

1 STEPHEN L. COHEN, *pro hac vice*  
2 Securities and Exchange Commission  
3 450 Fifth Street, N.W.  
4 Washington DC 20549-0911  
5 Telephone: (202) 551-4472  
6 Facsimile: (202) 772-9244  
7 Email: CohenS@sec.gov

8 LOCAL COUNSEL:  
9 MICHAEL A. PIAZZA, Cal Bar. No. 235881  
10 Securities and Exchange Commission  
11 5670 Wilshire Boulevard, 11<sup>th</sup> Floor  
12 Los Angeles, CA 90036-3648  
13 Telephone: (323) 965-3877  
14 Facsimile: (323) 965-3908  
15 Email: PiazzaM@sec.gov

16 Attorneys for Plaintiff  
17 Securities 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, and  
28 ARTHUR SIMBURG,

Defendants.

and

LA VIE D' ARGENT, R.P.J.  
INVESTMENT GROUP, INC., T.M.A.  
INVESTMENT ENTERPRISES, and  
THOMAS AVERY,

Relief Defendants.

Case No.

**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 3. Assignment to the Western Division of this Court is proper because it is  
17 the location of the largest number of Defendants, and acts or transactions  
18 constituting federal securities law violations occurred in Los Angeles County.

19 **SUMMARY OF THE ACTION**

20 4. Defendants are perpetrating a massive affinity fraud and Ponzi scheme,  
21 which has resulted in millions of dollars of losses by over 300 victims. Posing as a  
22 group of religious entrepreneurs who hope to earn phenomenal returns through  
23 “deistically inspired” and “divinely guided” transactions, Defendants recruit  
24 potential victims through claims that their investments are aimed, at least in part, at  
25 raising money for humanitarian efforts such as alleviating poverty in Africa and the  
26 Appalachians. Defendants promise their victims outlandish returns on their  
27 investments of 100 – 200% in as little as sixty days with no disclosure of any real  
28 risks.

1           5.     Since at least July 2002, Defendants have been soliciting investments in  
2 H & J Energy and Tri Energy for a purported coal mine venture and for a scheme to  
3 help a purported “Saudi Arabian prince” move his gold. In conference calls with the  
4 investors throughout the past six months, organized by Defendant Lowell Decker  
5 and usually conducted by Defendant Arthur Simburg, Defendants represent that the  
6 investments will be used to facilitate a “Middle East gold investment” organized by  
7 Defendants Marina Investors and Henry Jones. Defendants tell investors that the  
8 “Saudi Arabian prince’s” gold is stored in Israel and will be sent to the United Arab  
9 Emirates, that the deal will be finalized in Luxembourg, and that it is politically  
10 sensitive because the countries involved in the transaction would not want the public  
11 to know they were conducting business with one another (and thus the investor-  
12 victims must keep the “gold transaction” confidential).

13           6.     According to Defendants, investments in the “gold transaction” are  
14 being used to pay costs, including “miscellaneous expenses,” “storage fees”  
15 (\$150,000 per month) and payoffs to unnamed lawyers in Zurich and Dubai who are  
16 preparing documents such as “safe passage letters” and helping move the gold  
17 around Europe and the Middle East. Once Defendant Jones completes this alleged  
18 “gold transaction,” Defendants falsely represent that they will be able to fund Tri  
19 Energy’s coal mines with \$200 million and all of the investor-victims who have paid  
20 to make this “gold transaction” happen will become rich.

21           7.     Defendants’ claims that there is a “gold transaction” is false, and, on  
22 their face, Defendants’ claims and the promised returns they offer potential investors  
23 are plainly outrageous. Indeed, contrary to their express representations, the  
24 evidence indicates that Defendants primarily are using the investment proceeds  
25 obtained from investors for improper and undisclosed purposes. Since January 2003,  
26 Defendants have raised at least between \$12 million and \$18 million from at least  
27 three hundred investors (or groups of investors). Defendants continue to raise  
28

1 money from investors and, in fact, Defendants have requested and told the investors  
2 they raised \$550,000 more for the “gold transaction” in the last two weeks alone.

3 8. During the same time period, Defendants paid approximately \$4 million  
4 to \$5 million out to investors using funds deposited by other investors. Thus, in  
5 typical Ponzi scheme fashion, Defendants’ payments to existing investors were  
6 funded almost completely by money received from new investors to the scheme.  
7 Moreover, Defendants diverted a significant portion of investor funds –  
8 approximately nine million dollars – into nominee accounts they control and used  
9 the funds in part for personal expenses such as the funding of unrelated businesses,  
10 hotel stays, jewelry and other retail purchases and personal services. Some of the  
11 nominees recovering these ill gotten gains are named as Relief Defendants herein.  
12 As with all Ponzi schemes, once the ever-increasing flow of new investors stops, the  
13 house of cards built by Defendants will collapse and most investors will be left  
14 empty-handed.

