

1 STEPHEN L. COHEN, *pro hac vice*
2 Securities and Exchange Commission
3 100 F Street, N.E.
4 Washington DC 20549-4030
5 Telephone: (202) 551-4472
6 Facsimile: (202) 772-9245
7 Email: CohenS@sec.gov

8 **LOCAL COUNSEL:**

9 **JOHN B. BULGOZDY**
10 Cal Bar. No. 219897
11 Securities and Exchange Commission
12 5670 Wilshire Boulevard, 11th Floor
13 Los Angeles, CA 90036-3648
14 Telephone: (323) 965-3322
15 Email: BulgozdyJ@sec.gov

16 Attorneys for Plaintiff U.S. Securities
17 and Exchange Commission

18 **UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**

20 SECURITIES AND EXCHANGE
21 COMMISSION,

22 Plaintiff,

23 vs.

24 TRI ENERGY, INC., H & J ENERGY
25 COMPANY, INC., MARINA INVESTORS
26 GROUP, INC., LOWELL DECKER,
27 ROBERT JENNINGS, HENRY JONES,
28 ARTHUR SIMBURG, MILDRED STULTZ,
DJM, LLC, FINANCIAL MD, INC.,
FINANCIAL MD AND ASSOCIATES,
INC., DANIEL J. MERRIMAN, GLOBAL
VILLAGE RECORDS, and LA VIE
D'ARGENT,

Defendants.

and

R.P.J. INVESTMENT GROUP, INC.,
T.M.A. INVESTMENT ENTERPRISES,
THOMAS AVERY, and WING NGA
LAU, A/K/A ADRIENNE LAU,

Relief Defendants.

Case No. ED CV 05-351 AG(MANx)

AMENDED COMPLAINT

1 Plaintiff Securities and Exchange Commission (“Commission”) for its
2 Complaint alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This Court has jurisdiction over this action pursuant to Sections
5 20(d)(1) and 22(a) of the Securities Act of 1933 (the “Securities Act”) [15 U.S.C. §§
6 77t(d)(1) and 77v(a)] and Sections 21(d)(3), 21(e) and 27 of the Securities Exchange
7 Act of 1934 (the “Exchange Act”) [15 U.S.C. §§ 78u(d)(3), 78u(e) and 78aa].
8 Defendants, directly or indirectly, have made use of the means and instrumentalities
9 of interstate commerce or of the mails in connection with the acts, transactions,
10 practices and courses of business alleged in this Complaint.

11 2. Venue in this District is proper pursuant to Section 22(a) of the
12 Securities Act [15 U.S.C. §77v(a)] and Section 27 of the Exchange Act [15 U.S.C.
13 §78aa] because multiple defendants are located in the Central District of California
14 and acts or transactions constituting federal securities law violations occurred within
15 the Central District of California.

16 **SUMMARY OF THE ACTION**

17 3. Defendants have perpetrated a massive affinity fraud and Ponzi scheme,
18 which has resulted in tens of millions of dollars of losses by over 500 victims.
19 Posing as a group of religious entrepreneurs who hope to earn phenomenal returns
20 through “deistically inspired” and “divinely guided” transactions, Defendants
21 recruited potential victims through claims that their investments were aimed, at least
22 in part, at raising money for humanitarian efforts such as alleviating poverty in
23 Africa and the Appalachians. Defendants promised their victims outlandish returns
24 on their investments of 100 – 1000% in as little as sixty days with no disclosure of
25 any real risks.

26 4. From at least July 2002 through March of 2006, Defendants solicited
27 investments in H & J Energy, Tri Energy, Marina Investors Group, or Global Village
28 Records for a purported coal mine venture and for a scheme to help close a supposed

1 international “gold deal.” In conference calls with the investors, Defendants
2 represented that the investments would be used to facilitate Tri Energy’s successful
3 “clean burning coal” mine and a “Middle East gold investment” organized by
4 Defendants Marina Investors and Henry Jones. Defendants told investors that
5 hundreds of tons of gold was stored in Israel and would be sent to the United Arab
6 Emirates, that the deal would be finalized in Luxembourg, and that it was politically
7 sensitive because the countries involved in the transaction would not want the public
8 to know they were conducting business with one another (and thus the investor-
9 victims must keep the “gold transaction” confidential).

10 5. According to Defendants, investments in the “gold transaction” were
11 used to pay costs, including “miscellaneous expenses,” “storage fees” (\$50,000 -
12 \$150,000 per month) and payoffs to unnamed lawyers in Zurich and Dubai who
13 were supposedly preparing documents and helping move the gold around Europe and
14 the Middle East. Once Defendant Jones completed this alleged “gold transaction,”
15 Defendants falsely represented that they would be able to fund Tri Energy’s coal
16 mines with \$200 million and all of the investor-victims who had paid to make this
17 “gold transaction” happen would become rich.

18 6. There is no gold, and the “gold transaction” story is a complete
19 fabrication, and, on their face, Defendants’ claims and the promised returns they
20 offered potential investors are plainly outrageous. Indeed, contrary to their express
21 representations, the evidence indicates that Defendants primarily used the investment
22 proceeds obtained from investors for improper and undisclosed purposes. During
23 the course of this fraud, Defendants raised over \$50 million from hundreds of
24 investors (or groups of investors). Certain of the Defendants continued to raise
25 money from investors after the Court entered an injunction against them last year,
26 and they have successfully raised at least \$1.2 million since May of 2005 alone.

27 7. As part of the fraud, Defendants paid several million dollars out to a
28 small number of investors using funds deposited by other investors. Thus, in typical

1 Ponzi scheme fashion, Defendants' payments to existing investors were funded
2 completely by money received from other investors in the scheme. Moreover,
3 Defendants diverted millions of dollars of investor funds into nominee accounts they
4 control and used the funds largely for personal expenses such as the funding of
5 unrelated businesses, travel, hotel stays, jewelry and other retail purchases and
6 personal services. Some of the nominees receiving these ill gotten gains are named
7 as Relief Defendants herein.

8 8. On May 2, 2005, the Court entered a Temporary Restraining Order
9 ("TRO") against Defendants Tri Energy, H&J Energy, Marina Investors Group,
10 Lowell Decker, Robert Jennings, Henry Jones, and Arthur Simburg, which, among
11 other things, enjoined them from committing violations of Section 17(a) of the
12 Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and
13 SEC Rule 10b-5.

14 9. On May 23, 2005, the Court entered a stipulated Preliminary Injunction
15 ("PI") against the Defendants Tri Energy, H&J Energy, Marina Investors Group,
16 Lowell Decker, Robert Jennings, Henry Jones, and Arthur Simburg, which, among
17 other things, enjoined them from committing violations of Section 17(a) of the
18 Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and
19 SEC Rule 10b-5.

20 10. Even after many of the Defendants were enjoined from continuing to
21 violate the federal securities laws, they continued their fraud by soliciting additional
22 money into this scam.

