

1 RICHARD WEISSMAN
State Bar No. 54781
2 1875 Century Park East, Suite 2200
Los Angeles CA 90067
3 Tel: (310) 481-6780
Fax: (310) 481-6786
4 Email: rweissman@rwreceiver.com

5 COURT APPOINTED RECEIVER

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UNITED STATES DISTRICT COURT

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CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

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SECURITIES AND EXCHANGE) Case No. ED CV 05-00351 AG
12 COMMISSION,)

13

Plaintiff,) ASSIGNED JUDGE:

14

vs.) HON. ANDREW GUILFORD

15

TRI ENERGY, INC., H & J) HEARING DATE: JUNE 13, 2016

16

ENERGY COMPANY, INC.,) TIME: 10:00 A.M.

17

MARINA INVESTORS GROUP,) COURTROOM: 10D

18

INC., LOWELL DECKER, ROBERT)
JENNINGS, HENRY JONES, and) RECEIVER'S NOTICE OF
18 ARTHUR SIMBURG,) MOTION AND MOTION FOR

19

ORDER:

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Defendants.)

21

and) (1) APPROVING RECEIVER'S
FIFTH REPORT AND FOURTH
ACCOUNT PREVIOUSLY
21 LA VIE D' ARGENT, R.P.J.) FILED;

22

INVESTMENT GROUP, INC.,)

23

T.M.A. INVESTMENT) (2) APPROVING SIXTH AND
ENTERPRISES, and THOMAS) FINAL REPORT AND FIFTH
23 AND FINAL ACCOUNT OF
24 AVERY, ADRIENNE LAU, ET AL) RECEIVER;

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Relief Defendants.) (3) INSTRUCTING THE RECEIVER
24 REGARDING A SECOND
25 LIMITED DISTRIBUTION OF
25 NEWLY RECOVERED FUNDS
26 TO ELIGIBLE CLAIMANTS

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) AND REGARDING AN
) EXPENSE RESERVE;
) (4) AUTHORIZING DESTRUCTION
) OF PAPER RECORDS OF
) DEFENDANTS, INVESTORS
) AND THIRD PARTIES AND
) INSTRUCTIONS REGARDING
) RETENTION OF ELECTRONIC
) COPIES;
) (5) AUTHORIZING DESTRUCTION
) OF MUSIC CDS AND COPIES
) OF FILMS AND
) INSTRUCTIONS REGARDING
) RETENTION OF MUSIC AND
) FILM MASTERS;
) (6) TERMINATING THE
) RECEIVERSHIP AND FULLY
) DISCHARGING AND
) EXONERATING THE
) RECEIVER FROM LIABILITY;
) (7) FOR FINAL INSTRUCTIONS
) TO RECEIVER FOR CLOSURE
) OF RECEIVERSHIP AND FOR
) TRANSMITTAL OF RESIDUAL
) FUNDS TO SECURITIES AND
) EXCHANGE COMMISSION
) FOR TRANSFER TO U.S.
) TREASURY.
)
) MEMORANDUM OF POINTS AND
) AUTHORITIES AND
) DECLARATION OF RICHARD
) WEISSMAN IN SUPPORT
) THEREOF; RECEIVER'S SIXTH
) AND FINAL REPORT AND FIFTH
) AND FINAL ACCOUNT.

**TO THE HONORABLE COURT, INTERESTED PARTIES AND
COUNSEL OF RECORD:
NOTICE IS HEREBY GIVEN that, on Monday, JUNE 13, 2016, at 10:00**

1 a.m., in Courtroom 10D of the above-entitled Court, located at 411 West Fifth
2 Street, Santa Ana, CA 92701-4516, Richard Weissman, duly appointed Permanent
3 Receiver ("Receiver"), will move the Court for an Order:

- 4 (1) Approving the Receiver's pending Fifth Report and Fourth Account of
5 Receiver, filed on October 21, 2015;
- 6 (2) Approving the Receiver's Sixth and Final Report and Fifth and Final
7 Account of Receiver;
- 8 (3) Instructing the Receiver regarding a second limited of newly recovered
9 funds to the Eligible Claimants;
- 10 (4) Authorizing the destruction of paper records of the Defendants,
11 investors and third parties and instructions regarding retention of
12 electronic copies;
- 13 (5) Authorizing the destruction of copies of music CDs and films and
14 instructions regarding retention of music and film masters;
- 15 (6) Terminating the receivership and fully discharging and
16 exonerating the Receiver from liability;
- 17 (7) For final instructions to Receiver for closure and termination of the
18 Receivership and authorizing the Receiver to remit residual funds to
19 the Plaintiff Securities and Exchange Commission for transmittal to
20 the U.S. Treasury ("the Report Motion").

21 The following general facts support the Report Motion:

22 A. The Receiver filed his Fifth Interim Report and Fourth Account and
23 Declaration of Richard Weissman on October 21, 2015 (Doc. 321) ("Fifth Report")
24 as a status report informing the Court of newly discovered funds held by Bank of
25 America ("BOA") on behalf of Yekaterina Jones, Henry Jones and Marina
26 Investors Group, Inc. and subject to previous orders of this Court. The bank
27 remitted the funds to the California State Controller ("Controller") as "unclaimed
28 funds", notwithstanding the several outstanding Orders directing BOA to deliver

1 such funds to the Receiver.

2 B. The Receiver is filing his Sixth and Final Report and Fifth and Final
3 Account (“Sixth Report”), which describes his actions during the interim period of
4 April 1, 2014 through March 31, 2016 (“Sixth Reporting Period”), including,
5 without limitation, the completed disbursements made by the Receiver of the
6 Distribution Fund in accordance with the Distribution Plan (Doc. 292) and the
7 Order directing the distribution, entered on July 3, 2014 (Doc. 317) (“Distribution
8 Order”), and the Receiver's administrative oversight of the Eligible Claimants'
9 collection of the distributed funds.

10 C. The Receiver recently recovered \$185,897.76 from the Controller
11 attributable to BOA bank accounts of Yekaterina Jones and Marina Investors
12 Group, Inc. The Receiver seeks instructions authorizing disbursal of the newly
13 recovered funds to the Eligible Claimants, on a prorated basis, as a second and
14 final distribution of Fair Funds, pursuant to the Distribution Plan (Doc. 292).

15 D. The Receiver seeks the Court's ratification and approval of the Fifth
16 and Sixth Reports and his actions and conduct during the Fifth Reporting Period and
17 Sixth Reporting Period.

18 E. The Receiver seeks termination of the Receivership and his discharge,
19 and exoneration from liability for his administration of the Receivership, according
20 to law. The Court has approved the Receiver’s prior four reports and three accounts.

21 F. The Receiver seeks such other orders and instructions the Court
22 determines necessary and appropriate to effect termination and closure of the
23 Receivership and Fair Fund.

24 This Report Motion is based upon this (1) Notice of Motion and Motion, the
25 Memorandum of Points and Authorities and the Declaration of Richard Weissman
26 and Exhibits filed herewith, which together constitute the Receiver's Sixth and Final
27 Report and Fifth and Final Account; (2) the Fifth Report and Fourth Account (Doc.
28 321); (3) the Distribution Plan (Doc. No. 292) and the Distribution Order (Doc.

1 317), and (4) the other pleadings and outstanding Orders entered herein, and such
2 other and further oral and documentary evidence as may be considered in
3 connection with the Court's hearing and determination of this Motion.