15 9. Defendants’ blatant fraud violates the registration and antifraud  
16 provisions of the federal securities laws. Indeed, unless restrained and enjoined by  
17 this Court, Defendants will continue to engage in conduct that violates these  
18 securities laws. This fraud must be halted at once to protect potential new investors  
19 and to preserve the remaining assets of those who have already been defrauded.  
20 Accordingly, the Commission seeks an order enjoining and restraining Defendants,  
21 requiring disgorgement of ill-gotten gains, civil money penalties, and granting other  
22 equitable relief.

### 23 **DEFENDANTS**

24 10. Defendant Tri Energy, Inc. (“Tri Energy”), a private Nevada  
25 corporation with corporate offices of 2533 N. Carson Street Box T-305, Carson City,  
26 Nevada 89706, and 9622 Norton Coeburn Road, Norton, Virginia 24273, represents  
27 that it is in the business of coal mining. Defendants Lowell Decker, Robert Jennings  
28 and Arthur Simburg and Relief Defendant Thomas Avery are officers of Tri Energy.

1 Tri Energy’s principals solicited investors and made the majority of the  
2 misrepresentations at issue in this case. Investor-victims sent their money to a Tri  
3 Energy bank account.

4 11. Defendant Marina Investors Group, Inc. (“Marina Investors Group” or  
5 “Marina”), a private California corporation with corporate offices of 1801 Lincoln  
6 Blvd. Suite 113, Venice, California 90291, and 3017 Washington Blvd., Suite 115,  
7 Marina Del Rey, California 90292, represents that it is in the business of movie and  
8 music production. Defendant Jones is the owner of Marina Investors Group. Marina  
9 Investors Group has substantial business with Tri Energy, and potential investors are  
10 told that Marina is central to the scheme that will generate the allegedly fantastic  
11 returns for Tri Energy. Millions of dollars of investor funds were transferred from  
12 Tri Energy bank accounts to Marina Investors bank accounts, and Marina also  
13 received substantial investor funds directly.

14 12. Defendant H & J Energy Company, Inc. (“H & J Energy”), a Nevada  
15 corporation, with corporate offices at 350 S Center Street, Suite 500, Reno, Nevada  
16 89501, purports to be in the coal mining business. Defendant Jennings is the  
17 President and Treasurer of H&J Energy. H & J solicited and received investor funds  
18 as part of this scheme.

19 13. Defendant Lowell Decker (“Decker”), a resident of Placerville,  
20 California, is an officer of Tri Energy. Decker set up nightly investor conference  
21 calls for the purpose of soliciting and lulling investors and participated in them as  
22 well.

23 14. Defendant Robert Jennings (“Jennings”) of Perris, California is the  
24 President and Chairman of Tri Energy. Jennings is the President and Treasurer of  
25 Defendant H & J Energy. Jennings signed written offering materials used to solicit  
26 investor funds and received investor funds from the Tri Energy bank account.

27 15. Defendant Henry Jones (“Jones”) of Culver City, California is the  
28 owner of Marina Investors Group. Jones is the mastermind behind the fraudulent

1 gold transaction used to solicit investors and signed documents connecting his  
2 company to Tri Energy. Jones participated in certain nightly conference calls.

3 16. Defendant Arthur Simburg (“Simburg”) of Los Angeles, California is  
4 the Senior Vice President of Tri Energy. Simburg led nightly investor conference  
5 calls in which he solicited investors and lulled them with fraudulent statements. He  
6 received investor money from funds sent to the Tri Energy bank account.

7 **RELIEF DEFENDANTS**

8 17. Relief Defendant Thomas Avery (“Avery”) of Moreno Valley,  
9 California is the Senior Vice President and Vice Chairman of Tri Energy. Avery is  
10 also the Secretary of H & J Energy. Defendant Avery has received investor funds  
11 through Tri Energy and H & J and was responsible for opening the primary Tri  
12 Energy account used in this fraud.

13 18. Relief Defendant La Vie D’Argent (“La Vie D’Argent”), a Nevada  
14 corporation, has a registered agent at Corporate Services Company, 2<sup>nd</sup> Floor, 723  
15 So. Casino Center Blvd., Las Vegas, NV 89101. Defendant Simburg is President,  
16 Secretary and Treasurer of La Vie D’Argent.