23 11. Defendants' blatant fraud violates the registration and antifraud
24 provisions of the federal securities laws. Unless restrained and enjoined by this
25 Court, Defendants will continue to engage in conduct that violates these securities
26 laws as demonstrated by certain Defendants' continued perpetration of this fraud
27 even while subject to the TRO and PI. Accordingly, the Commission seeks an order
28

1 enjoining Defendants, requiring disgorgement of ill-gotten gains, civil money
2 penalties, and granting other equitable relief.

3 **DEFENDANTS**

4 12. Defendant Tri Energy, Inc. (“Tri Energy”), a private Nevada
5 corporation with corporate offices of 2533 N. Carson Street Box T-305, Carson City,
6 Nevada 89706, and 9622 Norton Coeburn Road, Norton, Virginia 24273, represents
7 that it is in the business of coal mining. Defendants Robert Jennings and Arthur
8 Simburg and Relief Defendant Thomas Avery are officers of Tri Energy. Tri
9 Energy’s principals solicited investors and made the majority of the
10 misrepresentations at issue in this case. Investor-victims sent their money to a Tri
11 Energy bank account. The Court issued a TRO, asset freeze, and PI against Tri
12 Energy in May of 2005, and Tri Energy is now controlled by a court-appointed
13 receiver.

14 13. Defendant Marina Investors Group, Inc. (“Marina Investors Group” or
15 “Marina”), a private California corporation with corporate offices of 1801 Lincoln
16 Blvd. Suite 113, Venice, California 90291, and 3017 Washington Blvd., Suite 115,
17 Marina Del Rey, California 90292, represents that it is in the business of movie and
18 music production. Defendant Jones is the owner of Marina Investors Group. Marina
19 Investors Group has substantial business with Tri Energy, and potential investors are
20 told that Marina is central to the scheme that will generate the allegedly fantastic
21 returns for Tri Energy. Millions of dollars of investor funds were transferred from
22 Tri Energy bank accounts to Marina Investors bank accounts, and Marina also
23 received substantial investor funds directly. The Court issued a TRO, asset freeze,
24 and PI against Marina in May of 2005, and Marina is now controlled by a court-
25 appointed receiver.

26 14. Defendant H & J Energy Company, Inc. (“H & J Energy”), a Nevada
27 corporation, with corporate offices at 350 S Center Street, Suite 500, Reno, Nevada
28 89501, purports to be in the coal mining business. Defendant Jennings is the

1 President and Treasurer of H&J Energy. H & J solicited and received investor funds
2 as part of this scheme. The Court issued a TRO, asset freeze, and PI against H & J
3 Energy in May of 2005, and H & J Energy is now controlled by a court-appointed
4 receiver.

5 15. Defendant Lowell Decker (“Decker”) is a resident of Placerville,
6 California. Decker set up nightly investor conference calls for the purpose of
7 soliciting and lulling investors and participated in them as well. The Court issued a
8 TRO, asset freeze, and PI against Decker in May of 2005.

9 16. Defendant Robert Jennings (“Jennings”) of Perris, California is the
10 President and Chairman of Tri Energy. Jennings is the President and Treasurer of
11 Defendant H & J Energy. Jennings signed written offering materials used to solicit
12 investor funds and received investor funds from the Tri Energy bank account. The
13 Court issued a TRO, asset freeze, and PI against Jennings in May of 2005. Since
14 that time, Jennings has communicated with investor-victims to falsely assure them
15 that the gold transaction is real.

16 17. Defendant Henry Jones (“Jones”) of Culver City, California is the
17 owner of Marina Investors Group. Jones is the mastermind behind the fraudulent
18 gold transaction used to solicit investors and signed documents connecting his
19 company to Tri Energy. Jones also participated in certain nightly conference calls.
20 The Court issued a TRO, asset freeze, and PI against Jones in May of 2005. Since
21 that time, Jones has continued to unlawfully solicit funds from the investor-victims.
22 As a means to circumvent the Court orders, Jones created Defendant Global Village
23 Records, which he has used to continue the fraud.

24 18. Defendant Arthur Simburg (“Simburg”) of Los Angeles, California is
25 the Senior Vice President of Tri Energy. Simburg led nightly investor conference
26 calls in which he solicited investors and lulled them with fraudulent statements. He
27 received investor money from funds sent to the Tri Energy bank account. The Court
28 issued a TRO, asset freeze, and PI against Simburg in May of 2005. Since that time,

1 Simburg has continued to falsely assure victims that the gold transaction is real, and
2 has continued to unlawfully solicit funds from them.

3 19. Defendant La Vie D'Argent ("La Vie D'Argent"), a Nevada
4 corporation, has a registered agent at Corporate Services Company, 2nd Floor, 723
5 So. Casino Center Blvd., Las Vegas, NV 89101. Defendant Simburg is President,
6 Secretary and Treasurer of La Vie D'Argent and used La Vie D'Argent to solicit and
7 receive some of the fraudulently obtained funds.

8 20. Defendant Global Village Records ("Global Village"), a private
9 California corporation with corporate offices of 830 Harbor Crossing, Marina Del
10 Rey, California 90292, represents that it is in the business of movie and music
11 production. Defendant Jones is the owner of Global Village. Over a million dollars
12 of investor funds were transferred to Global Village bank accounts after the Court
13 entered its injunction against Defendants Jones and Marina.

14 21. Defendant Mildred Stultz, ("Stultz") of Bothell, Washington, was one
15 of Tri Energy's biggest recruiters. Also known as "Miracle Millie," Stultz brought
16 more than \$2 million in victim money into the scam. She also solicited hundreds of
17 thousands of dollars from a Tri Energy investor who invested money into the "gold
18 transaction" after the Commission filed its complaint and enjoined Defendants.
19 Stultz also received a cease and desist order from the State of Washington for her
20 role in this fraud, which did nothing to curb her fundraising activities.

21 22. Daniel J. Merriman ("Merriman") of Highland, Utah, is a Tri Energy
22 investor who solicited investments from others and who continued to forward money
23 from investors, including Tri Energy's victims, to Global Village after the staff
24 obtained its TRO and PI against the Defendants. At one time, he was a registered
25 representative with Series 6, 26 and 63 licenses.

26 23. DJM, LLC ("DJM") is one of Merriman's companies. Merriman used
27 DJM bank accounts to forward money from Tri Energy's investors to Henry Jones'
28 companies and to Adrienne Lau.

1 (“Order”) for each of the Old Defendants and Defendant Stultz to cease and desist
2 raising money for a “Middle East gold investment.”

3 31. According to the DFI, many of Tri Energy’s investors learned about the
4 “gold program” through the networking portion of Millionaire Mind seminars, which
5 are run by Peak Potentials Training, Inc. and designed to help people “develop a
6 millionaire mind” and “reach their financial potential.” At these seminars,
7 Defendants or their agents solicited investors to dial into a nightly conference call
8 coordinated by Decker. When the investors dialed in to this call, they were
9 introduced to Simburg and Jennings who explained to them the investment
10 opportunity in Tri Energy and directed them to the company’s website,
11 www.trienergy.net, for additional information.