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DATED: MAY 10, 2016

Respectfully submitted,



RICHARD WEISSMAN
RECEIVER

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LIST OF EXHIBITS

<u>EXHIBIT</u>	<u>DOCUMENT DESCRIPTION</u>	<u>PAGE NO.</u>
Exhibit A	Revised Second Distribution Report	22
Exhibit B	Fifth Interim Account (4/1/15 – 3/31/16) and Receipts and Disbursements Journals	25
Exhibit C	Cumulative Account (5/2/2005 – 3/31/16)	26

1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
2 **MOTION FOR APPROVAL OF RECEIVER'S FIFTH AND SIXTH**
3 **REPORTS AND FOURTH AND FIFTH ACCOUNTS AND**
4 **TERMINATION OF RECEIVERSHIP, ETC.**

5
6 **I. PRELIMINARY STATEMENT.**

7 The Receiver seeks an order covering the following matters:

8 1. Approving the Receiver's Fifth Interim Report and Fourth Account
9 ("Fifth Report") (Doc. 321) previously filed on October 21, 2015, which reported
10 the latent discovery of substantial funds (\$185,897.76 plus) held by the California
11 State Controller ("Controller"), owned by Yekaterina Jones, Henry Jones, Marina
12 Investors Group, Inc., and other defendants herein, as remitted to it by Bank of
13 America ("BOA") as unclaimed property ("Unclaimed Funds") from accounts of
14 these defendants and relief party. These accounts existed at the time of
15 commencement of this case and were subject to turnover by BOA to the Receiver
16 in 2005 and 2009, respectively, pursuant to this Court's Orders.

17 2. The Receiver has recovered an aggregate of \$185,897.76, from the
18 Controller, of the Unclaimed Funds of Yekaterina and MIG. The recovered funds
19 are available for a second and final prorated distribution to the previously approved
20 Eligible Claimants. The Receiver requests authority to effect a distribution of these
21 funds.

22 3. Approving the Receiver's Sixth and Final Report and Fifth and Final
23 Account ("Sixth Report") which describes the Receiver's activities and conduct
24 during the overall period of April 1, 2014 through March 31, 2016 (collectively,
25 "the Sixth Reporting Period"), in implementing the Order Approving Distribution
26 Plan entered on March 21, 2011 ("Distribution Plan") (Doc. 292) and the
27 Distribution Order entered on July 3, 2014 (Doc. 317). Additionally, it reports his
28 efforts to recover the Unclaimed Funds transferred by Bank of America to the

1 Controller instead of to the Receiver. The activities of the Receiver and his
2 Paralegal and Accounting Staff ("Staff") include the disbursal of the Distribution
3 Fund to all Court approved Eligible Claimants, the monitoring of the investors
4 collection of these funds and an accounting therefor. These actions have
5 positioned the Receivership for a full and final closure in accordance with the
6 Distribution Plan (Doc. No. 292).

7 4. The Receiver has possession of thousands of pages of paper business
8 and financial records of the defendants, investors and creditors covering many
9 years of defendants' operations prior to commencement of this action and during
10 the course of this litigation. The pertinent financial of the defendants and of the
11 investors, including claim forms and supporting documentation, have been
12 electronically copied and such copies are within the custody and control of the
13 Receiver. The Receiver seeks authority to destroy all the papers, retaining only
14 electronic copies of investors' claims documentation and distribution records.
15 Retention of the electronic records would be for the applicable statutory period (6
16 years) or transferred to the custody of the Securities and Exchange Commission
17 upon consultation with Commission Staff.

18 5. The Receiver has possession of, and has been storing, over five
19 thousand music CDs and some of their master recording tapes produced by Marina
20 Investors Group, Inc., ("MIG"), and copies of cinematic tapes and a single film
21 master tape created by defendant Henry Jones. No alleged musical artist has sought
22 to purchase or request the release of the CDs and/or master music tapes within the
23 past eight years. The Receiver requests authority to destroy the CDs, in bulk, as
24 soon as practicable following entry of a final order therefor, and to retain the music
25 masters for one (1) year. If there is no economic value to the masters after the year
26 period, they would be destroyed.

27 There does not appear to be any financial value to the cinematic tape
28 copies or the master. The Receiver requests authority to destroy all of the

1 cinematic related materials in the same manner as the music CDs.