17 19. Relief Defendant RPJ Investment Group, Inc. (“RPJ”) is located in  
18 Perris California. Its Registered Agent is Robert Jennings who is the owner of RPJ  
19 Investment Group.

20 20. Relief Defendant TMA Investment Enterprises, Inc. (“TMA”) is located  
21 in Carson City, Nevada, and is owned by Relief Defendant Avery.

22 **REGULATORY BACKGROUND**

23 21. On February 28, 2005, the Securities Division of the State of  
24 Washington Department of Financial Institutions (“DFI”) issued a Summary Order  
25 (“Order”) for each of the Defendants herein to cease and desist raising money for a  
26 “Middle East gold investment.”

27 22. According to the DFI, many of Tri Energy’s investors learned about the  
28 “gold program” through the networking portion of Millionaire Mind seminars, which

1 are run by Peak Potentials Training, Inc. and designed to help people “develop a  
2 millionaire mind” and “reach their financial potential.” At these seminars,  
3 Defendants or their agents solicited investors to dial into a nightly conference call  
4 coordinated by Decker. When the investors dialed in to this call, they were  
5 introduced to Simburg and Jennings who explained to them the investment  
6 opportunity in Tri Energy and directed them to the company’s website,  
7 [www.trienergy.net](http://www.trienergy.net), for additional information.

8 23. Defendants told early investors that their money was going toward the  
9 development of Tri Energy’s coal mines, and later investors were told the money  
10 would be used for the gold transaction. The scheme investigated by the DFI is the  
11 same as the instant fraud as described below.

12 24. The Order issued by the Washington DFI has done nothing to stop the  
13 Defendants. In discussions with investors, Simburg was dismissive about the  
14 seriousness of the charges. For example, during an investor conference call on  
15 December 3, 2004, Simburg described the Washington state securities investigation  
16 and Order as “a slap on the wrist.”

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

## 22 **THE NATURE OF THE FRAUDULENT OFFERING**

### 23 **A. The Securities Offered By Defendants**

24 26. The Commission hereby incorporates paragraphs 1 through 25 by  
25 reference.

26 27. Beginning no later than July 2002, Defendants offered and sold  
27 securities in the form of investments in a coal venture and/or a purported  
28

1 international “gold transaction” in the name of H & J Energy, Tri Energy and/or  
2 Marina Investors Group.

3 28. These investments constitute unregistered securities in the form of  
4 investment contracts or notes offered and sold to the general public. Defendants  
5 have offered and sold, and are continuing to offer and sell, these securities through  
6 the use of the telephone, the mails, and other means and instruments of interstate  
7 commerce.

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

15 30. No registration statement was filed with the Commission or was in  
16 effect with respect to the securities that the Defendants offered and sold.

17 31. Defendants ask some potential investors to execute a “Tri Energy, Inc.  
18 Loan Agreement” (the “Agreement”), which Defendant Jennings executes on behalf  
19 of Tri Energy and which contains multiple false statements. The Agreement sets  
20 forth the rate of return promised to the investor for the initial investment period, and  
21 claims that “[Tri Energy] will pay a 100% return in 60 days for monies loaned.” The  
22 Agreement states that Tri Energy “has a present loan need of up to \$100,000 to  
23 handle general administrative costs and needs, business & travel expenses occurring  
24 now through August 18, 2004. Some of the corporate expenses which will equal  
25 \$100,000.00, are various accessory equipment, operational, and administrative  
26 working capital.” According to the Agreement, Tri Energy “will be in the position  
27 to carry out this return commitment due to the net profit projections stated above,  
28 and finalizing an international transaction.”

1           32. Defendants also provide some investors with a Promissory Note signed  
2 by Defendant Jennings on behalf of Tri Energy. This note falsely states that “[t]he  
3 principal and interest amount of 100% return will be paid in sixty days.” Tri Energy  
4 agrees to pay this 100% return “in the event Marina Investors Group’s project  
5 (which is due to pay a 200% return on loan totaling \$\_\_\_\_\_ principal and  
6 interest on lender’s loan amount) has not funded prior to the date stated above.”  
7 Upon information and belief, the “Marina Investors Group’s project” is the  
8 purported international “gold transaction.”

9           33. Defendants also provide some investors with wiring instructions, which  
10 direct them to send their investments to the “primary Corporate Bank account,”  
11 which is a Bank of America account in the name of Tri Energy.