12 32. Defendants told early investors that their money was going toward the
13 development of Tri Energy’s coal mines, and later investors were told the money
14 would be used for the gold transaction. The scheme investigated by the DFI is the
15 same as the instant fraud alleged herein.

16 33. The Order issued by the Washington DFI did nothing to stop the
17 Defendants. In discussions with investors, Simburg was dismissive about the
18 seriousness of the charges. For example, during an investor conference call on
19 December 3, 2004, Simburg described the Washington state securities investigation
20 and Order as “a slap on the wrist.” Stultz continued to attend conferences and solicit
21 investors into the fraudulent gold transaction.

22 34. Simburg also advised investor-victims not to say too much to state
23 securities investigators and encouraged non-compliance with the state investigation,
24 describing how one investor avoided service of a state investigative subpoena.
25 During this conference call, he also encouraged people to invite Washington state
26 investors to participate in conference calls.

1 **THE NATURE OF THE FRAUDULENT OFFERING**

2 **A. The Securities Offered By Defendants**

3 35. The Commission hereby incorporates paragraphs 1 through 34 by
4 reference.

5 36. Beginning no later than July 2002, Defendants offered and sold
6 securities in the form of investments in a coal venture and/or a purported
7 international “gold transaction” in the name of H & J Energy, Tri Energy, Marina
8 Investors Group and/or Global Village Records.

9 37. These investments constitute unregistered securities in the form of
10 investment contracts or notes offered and sold to the general public. Defendants
11 offered and sold these securities through the use of the telephone, the mails, and
12 other means and instruments of interstate commerce.

13 38. Each investment contract or note offered and sold by Defendants
14 constitutes a “security” pursuant to Section 2(1) of the Securities Act [15 U.S.C.
15 §77b(1)] and Section 3(a)(10) of the Exchange Act [15 U.S.C. § 78c(a)(10)]. The
16 money provided to the Defendants was consideration for a contract, transaction or
17 scheme whereby the investors make an investment of money in a common enterprise
18 offered, sold and/or promoted by the Defendants with the expectation of profits
19 through the efforts of others.

20 39. No registration statement was filed with the Commission or was in
21 effect with respect to the securities that the Defendants offered and sold.

22 40. Old Defendants asked some investors to execute a “Tri Energy, Inc.
23 Loan Agreement” (the “Agreement”), which Defendant Jennings executed on behalf
24 of Tri Energy and which contains multiple false statements. The Agreement, which
25 took on different forms over time, generally set forth the rate of return promised to
26 the investor for the initial investment period, and claims that “[Tri Energy] will pay a
27 100% return in 60 days for monies loaned.” Sometimes the percentage promised
28 was higher than 100%.

1 41. The Agreement states that Tri Energy “has a present loan need of up to
2 \$100,000 to handle general administrative costs and needs, business & travel
3 expenses occurring now through August 18, 2004. Some of the corporate expenses
4 which will equal \$100,000.00, are various accessory equipment, operational, and
5 administrative working capital.” According to the Agreement, Tri Energy “will be
6 in the position to carry out this return commitment due to the net profit projections
7 stated above, and finalizing an international transaction.” Various Old Defendants
8 and Relief Defendants facilitated the signing of these promissory notes and
9 Agreements over time.

10 42. Old Defendants also provided some investors with a Promissory Note
11 signed by Defendant Jennings on behalf of Tri Energy. This note falsely states that
12 “[t]he principal and interest amount of 100% return will be paid in sixty days.” Tri
13 Energy agrees to pay this 100% return “in the event Marina Investors Group’s
14 project (which is due to pay a 200% return on loan totaling \$_____ principal
15 and interest on lender’s loan amount) has not funded prior to the date stated above.”
16 Upon information and belief, the “Marina Investors Group’s project” is the
17 purported international “gold transaction.” Sometimes the rate of return was higher.

18 43. In some instances, Simburg would execute similar promissory notes on
19 La Vie D’Argent letterhead promising returns of 2x, 3x, or 5x the investor’s money.

20 44. Defendants also directed investors to wire their investments to bank
21 accounts in the name of Tri Energy, Marina Investors Group, Global Village
22 Records, Daniel Merriman, H&J Energy, La Vie D’Argent, or others.

23 45. Defendants Simburg, Jennings and Jones also relied on numerous
24 promoters to solicit investors to purchase these securities. Defendants Stultz and
25 Merriman were significant promoters who brought many victims into the fraud.

26 **B. The “Gold Transaction.”**

27 46. Defendants Simburg and Jones allegedly were introduced by a mutual
28 friend; both men thought their relationship would be mutually beneficial. Defendant

1 Simburg was looking for investors into his coal operation, and Defendant Jones
2 needed financial support in order to bring his “gold transaction” to completion.
3 Defendant Simburg also brought Jennings into these discussions.

4 47. Defendant Marina Investors Group and Tri Energy thus signed a
5 “Capital Infusion Proposal” on February 4, 2002, under which Marina Investors
6 Group proposed to infuse Tri Energy with \$200 million in capital. This “Proposal”
7 was signed by Jennings, Simburg, and Jones, among others. The proposal claims
8 that, with this funding, Tri Energy allegedly would be able to develop processes that
9 would create 100% emissions-free coal and pay back its investors. Tri Energy
10 neither had nor developed processes that would create emissions-free coal.

11 48. On or around January 17, 2004, Simburg informed an investor that the
12 “gold transaction” already had cost \$15 million over three years.

13 49. Some early investors gave money for this transaction to H & J Energy
14 and believed that Tri Energy may have bought H & J in 2003 or 2004.

15 50. Defendants Jones and Simburg lulled investors by telling them that the
16 “gold transaction” is, by nature of that business, very secretive, and thus its existence
17 cannot be proven. It is for this reason, among others, that Defendants told investors
18 they must maintain the confidentiality of this transaction.

19 51. On nightly conference calls, Defendants would tell investors and
20 prospective investors supposed details about the “gold transaction.” Various
21 Defendants kept investors on the hook by dispensing ridiculous “details” about the
22 progress of this bogus transaction.

23 52. Defendants have asserted that Israel is the seller of the gold, and the
24 buyers are the “Duvet people” of the United Arab Emirates. The advisors to the
25 transaction are the “Gunna people” of Amsterdam. Five thousand metric tons of
26 gold are supposedly involved in this transaction.

27 53. As of January 2004, the money involved in the “gold transaction” was
28 in Luxembourg awaiting some original paperwork needed for the Duvet people.