2 6. The Distribution Plan (Doc. 292) provides for any funds held by the
3 Receiver, following the disbursal to the Eligible Claimants of the Distribution
4 Funds, are to be remitted to the Commission for transfer to the U.S. Treasury. The
5 Receiver requests authority to remit to the Commission such “Residual Funds” he
6 may hold following completion of the second disbursal of the newly recovered
7 funds.

8
9 **II. AN ORDER APPROVING RECEIVER’S REPORTS AND**
10 **ACCOUNTS ARE NECESSARY AND PROPER.**

11 The Receiver is filing with the Court, and serving the necessary interested
12 parties with his reports showing the receipts and expenditures of the Receivership
13 and of his actions and transactions performed during the Fifth and Sixth Reporting
14 Periods. Fed.R.Civ.P. 66, L.R. 66-6.1. Pending the Court’s review of the Fifth
15 and Sixth Reports, the Receiver will serve the notice of hearing on all remaining
16 parties of record by electronic and regularly mailed notice as appropriate. Eligible
17 Claimants will receive constructive notice of the hearing by the posting of the
18 Report Motion on the Receiver's internet website. Fed.R.Civ.P. 66, L.R. 66-6.7(c).
19 All the known creditors’ claims against the Receivership have been adjudicated by
20 the Court and either paid in full or pro rata, or otherwise fully discharged, as
21 directed by the Court.

22 The Fifth Report and Sixth Report describe in detail the activities undertaken
23 and services rendered by the Receiver and his Staff during the respective reporting
24 periods. The Receiver requests an Order approving and ratifying the acts and
25 transactions of the Receiver reported during the Fifth and Sixth Reporting Periods,
26 from April 1, 2014 through March 31, 2016.

27 Based upon the foregoing and on the contents of the Fifth and Sixth Reports,
28 the Receiver respectfully requests the Court to issue an Order approving and

1 confirming the Receiver's Fifth Report and Fourth Account and the Sixth and Final
2 Report and Fifth and Final Account.

3 **III. THE DISTRIBUTION PLAN AND DISTRIBUTION ORDER HAVE**
4 **BEEN FULLY IMPLEMENTED.**

5 The Receiver has fully implemented the terms of the Distribution Plan (Doc.
6 292) and the Distribution Order (Doc. 317) in respect to the \$700,000.00
7 Distribution Fund. The Receiver's Staff monitored daily the presentation of
8 distribution checks to the Receiver's bank and approved them in accordance with
9 the terms of the Distribution Plan. Despite the Receiver's best efforts, eighteen
10 (18) checks were not negotiated, resulting in uncashed checks aggregating to
11 \$6,505.29. These uncashed checks have been voided because they were uncashed
12 past the ninety (90) day stale date of December 15, 2014 and, pursuant to the
13 Distribution Plan, the underlying claims are now extinguished (Doc. 292, Par.
14 5(x)). The \$6,505.29 remain in the Fair Fund.

15 The recovery of the \$185,897.76 held by the Controller provides an
16 opportunity to disburse these funds to the existing Eligible Claimants who cashed
17 their first distribution checks.in respect to the losses suffered by these investors.
18 The Receiver recommends the Court authorize a second and final distribution of
19 the funds held. The investors' money collection period would remain the same as
20 the earlier term, ninety (90) days. The Receiver would mail the funds to the
21 currently known addresses. Pursuant to the Distribution Plan, any uncollected
22 funds from the distribution will be delivered to the Commission (Doc. 292).

23 The completion of the Distribution Plan following a second distribution
24 positions the Receivership for termination and closure, subject to any final
25 instructions from the Court (Doc. 292, Par. 10).

26 The final services to be rendered by the Tax Administrator are the
27 preparation of a Qualified Settlement Fund Income Tax Return (Form 1120SF) for
28 the 2016 tax year, which will include the second distribution. The Receiver is

1 informed the Tax Administrator has prepared and filed the income tax returns for
2 2014 and 2015.