12           34. Investor-victims in Defendants schemes are not receiving these  
13 promised rates of returns on their investments nor are Defendants using investor  
14 funds as represented by them.

15                   **B.           The “Gold Transaction.”**

16           35. Defendants Simburg and Jones allegedly were introduced by a mutual  
17 friend; both men thought their relationship would be mutually beneficial. Defendant  
18 Simburg was looking for investors into his coal operation, and Defendant Jones  
19 needed financial support in order to bring his “gold transaction” to completion.

20           36. Defendant Marina Investors Group and Tri Energy thus signed a  
21 “Capital Infusion Proposal” on February 4, 2002, under which Marina Investors  
22 Group proposed to infuse Tri Energy with \$200 million in capital. This “Proposal”  
23 was signed by Jennings, Simburg, and Jones, among others. The proposal claims  
24 that, with this funding, Tri Energy allegedly would be able to develop processes that  
25 would create 100% emissions-free coal and pay back its investors. On or around  
26 January 17, 2004, Simburg informed an investor that the “gold transaction” already  
27 had cost \$15 million over three years.

28

1           37. At least one investor gave his money for this transaction to H & J  
2 Energy, but he believed that Tri Energy may have bought H & J in 2003 or 2004.

3           38. According to Defendant Simburg, the “gold transaction” is, by nature of  
4 that business, very secretive, and thus its existence cannot be proven. It is for this  
5 reason, among others, that Defendants tell investors they must maintain the  
6 confidentiality of this transaction.

7           39. On nightly conference calls, investors and prospective investors are told  
8 supposed details about the “gold transaction.” Various Defendants keep the  
9 investors on the hook by dispensing often nonsensical “details” about the progress of  
10 this bogus transaction.

11           40. Defendants have asserted that Israel is the seller of the gold, and the  
12 buyers are the “Duvet people” of the United Arab Emirates. The advisors to the  
13 transaction are the “Gunna people” of Amsterdam. Five thousand metric tons of  
14 gold are supposedly involved in this transaction.

15           41. According to Defendant Simburg, there are basically two types of gold  
16 used in these large transactions. There is Hallmark gold, which is found in bars.  
17 There is also Production gold, which allegedly is “advantageous because geometric  
18 progression sets in.” According to Simburg, Jordan has one of the main banks  
19 involved in the transfer, but the supposed gold transaction has involved at least five  
20 banks, as of January 2004.

21           42. As of January 2004, the money involved in the “gold transaction” was  
22 in Luxembourg awaiting some original paperwork needed for the Duvet people.  
23 Jones allegedly went to Zurich to coordinate the paperwork for the transaction.  
24 Simburg was to go to Luxembourg later in the month of January 2004 to receive the  
25 \$200 million proceeds from this transaction. As of late April 2005, Defendants  
26 purported “gold transaction” does not appear to have closed.

1           **C. Defendants' False Statements About the Gold Transaction And**  
2           **Participation In The Scheme To Defraud**

3           43. The Commission hereby incorporates paragraphs 1 through 42 by  
4 reference.

5           44. Defendants Simburg, Jennings, Decker and Jones have described the  
6 international "gold transaction" and other schemes to Tri Energy investors in some  
7 detail. Many Tri Energy investors dial into a nightly conference call which is hosted  
8 in large part by Simburg. Decker makes a recording of each night's investor  
9 conference call available on a public telephone mailbox for 24 hours following each  
10 call, and he introduces the recording of each night's telephone call with a short  
11 recorded statement.

12           45. On these telephone conference calls, Simburg frequently updates the Tri  
13 Energy investors on the progress of the "gold transaction," and he will sometimes  
14 explain to them that more funds are needed for a variety of expenses relating to the  
15 transaction itself.

16           46. Although Simburg does most of the talking on these investor conference  
17 calls, Defendants Jones, Decker and Jennings also have vouched for the authenticity  
18 of this transaction to investor-victims on at least one occasion each. In addition,  
19 Jones met with at least two investor-victims about the gold transaction in person.

