesday, February 28, 2012 11:28 AM
To: Collier, Andrew
Cc: dbeck@energy.state.ca.us; Luckhardt, Jane; Gatlin, Shelby; Puzar, Linda
Subject: Re: CalCERTS, Inc. HERS Decertification of Erik Hoover and Patrick Davis

Follow Up Flag: Follow up
Flag Status: Red

Andrew,

I just wanted to follow up on my letter to you dated February 15, 2012. I have not received a response from you. However, my clients are eager to review the complaints that were submitted to CalCERTS about them, and also to review the specific data that the QA rater produced relating to their work. Are you intending to send those items?

As with Mr. Hoover and Mr. Davis, my other clients, Dan Sidhu, Jennifer McFall, and Donald White, have received discipline from CalCERTS by having alleged QA failures published in the CalCERTS database, even though they have not been provided with detailed info about their alleged failures. On their behalf I request that CalCERTS remove the notice of QA failures for each of them until such time as CalCERTS has provided them with the data the QA rater produced so they have an opportunity to contest CalCERTS' findings.

I would appreciate your prompt response to this request.

Sincerely,
Dave

On Wed, Feb 15, 2012 at 2:33 PM, David Haddock <dave@davidhaddocklegal.com> wrote:

> Dear Mr. Collier,
>
> Please find attached to this e-mail a response to your letter dated
> February 8, 2012. A paper copy of my letter to you is going in the
> mail today.
>
> FYI, I will be out of the country with limited access to telephone or
> e-mail from February 18, 2012 through February 26, 2012.
>
> Thank you,
> Dave
>
> --
> David Haddock
> David Haddock Legal
> P. O. Box 2501
> Citrus Heights, CA 95611
> (916) 420-5802
> Fax: (916) 725-6000
> dave@davidhaddocklegal.com
>
> This communication may contain confidential and/or privileged material
> for the sole use of the intended recipient(s). Any review, use,
> distribution or disclosure by others is strictly prohibited. If you
> are not the intended recipient (or authorized to receive for the
> recipient), please contact the sender and delete all copies of this
> message.

--
David Haddock

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Fax: (916) 725-6000
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This communication may contain confidential and/or privileged material for the sole use of the intended recipient(s). Any review, use, distribution or disclosure by others is strictly prohibited. If you are not the intended recipient (or authorized to receive for the recipient), please contact the sender and delete all copies of this message.

ATTACHMENT I

CALIFORNIA ENERGY COMMISSION
OFFICE OF THE CHIEF COUNSEL
1516 NINTH STREET, MS-14
SACRAMENTO, CA 95814-5512
www.energy.ca.gov



January 11, 2012

Mr. David Haddock, Esq.
David Haddock Legal
P.O. Box 2501
Citrus Heights, CA 95611

Dear Mr. Haddock:

This letter is in response to your e-mail of January 9, 2012, which is enclosed with this letter. In that e-mail you express concerns about the manner in which CalCERTS administers its California Home Energy Rating System (HERS) Providership.

The HERS program was created under the authority of Section 25942 of the California Public Resources Code. The regulations implementing that statute – the HERS Regulations – are found in Sections 1670 through 1675 of Title 20 of the California Code of Regulations.¹ Incorporated by reference in those regulations is the HERS Technical Manual.²

Under the HERS Regulations, the California Energy Commission certifies Providers and Rating Systems, but not the Raters themselves. (See Section 1674 of Title 20.) Although the HERS Regulations set forth specific procedures that Providers must follow in training and certifying Raters (see Section 1674 of Title 20 and Section 8.1 of the HERS Technical Manual) and providing quality assurance of work done by Raters (see Section 1673(i) of Title 20 and Section 8.2 of the HERS Technical Manual), it is the Providers that are responsible for that training, certification, and quality assurance; this includes Rater discipline.

Providers and Raters are prohibited from knowingly providing untrue, inaccurate, or incomplete rating information or from reporting rating results that were not conducted in compliance with the HERS Regulations, and from knowingly accepting payment or other consideration in exchange for reporting a rating result that was not in fact conducted and reported in compliance with the HERS Regulations. (See Section 1672(m) of Title 20.)

It is mandatory that Raters and Providers be separate entities with each having no financial interest in the other. (See Sections 1671 and 1673(j)(1) of Title 20.) Providers are also required to have a complaint response system for responding to and resolving complaints related to ratings and field verification and diagnostic testing services and reports. (See Section 1673(i)(5) of Title 20.)

¹ <http://www.energy.ca.gov/2008publications/CEC-400-2008-011/CEC-400-2008-011-CMF.PDF>

² <http://www.energy.ca.gov/2008publications/CEC-400-2008-012/CEC-400-2008-012-CMF.PDF>

Ltr. to David Haddock, Esq.
January 11, 2012
Page 2

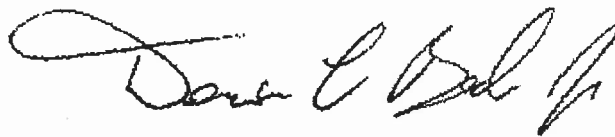
Taken together, the above-cited HERS Regulations create a system in which the Energy Commission has direct oversight of the Providers, and the Providers have direct oversight of the Raters. Although there are some general provisions in the HERS Regulations pertaining to Rater conduct and responsibilities and quality assurance of Rater work, it is the role of the Provider to monitor and if necessary investigate the work of Raters and to take appropriate action in response to Rater misconduct. The conflict of interest provisions of the HERS Regulations ensure that Providers are separate, independent entities from their Raters and thus may be independent and neutral in investigating Rater misconduct and imposing Rater discipline.

Given the structure of this system, your concerns and request for changes in the CalCERTS process are best directed to CalCERTS itself and not the Energy Commission. There is no indication in your e-mail that you have addressed these concerns with CalCERTS, or of any response from CalCERTS if indeed you have (also, it does not appear that you included anyone from CalCERTS on your e-mail of January 9).

Further, as the HERS Regulations were adopted pursuant to the provisions of the California Administrative Procedure Act (APA) (California Government Code section 11340, et seq.) any changes to the regulations, including adding requirements pertaining to a Provider's complaint response system, would need to be implemented via a rulemaking proceeding under the APA.³ Section 1221 of Title 20 contains the procedure by which any person may petition the Energy Commission to begin a rulemaking proceeding.

If you have questions or further concerns, you can contact me at 916-654-3974. Thank you.

Sincerely,



Dennis L. Beck, Jr.
Senior Staff Counsel

Encl: January 9, 2012 e-mail from David Haddock to Eurlyne Geiszler, Jim Holland and Tav Commins (two pages)

Cc: Eurlyne Geiszler, Supervisor, Building Standards Implementation
Jim Holland, Building Standards Implementation
Tav Commins, Building Standards Implementation
Mike Bachand, President, CalCERTS

³ See this webpage for additional information on this rulemaking process --
http://www.oal.ca.gov/Regular_Rulemaking_Process.htm.