3 **IV. CONCLUSION.**

4 For all the foregoing reasons, the Court is requested to enter an Order
5 approving the Receiver's Fifth Report and Fourth Account and the Sixth and Final
6 Report and Fifth and Final Account in their entirety, and granting the other relief
7 and instructions requested by the Report Motion.

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9 DATED: MAY 10, 2016

Respectfully submitted,

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RICHARD WEISSMAN
RECEIVER

DECLARATION OF RICHARD WEISSMAN

I, Richard Weissman, declare:

1. I am over the age of 18 years and competent to testify to the following facts of my own personal first-hand knowledge, except as to those facts of which I am informed by third parties, and as to those facts, I believe them to be true. I am the duly appointed Receiver in this action, having been appointed on May 2, 2005, under that certain Temporary Restraining Order and Orders: (1) Freezing Assets; (2) Prohibiting Destruction of Documents; (3) Appointing a Receiver; (4) For Accountings; and (5) For Repatriation of Assets; and Order to Show Cause Re Preliminary Injunction (Doc. ("Doc.") 14) ("TRO") over Defendants Marina Investors Group, Inc. ("MIG") and Tri Energy, Inc. ("TRI") entered by the Court, the Hon. Virginia A. Phillips, Judge of the U.S. District Court presiding. I was confirmed as "Permanent Receiver" on May 23, 2005, pursuant to the Court's Order on the Stipulation between Plaintiff Securities and Exchange Commission ("Commission") and Defendants Tri Energy, Inc., H&J Energy, Inc. ("H&J"), Robert Jennings ("Jennings"), and Arthur Simburg ("Simburg") and Relief Defendants, La Vie D'Argent ("La Vie"), R.P.J. Investment Group, Inc. ("RPJIG"), T.M.A. Investment Enterprises ("TMA") and Thomas Avery ("Avery") and Preliminary Injunction and Orders (1) Continuing Asset Freeze; (2) Appointing a Permanent Receiver; (3) Prohibiting the Destruction of Documents; and (4) Requiring Accountings (Doc. 32) ("PI") (the TRO and PI are collectively the "Receivership Order"). The Receivership Order authorized the Receiver to take possession and control of the bank accounts and tangible and intangible assets of Defendants TRI, H&J, and MIG, and Relief Defendants La Vie, RPJIG, TMA, and certain bank accounts owned or controlled by Relief Defendant Avery and individual Defendants Simburg, Jennings and Henry Jones ("Jones"), Yekaterina Jones (a.k.a Katya Jones) and Jessica Jones (collectively, "the Receivership Entities").

1 **I. STATUS OF PROCEEDINGS.**

2 2. This declaration constitutes my Sixth and Final Report and Fifth and
3 Final Account (“Sixth Report”), covering the period of April 1, 2014 through March
4 31, 2016 (“Sixth Reporting Period”), and is filed in support of the attached
5 Receiver’s Notice of Motion and Motion for Order seeking various relief and
6 instructions (“Report Motion”).

7 3. The Receiver has filed five interim reports and four interim accounts
8 covering the following periods:

9 (a) May 2, 2005 through May 21, 2005, in the Receiver’s First
10 Interim Report (“First Report”), filed on May 23, 2005 (Doc. 29), relating to three
11 weeks of the Receiver's initial activities as “Temporary Receiver.”

12 (b) May 22, 2005 through April 30, 2006, in the Receiver’s Second
13 Interim Report and First Account (“Second Report”) (Doc. 91-100), filed on May
14 15, 2006; an Order Re Approval of Receiver's First and Second Interim Reports and
15 First Account was entered on August 3, 2006 (Doc. 114);

16 (c) May 1, 2006 through August 31, 2008, in the Receiver’s Third
17 Interim Report and Second Account, filed on November 10, 2008, in conjunction
18 with the Receiver's Motion for Orders (1) Approving Third Interim Report (2)
19 Approving and Denying Business Creditors' Claims, and (3) For Further
20 Instructions, (Doc. 239-244). An Order Approving Fees and Expenses of Receiver
21 was entered on December 15, 2008 (Doc. 255). The Motion for Orders Approving
22 Third Interim Report and Account and for other relief was taken under submission
23 on December 15, 2008 (Doc. 256). An Order Re: Approval of Receiver’s Third
24 Interim Report and Account and Further Instructions was entered on March 2, 2009
25 (Doc. 259).