20           47. In or around February 2004, Simburg described the transaction in one  
21 telephone call to a few investors as follows:

22           Our funds are sitting in Luxemburg right now. And we just simply have  
23 what's going to be some paperwork protocol to access it. Never before  
24 were we ever able to say that our funds have been wired from the  
25 middle east to Luxemburg. Everything was always an anticipation  
26 whether it would be wired. This time the first truant um meaning that  
27 uh this is a transaction that goes into the billions, and something that is  
28 greatly in excess of a hundred million has already been wired to us in  
Luxemburg. And what, and what we have to do at this point is there's a  
protocol that you have to go through, it's about 10 days or so before  
being able to access the funds and that's why we've been out most of

1 last three nights with a 10-hours time difference. Doing every thing we  
2 can to reduce that thing to 6 or 7 days as opposed to 17 days. But uh, it,  
3 it's because of those kind of things that we actually have had the funds  
4 wired as Israel the buyer has dedicated 27 humanitarian projects uh for  
5 the funds from the transaction. This is their largest source of revenue.  
6 This is a transaction between two countries that had never had a  
7 diplomatic relations before uh to buy in Israel. ... And this is not an  
8 easy thing to do, it goes into the billions, it's, it's you know when  
9 you're sitting there uh and you're advancing funds, wiring funds from  
10 the middle east, it goes into the billions and it's gold.

11 48. In the nightly investor telephone call on December 7, 2004, Decker  
12 explained the need for a "safe passage" letter to the Tri Energy investors. This letter  
13 was allegedly important because it would satisfy some attorneys in Dubai that the  
14 funds from the gold transaction would be able to travel safely from Dubai to Jordan  
15 to Luxembourg, and then to the United States. When Decker was asked to explain  
16 the "safe passage" letter, the response was:

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

29 Jones also joined the call on this night to reassure the investors about the need  
30 for the "safe passage" letter.

31 49. Regarding the investments generally, Simburg has repeatedly lied to the  
32 investors about the actual use of their investments in Tri Energy. Day after day, he  
33 has described in detail the steps in the "gold transaction" in which he and Jones

1 supposedly are participating, all the while asking the investors for more money and  
2 assuring them that the big payoff is just around the corner. For instance, in the Tri  
3 Energy investor conference call that took place on December 3, 2004, Simburg  
4 informed the investors that Tri Energy needed \$250,000 “to meet the requirements of  
5 the managers” who supposedly were going to meet with Jones and Simburg. He  
6 claimed this money would be used to release the “actual pay order” and pay for a  
7 “lawyer fee” relating to the transaction.

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

18         51. On December 7, 2004, Simburg informed the investors on the call that  
19 the pay order had been sent to Dubai from Jordan, but that they now needed to get a  
20 “safe passage letter” in order to safeguard the transport of funds from Jordan and  
21 Luxembourg, and then from Luxembourg to the United States. According to  
22 Simburg:

23  
24         In conjunction with the pay order, ah, when that was brought yesterday,  
25 the [Dubai] attorneys contacted the Zurich people, looked at the letter in  
26 conjunction with the Zurich attorneys and they concluded that they  
27 really need to have another letter that talks about, his letter talks about  
28 safe passage originating from that country, to Jordan and on to  
Luxembourg and it doesn't really clearly specify the Luxemburg U.S.  
portion which we need and they need to do that, have all three people

1 sign, make sure it's not in conjunction, not in any way, in conflict with  
2 the original letter . . . .

3 Thus, Simburg allegedly did not leave for Zurich because the "safe passage letter"  
4 had not been finalized. Simburg explained that this letter was important because it  
5 would satisfy the Dubai attorneys by handling the passage of the funds from "the  
6 particular country to Jordan to, um, Luxemburg. And now they want it very, very  
7 clearly specified, ah, Luxemburg, U.S."

8 52. On December 8, 2004, Simburg informed the investors that his tentative  
9 plans were still to leave for Zurich in a few days, and that "spirited discussions"  
10 were taking place about when to meet. On December 9, 2004, Simburg explained  
11 that there were a "significant amount of complications" concerning the "safe passage  
12 letter," and that the transaction would be completed in a couple of days. He  
13 emphasized how important it was to continue raising funds, because "that's why  
14 we're saying that some of the 5,000, 10,000 kind of things just right now are, are  
15 more helpful than you would, you would imagine."

16 53. The transaction did not get completed. On December 10, 2004,  
17 Simburg explained that "well it did not happen today and uh we really thought it  
18 was." He explained how difficult it was to complete the "gold transaction," but that  
19 "you know to be able to let them know that the funds uh it have been verified us  
20 these are, this is ammunition."

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

25 55. On December 15, 2004, Simburg explained that the deal was going to  
26 close in a few days. He also explained that when the "gold transaction" was  
27 complete, "the one lump sum that's being sent to Tri Energy there'll be a number of  
28 10 million dollar amounts that will be going out to, to a number of individuals in the  
team . . . ." He also explained in detail how the proceeds from the "gold transaction"

1 would be wired into the United States, and reemphasized the importance of even  
2 investments of the “minimum amounts” of \$5,000.