1 Jones allegedly went to Zurich to coordinate the paperwork for the transaction.
2 Simburg was to go to Luxembourg later in the month of January 2004 to receive the
3 \$200 million proceeds from this transaction. As of late July 2006, notwithstanding
4 Defendants' continued insistence to investor-victims that it will pay off, Defendants
5 purported "gold transaction" does not appear to have closed.

6 54. After entry of the TRO and PI, Defendants told investors that the gold
7 transaction would still close but that the gold deal did not close as expected because
8 the Commission interfered with the transaction by causing a freeze of their assets.

9 55. Each of the foregoing statements by Defendants were knowingly false
10 when made.

11 **C. Examples of Defendants' False Statements About the Gold**
12 **Transaction And the Coal Mines And Their Participation In The**
13 **Scheme To Defraud**

14 56. The Commission hereby incorporates paragraphs 1 through 55 by
15 reference.

16 57. Defendants Simburg, Jennings, Decker and Jones have described the
17 international "gold transaction," the coal mines and other schemes to Tri Energy
18 investors in some detail. Many Tri Energy investors dialed into a nightly conference
19 call which, until May 2005, was hosted in large part by Simburg. Decker would
20 make a recording of each night's investor conference call available on a public
21 telephone mailbox for 24 hours following each call, and he introduced the recording
22 of each night's telephone call with a short recorded statement.

23 58. Defendants Stultz and Merriman also have described the gold deal to
24 investors in order to promote the scheme.

25 59. Defendant Merriman used his status as a financial advisor to assure
26 investors that he had done "due diligence" on the deal and that it was a sound
27 investment.

1 60. On the telephone conference calls, or separate smaller calls, Simburg
2 would update the Tri Energy investors – or would-be investors – on the progress of
3 the “gold transaction,” and he would sometimes explain to them that more funds
4 were needed for a variety of expenses relating to the transaction itself. These efforts
5 continued after the entry of the TRO and PI.

6 61. Although Simburg did most of the talking on these investor conference
7 calls, Defendants Jones, Decker, Merriman, Stultz, and Jennings also have vouched
8 for the authenticity of this transaction to investor-victims. In addition, Jones,
9 Simburg, Merriman and Stultz met with some of the investor-victims about the gold
10 transaction in person or conducted private conference calls to provide details of the
11 transaction.

12 62. In or around February 2004, Simburg described the transaction in one
13 telephone call to a few investors as follows:

14 Our funds are sitting in Luxemburg right now. And we just simply have
15 what’s going to be some paperwork protocol to access it. Never before
16 were we ever able to say that our funds have been wired from the
17 middle east to Luxemburg. Everything was always an anticipation
18 whether it would be wired. This time the first truant um meaning that
19 uh this is a transaction that goes into the billions, and something that is
20 greatly in excess of a hundred million has already been wired to us in
21 Luxemburg. And what, and what we have to do at this point is there’s a
22 protocol that you have to go through, it’s about 10 days or so before
23 being able to access the funds and that’s why we’ve been out most of
24 last three nights with a 10-hours time difference. Doing every thing we
25 can to reduce that thing to 6 or 7 days as opposed to 17 days. But uh, it,
26 it’s because of those kind of things that we actually have had the funds
27 wired as Israel the buyer has dedicated 27 humanitarian projects uh for
28 the funds from the transaction. This is their largest source of revenue.
This is a transaction between two countries that had never had a
diplomatic relations before uh to buy in Israel. ... And this is not an
easy thing to do, it goes into the billions, it’s, it’s you know when
you’re sitting there uh and you’re advancing funds, wiring funds from
the middle east, it goes into the billions and it’s gold.

1 63. In the nightly investor telephone call on December 7, 2004, Decker
2 explained the need for a “safe passage” letter to the Tri Energy investors. This letter
3 was allegedly important because it would satisfy some attorneys in Dubai that the
4 funds from the gold transaction would be able to travel safely from Dubai to Jordan
5 to Luxembourg, and then to the United States. When Decker was asked to explain
6 the “safe passage” letter, the response was:

7
8 These safe passageway is, there’s a form that is necessary to update that
9 will, that will include, a safe passageway from the Middle East to,
10 countries, to Luxembourg, and Luxembourg to the U.S. and because of
11 the fact that there’s been several changes, in that in [Dubai] was not
12 included previously in having their funds going to Luxemburg, ah, they,
13 the attorneys for both the, the [Dubai] as well as our attorney from, they
14 looked over the pay order um, which they did receive today, they found
15 out that that it needs to be updated and more specific and so they’re, so
16 Henry is in the process of contacting the three, D.C. guys who are going
17 to update it and, and make it so that they won’t run into any problems as
18 far as safe passageway, so that’s what’s, what they are in the process of
19 doing right now.

20 Jones also joined the call on this night to reassure the investors about the need
21 for the “safe passage” letter.

22 64. Regarding the investments generally, Simburg repeatedly lied to the
23 investors about the supposed need for investments in Tri Energy. Day after day, he
24 described in detail the steps in the “gold transaction” in which he and Jones
25 supposedly were participating, all the while asking the investors for more money and
26 assuring them that the big payoff was just around the corner.

27 65. For instance, in the Tri Energy investor conference call that took place
28 on December 3, 2004, Simburg informed the investors that Tri Energy needed
\$250,000 “to meet the requirements of the managers” who supposedly were going to
meet with Jones and Simburg. He claimed this money would be used to release the
“actual pay order” and pay for a “lawyer fee” relating to the transaction.

1 66. During the December 6, 2004, call, Simburg asked the group for
2 \$200,000 for “storage” (for the gold) and “expenses needed for the travelling”
3 (presumably to the Middle East to close the deal). On this call, Simburg explained
4 that over the weekend Jones traveled with “4 or 5 burly bodyguards” to a place
5 where he could exchange money for a pay order from Dubai, and that a group of
6 Zurich attorneys was supposed to meet with a group of Dubai attorneys to give them
7 a pay order sometime over the next week and complete the “gold transaction.”
8 Simburg said he wanted to “keep the flow of fund raising going,” and that soon he
9 would have to “get on an airplane and go to Zurich,” presumably to help close the
10 transaction.

11 67. On December 7, 2004, Simburg informed the investors on the call that
12 the pay order had been sent to Dubai from Jordan, but that they now needed to get a
13 “safe passage letter” in order to safeguard the transport of funds from Jordan and
14 Luxembourg, and then from Luxembourg to the United States. According to
15 Simburg:

16
17 In conjunction with the pay order, ah, when that was brought yesterday,
18 the [Dubai] attorneys contacted the Zurich people, looked at the letter in
19 conjunction with the Zurich attorneys and they concluded that they
20 really need to have another letter that talks about, his letter talks about
21 safe passage originating from that country, to Jordan and on to
22 Luxembourg and it doesn’t really clearly specify the Luxembourg U.S.
23 portion which we need and they need to do that, have all three people
24 sign, make sure it’s not in conjunction, not in any way, in conflict with
25 the original letter

26 Thus, Simburg allegedly did not leave for Zurich because the “safe passage letter”
27 had not been finalized. Simburg explained that this letter was important because it
28 would satisfy the Dubai attorneys by handling the passage of the funds from “the
particular country to Jordan to, um, Luxembourg. And now they want it very, very
clearly specified, ah, Luxembourg, U.S.”