26 (d) September 1, 2008 through March 31, 2014, in the Fourth Report
27 and Third Account of Receiver (Doc. 313), filed on May 23, 2014, in conjunction
28 with the Receiver's Notice of Motion And Motion For Orders An Order (1)

1 Approving Receiver's Fourth Report And Third Account; (2) Approving And
2 Denying Investors' Claims; (3) Approving Loss Recovery Methodology; (4)
3 Authorizing Receiver To Pay Approved Investors' And General Creditors' Claims;
4 (5) Directing Clerk Of Court To Disburse Funds To Receiver; (6) Establishing A
5 Reserve Account For Fees And Expenses To Implement The Approved Distribution
6 Plan And For Closing Tax Returns And Related Services; And (7) For Further
7 Instructions To Receiver. An Order approving the Fourth Report was entered on
8 July 3, 2014 (Doc. 317). The Receiver's Motion for Approval of Fees and Expenses
9 was also filed on May 23, 2014, relating to the Fourth Reporting Period. An Order
10 Approving Receiver's Fees and Expenses was entered on July 2, 2014 (Doc. 318).

11 (e) The Fifth Report and Fourth Account ("Fifth Report") were filed
12 on October 21, 2015 (Doc. 321), which are pending approval.

13 4. The Court entered judgments against the Relief Defendants, Defendant
14 Nga Wing Lau a.k.a. Adrienne Lau (Doc. 182); Daniel J. Merriman, DJM, LLC,
15 Financial MD, Inc., and Financial MD and Associates (Doc. 180); and Thomas
16 Avery and T.M.A. Investment Enterprises (Doc. 233).

17 5. Judgments were entered against Defendants Henry Jones, Marina
18 Investors Group, Inc., and Global Village Records in 2008 (collectively, "Jones
19 Judgment") (Doc. 230) in the amount of \$24,365,647, plus civil penalties in an
20 amount of Seven Million Dollars (\$7,000,000) against Henry Jones (Doc. 230).
21 Judgment was entered on April 9, 2009 against Tri Energy, Inc., H&J Energy
22 Company, Inc., Robert Jennings, Arthur Simburg and La Vie D'Argent for
23 disgorgement of \$8,999,156, and civil penalties against the Defendants Simburg and
24 Jennings, in the amount of \$7,000,000, each (Doc 261).

25 6. Jones is serving a 20-year jail term for fraud and securities violations
26 arising from the subject matter of this case. Jennings is serving a 12-year jail term;
27 Simburg is serving an 8-year jail term.

28 7. Pursuant to Court authority, the Receiver liquidated all of the known

1 real and personal property assets of TRI, MIG and Jones (Docs. 64, 65, 79, 114,
2 115).

3
4 **II. IMPLEMENTATION OF DISTRIBUTION PLAN**

5 **A. DISTRIBUTION OF FAIR FUND**

6 8. The Court entered its Order Approving Distribution Plan on March 21,
7 2011 (Doc. 292) ("Distribution Plan"). The Receiver's Fourth Report recited facts
8 and events relating to the administration of the procedure for the filing of claims by
9 qualified claimants, establishing their alleged investment losses, and proving their
10 eligibility to receive a distribution on account of such losses from the Distribution
11 Fund (Doc. 313). The Court entered its Order Approving the Fourth Report and
12 Third Account of Receiver, Approving and Denying Investors' Claims; Approving
13 Loss Recovery Methodology; Authorizing Receiver to Pay Approved Investors' and
14 Business Creditors' Claims on July 3, 2014 (Doc. 317) ("Distribution Order"). The
15 Order authorized the Receiver to disburse the Distribution Fund of \$700,000 (Doc.
16 313, 317).