3 56. Finally, on December 16, 2004, Simburg explained again that the  
4 transaction was almost closed, and solicited more funds from the Tri Energy  
5 investors to pay for some mine equipment:

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

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

19 Now we went into visit with Henry and it was a surprise visit and these  
20 people came and accused him of lying and where’s the documents, if  
21 there’s a real deal you’d have the documents here. And what uh, what  
22 happened is, is that they said we have people and are you going to  
23 produce the documents? And he said no, I’m not, it would be a  
24 violation of the confidentiality that was set from the beginning. Well  
25 we have people that could come here and hurt you, and we might just  
26 bring them. ... He said but the fact is your people if I provide the  
27 documents might kill me, my people that ... guys if I provide, if I don’t  
28 provide the documents your people might kill me. If I do provide the  
documents I can assure you that, that ... people will kill me. The last  
time I checked you can only get killed once. He said so the fact is I will  
go with that that I know which is them and I know we have a real  
transaction here. And if it ever came down to it, if there’s any legal  
thing I would produce all the documents which would show we’ve had  
a real thing the whole time but it would kill the deal. Because it’s a  
violation of the confidentiality.

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

3 58. On at least one occasion in or around late March 2005, Jennings also  
4 updated the Tri Energy investors listening on the nightly conference call as to the  
5 status of a “currency washing” transaction he is involved with. According to  
6 Jennings, special chemicals (or “activating powder”) are needed to “wash” currency  
7 in one country so that it may be successfully transported to another country, and  
8 presumably finally to a place where it may be distributed to the Tri Energy investors.  
9 Jennings has informed Tri Energy’s investors on at least one phone call that  
10 questions of “diplomatic immunity” and highly placed government officials are  
11 involved in this transaction. On at least one occasion on the nightly conference call,  
12 Jennings has solicited investors for funds to help pay for the costs of this “currency  
13 washing” transaction.

14 59. Defendants knew that the foregoing statements were false when they  
15 were made. Defendants made these false statements in order to induce investments in  
16 H&J, Tri Energy and/or Marina Investors Group.

17 60. Defendants have continued to provide investors with information about  
18 the “gold transaction” up to and including this past week. On or around April 25,  
19 2005, for instance, Simburg informed the investors on the nightly phone call that a  
20 “pre-advice” letter had been sent from one bank to another as a test case for the “pre-  
21 advice” letters that would later be sent finalizing the “gold transaction.” Simburg  
22 also explained on this call that the investors might be required to pay for “storage”  
23 for the gold. He informed them that the “gold transaction” probably would  
24 successfully close in the next week or so, once the “pre-advice” process had been  
25 properly adjusted and the “pre-advice” letters had properly been sent on their test  
26 runs between the institutions involved in this transaction.

1           61. During the months of March and April 2005, Simburg also has solicited  
2 money from investors to pay for “lawyers’ fees” associated with closing the “gold  
3 transaction.”

4           **D. Defendants’ Misrepresentations Regarding Investor Money**

5           62. The Commission hereby incorporates paragraphs 1 through 61 by  
6 reference.

7           63. The Tri Energy Account statements show that during the time period  
8 February 2003 through March 2005, at least \$18.9 million was deposited by  
9 investors into a Tri Energy bank account, including at least six million dollars that  
10 were deposited during February and March 2005. During the same time period, at  
11 least \$18.8 million was transferred out of the Tri Energy Account.

12           64. Many of the deposits made into the Tri Energy Account were received  
13 via wire transfer or check from bank accounts in the names of individuals, often in  
14 round dollar figures such as \$5,000 and \$10,000. At least 350 individuals made  
15 deposits totaling more than \$12 million into the Tri Energy’s bank account during  
16 the time period September 2003 through March 31, 2005. The Tri Energy Account  
17 statements and bank records show that at least one hundred of these individuals  
18 made more than one deposit into the Tri Energy Account.

19           65. On several different days in December 2004, Simburg informed the Tri  
20 Energy investors that at least \$250,000 was needed to “meet the requirements of the  
21 managers” involved in the Middle Eastern gold transaction. Tri Energy’s bank  
22 records indicate that its “primary Corporate Account” received \$1,806,446.00 from  
23 at least sixty-six deposits in December 2004. Many of those deposits were made by  
24 individuals in increments of \$5,000 and \$10,000, which is the minimum investment  
25 amount allowed in Tri Energy according to its offering documents.