1 68. On December 8, 2004, Simburg informed the investors that his tentative
2 plans were still to leave for Zurich in a few days, and that “spirited discussions”
3 were taking place about when to meet.

4 69. On December 9, 2004, Simburg explained that there were a “significant
5 amount of complications” concerning the “safe passage letter,” and that the
6 transaction would be completed in a couple of days. He emphasized how important
7 it was to continue raising funds, because “that’s why we’re saying that some of the
8 5,000, 10,000 kind of things just right now are, are more helpful than you would,
9 you would imagine.”

10 70. The transaction did not get completed. On December 10, 2004,
11 Simburg explained that “well it did not happen today and uh we really thought it
12 was.” He explained how difficult it was to complete the “gold transaction,” but that
13 “you know to be able to let them know that the funds uh it have been verified us
14 these are, this is ammunition.”

15 71. On December 14, 2004, Simburg explained that the transaction
16 probably would be postponed until January 15, 2005. He attributed these delays to
17 the way the European banking system worked and to the fact that some of the Dubai
18 attorneys had to go on a pilgrimage to Mecca.

19 72. On December 15, 2004, Simburg explained that the deal was going to
20 close in a few days. He also explained that when the “gold transaction” was
21 complete, “the one lump sum that’s being sent to Tri Energy there’ll be a number of
22 10 million dollar amounts that will be going out to, to a number of individuals in the
23 team . . .” He also explained in detail how the proceeds from the “gold transaction”
24 would be wired into the United States, and reemphasized the importance of even
25 investments of the “minimum amounts” of \$5,000.

26 73. Finally, on December 16, 2004, Simburg explained again that the
27 transaction was almost closed, and solicited more funds from the Tri Energy
28 investors to pay for some mine equipment:

1
2 We um, we have some um, an opportunity uh at the mine uh for to um,
3 some things that are very highly discounted equipment. And we have to
4 make the uh, payment on it tomorrow. We have the commitments for it,
5 but some funds for that however, it may not make it uh by wire cut off
6 time tomorrow. Uh, so if any of you have a situation where the [are]
7 some funds available where we, we literally can turn uh this is a
8 commitment. We, we would literally uh turn it around and uh if the
9 funds were expected for a wire uh cut off, we could turn around and get
10 it back to you the same day.

11 74. On or around April 25, 2005, Simburg informed the investors on the
12 nightly phone call that a “pre-advice” letter had been sent from one bank to another
13 as a test case for the “pre-advice” letters that would later be sent finalizing the “gold
14 transaction.” Simburg also explained on this call that the investors might be required
15 to pay for “storage” for the gold. He informed them that the “gold transaction”
16 probably would successfully close in the next week or so, once the “pre-advice”
17 process had been properly adjusted and the “pre-advice” letters had properly been
18 sent on their test runs between the institutions involved in this transaction.

19 75. During the months of March and April 2005, Simburg also solicited
20 money from investors to pay for “lawyers’ fees” associated with closing the “gold
21 transaction.” He continued to seek money for these fees after the Court entered the
22 TRO and PI against him.

23 76. Jones also has assured at least some investors directly that the “gold
24 transaction” is a real transaction. Simburg described a visit by approximately ten
25 angry investors to Jones’ house one day in early 2004 as follows:

26 Now we went into visit with Henry and it was a surprise visit and these
27 people came and accused him of lying and where’s the documents, if
28 there’s a real deal you’d have the documents here. And what uh, what
happened is, is that they said we have people and are you going to
produce the documents? And he said no, I’m not, it would be a
violation of the confidentiality that was set from the beginning. Well
we have people that could come here and hurt you, and we might just
bring them. ... He said but the fact is your people if I provide the

1 documents might kill me, my people that ... guys if I provide, if I don't
2 provide the documents your people might kill me. If I do provide the
3 documents I can assure you that, that ... people will kill me. The last
4 time I checked you can only get killed once. He said so the fact is I will
5 go with that that I know which is them and I know we have a real
6 transaction here. And if it ever came down to it, if there's any legal
7 thing I would produce all the documents which would show we've had
8 a real thing the whole time but it would kill the deal. Because it's a
9 violation of the confidentiality.

7 On the day referenced above, Jones met in person with at least two of the angry
8 investors.

9 77. In or around February 2004, around the time of the visit to his house by
10 the aforementioned investors, Jones discussed the "Dubai deal" (or gold transaction)
11 in some detail with a group of skeptical investors. According to Jones, "the Dubai
12 deal has my signature on it" and he would soon be able to provide them with
13 paperwork from the "gold transaction," although he had to be careful not to disclose
14 "information that would technically kill the deal." He also explained that he was
15 looking elsewhere for the final funds needed to "conclude the deal," since the
16 investors' skepticism had made it impossible for him to expect continued funding
17 from them.

18 78. On or about March 29, 2004, Jones participated in an investor call in
19 which he instructed Simburg to have a bank manager advance the funds for the gold
20 storage.

21 79. On or about June 4, 2004, Jones participated in an investor call in which
22 he explained in detail the supposed status of the "gold transaction" and the
23 international banking and paperwork issues.

24 80. On or about July 8, 2004, Jones participated in an investor call in order
25 to answer investor questions. He also updated the group on his efforts to secure a
26 visa for the principals involved so they can come to the states in order to complete
27 the sale. He also updated the group on the "Uranium sale."
28

1 81. On or about July 19, 2004, Jones participated in an investor call in order
2 to answer questions from investors. He discussed issues related to wire transfers and
3 the timing of aspects of the gold transaction.

4 82. Jones participated in another investor call on or about August 5, 2004.
5 On that call, investors were told more nonsensical details about the alleged
6 transaction. Defendants explained that a new clearing bank was needed because the
7 Jordan bank they were using was under investigation. Although the wire was
8 supposedly ready to close the next day, they decided to use a new bank. Investors
9 were also told that paperwork was being delivered by diplomatic pouch the next day,
10 so the signing of the sale closing could take place then. Because Jones was
11 supposedly going to Jordan, the "Congolese people" would have to be attended to by
12 Art or Demetrius until Jones could return to complete the transaction.

13 83. On or about January 24, 2005, Jones participated in an investor call in
14 which he explained details regarding what the attorneys were trying to accomplish in
15 Luxembourg and lulled investors with false time frames for the transaction to be
16 completed.

17 84. Jennings helped maintain Tri Energy's investor records and helped keep
18 track of the millions of dollars of investments into Tri Energy.