17 9. The Receiver disbursed the Distribution Fund to the Eligible Claimants
18 during September 2014, following the Distribution Order becoming final (Doc.
19 317). The disbursal checks were prepared by the Receiver's Accounting Staff, with
20 the payment amounts and addresses verified by Paralegal Staff. The checks were
21 further reviewed and signed by the Receiver. The Receiver's Staff mailed, by
22 regular United States Mail, checks in amounts under \$4,000. Checks in amounts
23 over \$4,000 were sent by certified mail, return receipt requested, to provide
24 confirmation they were duly received by the correct addressees.

25 10. The Distribution Plan (Doc. 292, ¶5(s)) directed all distribution checks
26 to be presented by the Receiver's bank to the Receiver or his Staff for review and
27 approval for payment, pursuant to the process of Positive Pay, which enabled the
28 Receiver and his Staff to review each check via the internet. Through this process,

1 the Agent's bank electronically notified the Agent and the Accounting Staff daily of
2 each check presented for payment and the Accounting Staff reviewed "online" an
3 electronic image of each check to verify it was the Agent's check, he had signed it,
4 and the name of the payee and the amount were correct. The endorsement on the
5 check was also reviewed. If all was in order, the Accounting Staff approved the
6 check for payment. The Agent also sample reviewed the approved checks as a
7 second layer of verification. This process occurred for approximately one hundred
8 twenty (120) days from the last day the checks were mailed.

9 11. The Accounting Staff prepared a reconciliation report for the monthly
10 uncollected funds and prepared a cash basis income and expense report for the
11 Agent. The Agent and Accounting Staff also spoke with Eligible Claimants who
12 had difficulty cashing their checks, who questioned the amount of the pro-rated
13 disbursement, and with those who did not receive a check. Some checks were
14 returned because the claimants' addresses had become invalid. Incorrect addresses
15 were corrected and the checks were remailed to the extent practicable. Checks
16 returned as undeliverable required research to determine whether the claimant had
17 an identifiable forwarding address. Personal telephone calls were made to these
18 claimants as practicable. The Agent and Accounting Staff verified the identity of
19 each "returned check" claimant with whom they spoke and obtained the
20 documentation supporting their change of address before a replacement check was
21 sent to them.

22 12. Despite the Agent's best efforts, eighteen (18) checks were *uncashed*
23 checks, aggregating to \$6,505.29. Pursuant to the Distribution Plan, all checks had a
24 stale date of ninety (90) days, and the last checks became stale after December 15,
25 2014. Stop Payment orders have been made on these uncashed checks. Pursuant to
26 the Distribution Plan, the underlying claims are now extinguished and the \$6,505.29
27 remain in the Fair Fund (Doc. 85, Par. 3.27).

28 13. Pursuant to the Distribution Plan, the uncashed funds remaining in the

1 Fair Fund are deemed to be "Residual Funds" and are to be remitted to the
2 Commission for transfer to the U.S. Treasury (Doc. 292, p. 13, ¶15(y)).

3 **B. TAX RETURNS-Qualified Settlement Fund (QSF)**

4 14. The Receiver is informed by the duly appointed Special Tax
5 Administrator, Damasco & Associates ("Tax Administrator"), it prepared the
6 Receivership's Qualified Settlement Fund Income Tax Returns for 2014 and 2015,
7 which included the distribution of the Fair Funds to the Eligible Claimants. An
8 additional final tax return will be required to account for the second distribution
9 during 2016. The Tax Administrator informed the Receiver no income taxes were
10 due by the QSF for 2014 and 2015 and no taxes will be due for 2016.