26           66. During the month of December, Tri Energy wired at least \$1,030,000  
27 from this account to a bank account in the name of Marina Investors Group, which is  
28 controlled by Jones. Tri Energy wired additional funds to La Vie D’Argent (whose

1 president is Simburg), TMA (which is controlled by Avery), RPJ (which is  
2 controlled by Jennings) and to another bank account in the name of Tri Energy. The  
3 bank records do not support the use of investor funds consistent with the  
4 representations made to investors on these conference calls.

5         67. On several different days on and around March 21, 2005, Simburg  
6 informed investors on conference calls that \$150,000 was needed for “pay orders”  
7 relating to the Middle Eastern gold transaction. Several investors communicated to  
8 Simburg that they were sending him money in increments of \$1,000, and one  
9 investor told Simburg that he would attempt to cash a blank check a credit card  
10 company had sent him in order to send the Defendants up to \$3,000. Tri Energy’s  
11 bank records indicate that its “primary Corporate Account” received \$3,024,722.87  
12 from at least 111 deposits during this month. Many of those deposits were made by  
13 individuals in increments of \$5,000 and \$10,000, which is the minimum investment  
14 amount allowed in Tri Energy, according to its offering documents. Many smaller  
15 deposits of \$1,000 and \$5,000 were made on or around March 21 and March 22,  
16 2005.

17         68. During the month of March 2005 , Tri Energy wired at least \$1,077,000  
18 from this account to a bank account in the name of Marina Investors Group, which is  
19 controlled by Jones. Tri Energy wired smaller amounts to accounts controlled by  
20 Simburg (La Vie), Avery (TMA) and Jennings (H & J Energy). The Commission  
21 has found no evidence Marina Investors Group made any overseas payments during  
22 this month to countries allegedly connected to the gold transaction with the money it  
23 received from Tri Energy. The bank records do not support the use of investor funds  
24 consistent with the representations made to investors on these conference calls.

25         69. In addition, investor-victims have told more than one state securities  
26 regulator that they did not receive the promised returns or, in some instances, any  
27 interest or return on their investment.  
28

1           70. The fraud is ongoing. On several different days in April 2005, Simburg  
2 informed the Tri Energy investors that \$50,000 was needed for some law firms doing  
3 work for the Middle Eastern gold transaction. On or around April 18, 2005, Simburg  
4 informed the Tri Energy investors that he would need \$550,000 instead of \$50,000  
5 because the \$500,000 that was supposed to come in from another deal had not  
6 materialized. On or around April 19, 2005, Simburg informed the Tri Energy  
7 investors that the group had successfully raised \$550,000. On or around April 19,  
8 2005, Simburg also introduced a new investor to the group on the nightly telephone  
9 call, and explained to the group that this investor had forwarded to Tri Energy a  
10 substantial portion of the funds that had to be raised.

11           71. Defendants knew that each of the foregoing statements was false when  
12 they were made. Defendants made these false statements in order to induce  
13 investments in H&J, Tri Energy and/or Marina Investors Group.

14           72. Defendants converted significant portions of these funds for their own  
15 use rather than using them as represented to investors.

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

19           74. During the time period September 2003 through March 2005, at least  
20 \$100,000 was transferred from the Tri Energy Account to at least one account in the  
21 name of H&J Energy Company.

22           75. During the time period February 2003 through March 2005, at least  
23 \$350,000 was transferred from the Tri Energy Account to at least one account in the  
24 name of La Vie D'Argent.

25           76. During the time period February 2003 through March 2005, at least  
26 \$100,000 was transferred from the Tri Energy Account to at least one account in the  
27 name of RPJ Investment Group, Inc.

28







1 **FIFTH CLAIM FOR RELIEF**

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

3 96. The Commission hereby incorporates Paragraphs 1 through 95 by  
4 reference.

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

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

13 99. As a result of their conduct described above, pursuant to Section 20(e)  
14 of the Exchange Act [15 U.S.C. § 78t(e)], the Defendants aided and abetted the  
15 violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5  
16 [17 C.F.R. §§ 240.10b-5] thereunder.

17 **SIXTH CLAIM FOR RELIEF**

18 **(Against the Relief Defendants)**

19 100. The Commission hereby incorporates Paragraphs 1 through 99 by  
20 reference.