19 85. Jennings also made a number of false representations about the "gold
20 transaction." For instance, in one letter to two investors, Jennings wrote that the
21 closing of the "deal" had been delayed by "European banking protocol" and the
22 "Patriot Act."

23 86. In one August 11, 2004, facsimile, Jennings wrote to an investor that
24 "we believe you will be paid out within 30 days from the concluding overseas
25 transaction, so show 3x as expected return and principal combined." In a March
26 2004 letter to some other investors, Jennings wrote that:

27
28 Due to European banking protocol, we have been delayed in receiving
 our funds. The person making all of the contacts for our mining
 company, Tri Energy, Inc., has been in conversations with the bank

1 manager who verifies the funds are in the account in Europe. The
2 banking authorities are finalizing the disbursement process at this time.
3 ... All the delays up to now have been due to the scrutiny of the
4 European banking system since 9/11, and the enforcement of the Patriot
5 Act.

6 87. Jennings frequently forwarded false written information about Tri
7 Energy's coal mines to potential investors, and he communicated false information
8 about these mines to dozens of potential investors.

9 88. For instance, in one June 2004 letter to an investor, Jennings claimed
10 that Tri Energy was "currently mining compliance coal in the eastern Kentucky coal
11 fields" and that "[t]his type of coal is some of the best low sulfur coal in the nation."
12 Jennings further informed the investor that "[o]ur company is seeking to increase its
13 production to meet the coal demand. We have mining & associated equipment needs
14 in the amount of \$100,000.00, as well as working capital needs in the amount of
15 \$150,000.00."

16 89. A Loan Agreement Jennings signed with another investor falsely states
17 that the value of Tri Energy's "coal leases, reserves etc., equates to \$22,746,600.00."

18 90. Jennings also participated in most of the nightly conference calls.

19 91. On at least one occasion in or around late March 2005, Jennings also
20 updated the Tri Energy investors listening on the nightly conference call as to the
21 status of a "currency washing" transaction he is involved with. According to
22 Jennings, special chemicals (or "activating powder") are needed to "wash" currency
23 in one country so that it may be successfully transported to another country, and
24 presumably finally to a place where it may be distributed to the Tri Energy investors.
25 Jennings has informed Tri Energy's investors on at least one phone call that
26 questions of "diplomatic immunity" and highly placed government officials are
27 involved in this transaction. On at least one occasion on the nightly conference call,
28 Jennings has solicited investors for funds to help pay for the costs of this "currency
washing" transaction.

1 92. Defendant Stultz raised more than \$2 million from dozens of victims for
2 the “gold transaction.” She met many of her recruits at the “Millionaire Minds”
3 investing seminars she liked to attend.

4 93. Stultz was one of the “gold transaction’s” most successful recruiters in
5 terms of the number of participants she persuaded to invest in the bogus deal.
6 Defendant Stultz pitched the gold transaction to would-be investors assuring them
7 that they would make as much as 3:1 return on their investment when the gold
8 transaction closed.

9 94. Stultz participated in many of the nightly investor conference calls over
10 the years, however, and knew or had to have known that the investors she recruited
11 never received the fantastic returns she was promising them.

12 95. Often, after making her initial pitch, Stultz would put investors in touch
13 with Simburg and participate in conference calls where she and Simburg would
14 convince investors to put money into the gold deal.

15 96. In May 2005, after she had received an order from the State of
16 Washington identifying the “gold transaction” as a fraud and after the Commission
17 sued the other Defendants, Stultz convinced one victim to invest approximately
18 \$500,000 in the gold transaction. Stultz told this investor she would receive a 3 to 1
19 return on her money, which was needed to close the gold deal because the
20 Commission had frozen the Tri Energy bank accounts.

21 97. Defendant Merriman also described the gold deal to investors, and he
22 trumpeted the merits of the deal to solicit investors into the transaction while using
23 his credentials as a financial advisor to lend credibility to his statements.

24 98. For example, in one investor conference call Merriman informed
25 investors that he had investigated both the gold deal and the coal mine, and had
26 satisfied himself that both investments were legitimate and that there really was gold
27 stored overseas.

28

1 99. Defendants knew that their statements were false when they were made.
2 Defendants made these false statements in order to induce investments in H&J, Tri
3 Energy, Marina Investors Group, and/or Global Village Records.

4 100. Defendants have continued to provide investors with false information
5 about the “gold transaction” after the Court issued the TRO and PI. Investors are
6 still updated by Simburg, Jones and others about the “status” of the gold deal, and
7 this information is used to lull investors and to solicit additional funds.

8 **D. Defendants’ Misrepresentations Regarding Use of Investor**
9 **Money**

10 101. The Commission hereby incorporates paragraphs 1 through 100 by
11 reference.

12 102. Investor-victims in Defendants’ schemes did not receive the promised
13 rates of returns on their investments nor did Defendants use investor funds as
14 represented by them.

15 103. According to Tri Energy and Marina’s bank accounts, and other records
16 of bank accounts belonging to Defendants, Defendants collectively solicited between
17 \$42 million and \$57 million from January 2003 through April 2005.

18 104. Defendants Simburg, Merriman, Jones, Stultz and Global Village
19 Records solicited in excess of \$1.2 million after the Court issued the TRO and PI.

20 105. Many of the deposits made into the Tri Energy, Marina, Global Village
21 and La Vie D’Argent bank accounts were received via wire transfer or check from
22 bank accounts in the names of individuals, often in round dollar figures such as
23 \$5,000 and \$10,000. At least 500, and as many as 1000, individuals made deposits
24 into Defendants’ bank accounts during the time period January 2003 through April
25 2005. Account statements and bank records show that hundreds of these individuals
26 made more than one deposit.

27 106. In addition, after the Court froze the assets of Defendants Simburg,
28 Jennings, Jones, Tri Energy, and Marina, investors began sending their funds to

1 Merriman and others, who then forwarded the majority of these funds to Jones,
2 Relief Defendant Adrienne Lau, Simburg, or people designated by Simburg and
3 Jones.

4 107. December 2004 illustrates, in part, how Defendants perpetrated this
5 scheme. On several different days in December 2004, Simburg informed the Tri
6 Energy investors that at least \$250,000 was needed to “meet the requirements of the
7 managers” involved in the Middle Eastern gold transaction. Tri Energy’s bank
8 records indicate that its “primary Corporate Account” received \$1,806,446.00 from
9 at least sixty-six deposits in December 2004. Many of those deposits were made by
10 individuals in increments of \$5,000 and \$10,000, which is the minimum investment
11 amount allowed in Tri Energy according to its offering documents.

12 108. During the month of December, Tri Energy wired at least \$1,030,000
13 from this account to a bank account in the name of Marina Investors Group, which is
14 controlled by Jones. Tri Energy wired additional funds to La Vie D’Argent (whose
15 president is Simburg), TMA (which is controlled by Avery), RPJ (which is
16 controlled by Jennings) and to another bank account in the name of Tri Energy. The
17 bank records do not support the use of investor funds consistent with the
18 representations made to investors on these conference calls.