21 101. In the manner described above, each Relief Defendant received ill-  
22 gotten gains for which they gave no consideration and to which they have no  
23 legitimate claim.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, the Commission respectfully requests that the Court issue  
26 findings of fact and conclusions of law that the Defendants committed the violations  
27 charged and alleged herein and issue orders as follows:  
28

1 I

2 Temporarily and preliminarily, and upon Final Judgment permanently,  
3 restraining and enjoining Defendants from, directly or indirectly, engaging in  
4 conduct in violation of Sections 5(a), and 5(c) of the Securities Act [15 U.S.C. §§  
5 77e(a), and 77e(c)], Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] and  
6 Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder  
7 [17 C.F.R. § 240.10b-5], and from aiding and abetting violations of Section 10(b) of  
8 the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder, and enjoining  
9 Defendants and Relief Defendants from accepting, taking control of, or depositing in  
10 any financial institution additional funds from actual or potential investors in Tri  
11 Energy, H&J Energy, or Marina Investors Group.

12 II.

13 Issue an Order appointing or continuing the appointment of a receiver for Tri  
14 Energy and Marina Investors Group to (1) preserve the status quo, (2) ascertain the  
15 financial condition of Tri Energy and Marina Investors Group, (3) prevent further  
16 dissipation of Tri Energy's and Marina Investor Group's property and assets to  
17 prevent loss, damage, and injury to investors, (4) preserve Tri Energy's and Marina's  
18 books, records and documents, and (5) be available to respond to investor inquiries.

19 III.

20 Issue an Order permitting expedited discovery and directing all of the  
21 Defendants and Relief Defendants jointly and severally, to prepare and present to the  
22 Court and the Commission within three (3) days from the entry of said order, or within  
23 such extension of time as the Commission staff agrees, a written accounting signed  
24 under penalty of perjury, setting forth all funds, assets and liabilities including: all  
25 real and personal property exceeding \$5,000 in value, located both within and  
26 outside of the United States, which are held by such Defendant or Relief Defendant,  
27 on their behalf, or under their direct or indirect control, whether jointly or singly, or  
28 in which they have an interest; all funds and assets that each Defendant and Relief

1 Defendant received from its investors and the ultimate use or current location of  
2 those funds or assets. The accountings shall include a description of the source(s) of  
3 all such assets; and all bank, securities, futures and other accounts controlled by  
4 Defendant or Relief Defendant, directly or indirectly, identified by institution,  
5 branch address and account number.

6 IV.

7 Issue an Order directed to any financial or brokerage institution or other person  
8 or entity located within the territorial jurisdiction of the United States courts that is  
9 holding any funds or other assets in the name of, for the benefit of, or under the  
10 control of Defendants or Relief Defendants, or their officers, directors, subsidiaries,  
11 affiliates, agents, servants, employees, attorneys-in-fact, and those persons in active  
12 concert or participation with them, which requires said financial institutions or  
13 brokerage institutions to hold and retain within their control and prohibit the  
14 withdrawal, removal, transfer or other disposal of any such funds or other assets for  
15 Defendants and Relief Defendants La Vie D'Argent and R.P.J. Investment Group, and  
16 up to as to Relief Defendant and up to \$ 70,000 for Relief Defendants T.M.A.  
17 Investment Enterprises and Thomas Avery.

18 V.

19 Issue an Order directing Defendants, Relief Defendants, and their officers,  
20 agents, servants, employees, attorneys, subsidiaries and affiliates, and those persons  
21 in active concert or participation with any of them, who receive actual notice of this  
22 Order, by personal service or otherwise, directly or indirectly, from withdrawing,  
23 transferring, assigning, selling, pledging, hypothecating, changing, wasting,  
24 dissipating, converting, concealing, encumbering, or otherwise disposing of, in any  
25 manner, any funds, assets, securities, claims, or other real or personal property,  
26 wherever located, of Defendants, Relief Defendants, and their subsidiaries and  
27 affiliates, whether owned by, controlled by, managed by or in the possession or  
28 custody of any of them, including assets held in corporate or partnership accounts in

1 which Defendants and Relief Defendants have an interest, except as otherwise  
2 ordered by the Court, limited to \$ 70,000 only as to Relief Defendants T.M.A.  
3 Investment Enterprises and Thomas Avery.

4 VI.

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

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.

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VIII.

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

Dated: May 2, 2005

Respectfully submitted:  
By:

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Stephen L. Cohen  
Attorneys for Plaintiff  
SECURITIES AND EXCHANGE  
COMMISSION

LOCAL COUNSEL:

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Michael A. Piazza, Cal. Bar No. 235881