19 109. On several different days on and around March 21, 2005, Simburg
20 informed investors on conference calls that \$150,000 was needed for “pay orders”
21 relating to the Middle Eastern gold transaction. Several investors communicated to
22 Simburg that they were sending him money in increments of \$1,000, and one
23 investor told Simburg that he would attempt to cash a blank check a credit card
24 company had sent him in order to send the Defendants up to \$3,000. Many such
25 deposits of \$1,000 and \$5,000 were made on or around March 21 and March 22,
26 2005.

27 110. Tri Energy’s bank records indicate that its “primary Corporate
28 Account” received \$3,024,722.87 from at least 111 deposits during this month.

1 Many of those deposits were made by individuals in increments of \$5,000 and
2 \$10,000, which is the minimum investment amount supposedly allowed in Tri
3 Energy, according to its offering documents.

4 111. None of the money was sent to any of the countries (Luxembourg,
5 Switzerland, etc.) supposedly involved in the "gold deal."

6 112. During the month of March 2005, Tri Energy wired at least \$1,077,000
7 from this account to a bank account in the name of Marina Investors Group, which is
8 controlled by Jones. Tri Energy wired smaller amounts to accounts controlled by
9 Simburg (La Vie), Avery (TMA) and Jennings (H & J Energy). Marina Investors
10 Group did not make overseas payments during this month to countries allegedly
11 connected to the gold transaction with the money it received from Tri Energy. Nor
12 do the bank records otherwise support the use of investor funds consistent with the
13 representations made to investors on these conference calls.

14 113. In addition, investor-victims have told securities regulators in multiple
15 states that they did not receive the promised returns or, in some instances, any
16 interest or return on their investment.

17 114. On several different days in April 2005, Simburg informed the Tri
18 Energy investors that \$50,000 was needed for some law firms doing work for the
19 Middle Eastern gold transaction.

20 115. On or around April 18, 2005, Simburg informed the Tri Energy
21 investors that he would need \$550,000 instead of \$50,000 because the \$500,000 that
22 was supposed to come in from another deal had not materialized.

23 116. On or around April 19, 2005, Simburg informed the Tri Energy
24 investors that the group had successfully raised \$550,000. At that time, Simburg
25 also introduced a new investor to the group on the nightly telephone call and
26 explained that this investor had forwarded to Tri Energy a substantial portion of the
27 funds that had to be raised.

1 117. During one investor conference call in late 2004, Merriman told
2 investors that if they were contacted by state securities regulators, they should say
3 that their investments in Tri Energy were loans and ask to see any questions about
4 their investments in writing.

5 118. Even after learning in late 2004 that various state regulators were
6 investigating Tri Energy, and in May 2005 that the Commission had filed its
7 complaint, Merriman continued to play a key role in raising money from victims by
8 allowing his companies' bank accounts to serve as one of the main conduits between
9 Jones and Tri Energy's old victims.

10 119. After the Commission filed suit in May 2005, Merriman, DJM and
11 Financial MD continued to forward hundreds of thousands of dollars in investor
12 money to Global Village's bank account. Merriman and his companies also had
13 wired hundreds of thousands of dollars to Jones and his companies prior to May
14 2005.

15 120. Through participating in the nightly conference calls, each of the
16 Defendants knew that investors were not receiving their returns as promised, yet they
17 continued to solicit funds with the same outlandish promises.

18 121. Defendants knew that each of the foregoing statements was false when
19 they were made. Defendants made these false statements in order to induce
20 investments in H&J, Tri Energy, Marina Investors Group, or Global Village
21 Records.

22 122. Defendants converted significant portions of these funds for their own
23 use rather than using them as represented to investors.

24 123. During the time period April 2003 through May 2004, at least \$300,000
25 was transferred from the Tri Energy Account to another account at Bank of America
26 in the name of Tri Energy, Inc.

1 124. During the time period September 2003 through March 2005, at least
2 \$100,000 was transferred from the Tri Energy Account to at least one account in the
3 name of H&J Energy Company.

4 125. During the time period February 2003 through March 2005, at least
5 \$350,000 was transferred from the Tri Energy Account to at least one account in the
6 name of La Vie D'Argent.

7 126. During the time period February 2003 through March 2005, at least
8 \$100,000 was transferred from the Tri Energy Account to at least one account in the
9 name of RPJ Investment Group, Inc.

10 127. During the time period February 2003 through March 2005, at least
11 \$70,000 was transferred from the Tri Energy Account to at least one account in the
12 name of TMA Investment Enterprises.

13 128. During the time period January 2003 through April 2005, approximately
14 \$8 million was transferred to at least one account in the name of Marina Investors
15 Group, Inc.

16 129. On May 9, 2005, shortly after the Court issued the TRO, an investor
17 wired \$500,000 to Defendant Merriman in order to invest in what she believed to be
18 the gold transaction. Merriman then transferred \$430,000 of that money to Relief
19 Defendant Adrienne Lau who was held out as a lawyer for the gold transaction. He
20 simultaneously wired \$60,000 of these funds to others involved in the Tri Energy
21 scheme. Defendant Merriman kept the remaining \$10,000 for himself.

22 130. During the time period from May 2005 to the present, at least \$1 million
23 in investor funds has been sent to the bank account of Global Village Records.

24 131. Marina and Global Village Records commingled solicited funds with
25 their other assets in their bank accounts and used Tri Energy funds to pay for
26 business and operating expenses and the personal expenses of Defendant Jones and
27 others associated with him. A majority of the funds received in the Marina Investors
28 Group and Global Village Records accounts came from Tri Energy or its investors.

1 132. During the time period January 2003 through April 2005, at least \$5
2 million was transferred from Tri Energy to bank accounts in the names of individuals
3 often in round dollar figures such as \$2,000 and \$5,000. At least 130 individuals,
4 received transfers from Tri Energy during the time period October 2003 through
5 March 2005. These investor-victims were paid with money from new investor-
6 victims recruited into the scheme. Although some investors received their principal
7 – often after complaining vocally – they received no return on their investment as
8 promised.

9 133. During the time period January 2003 through April 2005, some of the
10 Tri Energy investors transferred money directly to Marina Investors Group accounts
11 in excess of \$8 million. This money was converted by Jones to his personal use.

12 134. Some of the investor money was used to pay back Defendant Stultz.
13 Unlike other investors, Stultz received almost her entire principal back in return for
14 her substantial promotion. Few other investors received such returns.

15 135. Defendants continued to solicit funds through at least March 2006.
16 Throughout the summer and fall of 2005, Merriman was the primary contact for
17 investors sending money to support the fraud. The bank records of Merriman and
18 his corporations DJM and Financial MD demonstrate that Merriman kept some of
19 the victim money for his own use, although investors believed it was going to
20 support the gold transaction.

21 136. Defendants misrepresented the return promised to investors and, in fact,
22 did not produce those returns to investors.

23 137. There is reason to believe the fraud is ongoing. After the TRO and PI,
24 Defendants continued to hold conference calls and inform investors that the gold
25 deal would still close, sharing the same kinds of false statements about the supposed
26 transaction. As a result, investors would send funds to Merriman and others
27 designated by Simburg and Jones, or sometimes directly to Simburg or Jones.

1 144. By reason of the foregoing, Defendants have directly or indirectly
2 violated Sections 17(a)(2) and (3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and
3 (3)] and unless enjoined will continue to violate Sections 17(a)(2) and (3) of the
4 Securities Act.

5 **THIRD CLAIM FOR RELIEF**

6 **(Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder)**

7 145. The Commission hereby incorporates Paragraphs 1 through 144 by
8 reference.

9 146. Defendants have, by engaging in the conduct set forth above, directly or
10 indirectly, by use of means or instrumentalities of interstate commerce, or of the
11 mails, or of a facility of a national security exchange, with *scienter*: (a) employed
12 devices, schemes or artifices to defraud; (b) made untrue statements of material fact
13 or omitted to state material facts necessary in order to make the statements made, in
14 light of the circumstances under which they were made, not misleading; or
15 (c) engaged in acts, practices or courses of business which operated or would operate
16 as a fraud or deceit upon other persons, in connection with the purchase or sale of
17 securities.

18 147. By reason of the foregoing, Defendants have directly or indirectly
19 violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17
20 C.F.R. §§ 240.10b-5] and unless enjoined will continue to violate Section 10(b) of
21 the Exchange Act and Rule 10b-5.

22 **FOURTH CLAIM FOR RELIEF**

23 **(Violations of Section 5(a) and 5(c) of the Securities Act)**

24 148. The Commission hereby incorporates Paragraphs 1 through 147 by
25 reference.

26 149. Defendants have, by engaging in the conduct set forth above, directly or
27 indirectly, through use of the means or instruments of transportation or
28 communication in interstate commerce or of the mails, offered to sell or sold

1 securities or carried or caused such securities to be carried through the mails or in
2 interstate commerce, for the purpose of sale or delivery after sale.

3 150. No registration statement was filed with the Commission or was in
4 effect with respect to the securities offered by Defendants prior to the offer or sale of
5 these securities.

6 151. By reason of the foregoing, Defendants have directly or indirectly
7 violated Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and
8 77e(c)], and unless restrained and enjoined will continue to violate these provisions.

9 **FIFTH CLAIM FOR RELIEF**

10 **Aiding and Abetting Violations of 10(b)**

11 152. The Commission hereby incorporates Paragraphs 1 through 151 by
12 reference.

13 153. Each Defendant, directly or indirectly, has, by engaging in the conduct
14 set forth above, directly or indirectly violated Section 10(b) of the Exchange Act [15
15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. §§ 240.10b-5] thereunder.

16 154. Each Defendant knew, or was reckless in not knowing, that the other
17 Defendants' conduct was improper and each Defendant knowingly and substantially
18 assisted the other Defendants in directly or indirectly violating Section 10(b) of the
19 Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. §§ 240.10b-5]
20 thereunder.

21 155. As a result of their conduct described above, pursuant to Section 20(e)
22 of the Exchange Act [15 U.S.C. § 78t(e)], the Defendants aided and abetted the
23 violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5
24 [17 C.F.R. §§ 240.10b-5] thereunder.

25 **SIXTH CLAIM FOR RELIEF**

26 **(Against the Relief Defendants)**

27 156. The Commission hereby incorporates Paragraphs 1 through 155 by
28 reference.

1 prevent loss, damage, and injury to investors, (4) preserve Tri Energy's and Marina's
2 books, records and documents, and (5) be available to respond to investor inquiries.

3 III.

4 Issue an Order directing all of the Defendants and Relief Defendants jointly and
5 severally, to prepare and present to the Court and the Commission within thirty (30)
6 days from the entry of said order, or within such extension of time as the Commission
7 staff agrees, a written accounting signed under penalty of perjury, setting forth all
8 funds, assets and liabilities including: all real and personal property exceeding
9 \$5,000 in value, located both within and outside of the United States, which are held
10 by such Defendant or Relief Defendant, on their behalf, or under their direct or
11 indirect control, whether jointly or singly, or in which they have an interest; all funds
12 and assets that each Defendant and Relief Defendant received from its investors and
13 the ultimate use or current location of those funds or assets. The accountings shall
14 include a description of the source(s) of all such assets; and all bank, securities,
15 futures and other accounts controlled by Defendant or Relief Defendant, directly or
16 indirectly, identified by institution, branch address and account number.

17 IV.

18 Order Defendants and Relief Defendants to disgorge their ill-gotten gains in
19 an amount according to proof, plus prejudgment interest thereon, and to repatriate
20 any and all funds received from any Defendant transferred to any location outside
21 the United States, and Order Defendants to pay civil money penalties pursuant to
22 Section 20(d)(1) of the Securities Act [15 U.S.C. §77t(d)(1)] and Section 21A of the
23 Exchange Act [15 U.S.C. §78u-1].

24 V.

25 Issue an Order temporarily enjoining Defendant Global Village Records from,
26 directly or indirectly, engaging in conduct in violation of Sections 5(a), and 5(c) of
27 the Securities Act [15 U.S.C. §§ 77e(a), and 77e(c)], Section 17(a) of the Securities
28 Act [15 U.S.C. § 77q(a)] and Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)]

1 and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and from aiding and abetting
2 violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5
3 thereunder, and from accepting, taking control of, or depositing in any financial
4 institution additional funds from actual or potential investors in Tri Energy, H&J
5 Energy, Marina Investors Group, or GVR, and from any involvement in, or conduct
6 facilitating or relating in any way to, investing or soliciting investment in any
7 program purporting to involve coal or a coal mine operation, an international gold
8 transaction, or an international banking transaction, with or from any participant,
9 officer, director, or investor in Tri Energy Inc., H&J Energy Inc., La Vie D'Argent,
10 Global Village Records, or Marina Investors Group, Inc.

11 VII.

12 Retain jurisdiction of this action in accordance with the principles of equity
13 and the Federal Rules of Civil Procedure in order to implement and carry out the
14 terms of all orders and decrees that may be entered, or to entertain any suitable
15 application or motion for additional relief within the jurisdiction of this Court.

16 VIII.

17 Grant such other and further relief as this Court may deem just, equitable, and
18 necessary.

19 Dated: August 9, 2006

20 Respectfully submitted:

21 By:

22 

23 Stephen L. Cohen

24 John B. Bulgozdy (Cal. Bar No. 219897)

25 Attorneys for Plaintiff

26 SECURITIES AND EXCHANGE
27 COMMISSION
28