11 **III. FUNDS HELD BY CALIFORNIA STATE CONTROLLER**

12 15. The Receiver was informed in August 2015, by a third party, Mr. Kevin
13 G. Rios, the California State Controller ("Controller") held a significant amount of
14 "unclaimed funds" remitted to it by Bank of America on behalf of Yekaterina Jones,
15 the spouse of Defendant Henry Jones, pursuant to California's Unclaimed Property
16 statutes (*Code of Civil Procedure*, §§1500, et seq). Bank of America's ("BOA")
17 remittance to the Controller was after and notwithstanding the Court's 2009 Order
18 (Doc. 259) directing BOA to remit to the Receiver all funds it held on behalf of
19 Yekaterina and Jessica Jones. BOA did remit to the Receiver, in 2009, \$225,000.00,
20 but it did not identify the existence of the recently discovered funds. The Receiver
21 researched the Controller's records and communicated with the Controller's
22 representatives confirming BOA had remitted to the Controller approximately
23 \$182,496.83, from bank accounts owned by Yekaterina Jones ("Yekaterina Funds").

24 16. As reported in the Fifth Report (Doc. 321), the Receiver filed claims
25 with the Controller, on September 19, 2015, for the recovery of the Yekaterina
26 Funds, and for funds of Marina Investors Group, Inc. (MIG Funds) (\$3,440.93)
27 which were discovered by the Receiver, as well as for nominal amounts relating to
28 Henry Jones and Arthur Simburg, which had not been transferred to the Receiver.

1 The Receiver endeavored to communicate numerous times with the Controller's
2 representatives to reduce the published six (6) months processing time for the claims
3 (Doc. 321).

4 17. The Controller's counsel, Ronald V. Placet, Esq. ("Counsel"),
5 conditionally denied the claim for the Yekaterina Funds and unconditionally denied
6 the other three (3), in his letter, dated October 27, 2015, received November 1, 2015.
7 He stated Yekaterina's claim would be approved upon the Receiver's "linking" her to
8 the 2009 Order and as the "owner" of the Bank of America ("BOA") accounts. He
9 said there were "other" Yekaterina Jones's who were BOA customers and the
10 Receiver had to show "our" Yekaterina was the owner of the accounts. He did not
11 indicate what competent information would achieve the linkage. Counsel also said
12 the Court's 2009 Order had to precede the actual remittance date of the unclaimed
13 funds to the Controller. Subsequently, Counsel told the Receiver the Unclaimed
14 Property statutes had changed in 2014 requiring the "owner" of the funds to make
15 the actual claim, thereby precluding a creditor of a claimant from making a claim to
16 the funds unless the creditor's right to levy against the funds arose prior to the
17 financial institution's transfer of funds to the Controller. He said the statutory
18 change, (Section 1540, *Code of Civil Procedure*) negated any creditor's claim or
19 levy against Controller held funds arising (pursuant to Court Order) after the
20 remittance date by the financial institution.¹ The Receiver provided the Controller's
21 Counsel with Yekaterina's Social Security Number and other information to link
22 "this" Yekaterina to the subject accounts and reiterated the 2009 Order gave the

23 ¹ Effectively, the statutory change prevents a creditor (receiver) from making any
24 claim against such funds pursuant to a levy order issued after a cash transfer to the
25 Controller. Without the levying orders timely issued in this case, only Henry Jones
26 or Yekaterina Jones could make the claim for their respective funds. She is alleged
27 to be in Russia. Henry Jones is incarcerated. Kevin Rios informed the Receiver Mr.
28 Rios has processed claims for incarcerated individuals and remitted the recovered
funds to the claimant(s) while incarcerated, without any creditor attaching such
funds.

1 Receiver the right to the funds prior to Bank of America's transfer to the Controller.
2 The Receiver was informed on December 6, 2015, that the Yekaterina claim had
3 been approved by the Controller's General Counsel. Following several additional
4 management layers of approval, the Yekaterina funds, \$182,496.83, were received
5 on December 16, 2015, without interest. These funds were deposited to the
6 Receivership trust account.

7 18. The Controller's Counsel further told the Receiver the foregoing
8 legislative change prevented the Receiver's Claim against the MIG funds
9 (\$3,440.93) because the 2008 Default Judgment was chronologically after Bank of
10 America's transfer of the funds to the Controller.

11 19. The Receiver did not seek this Court's determination whether the 2014
12 legislation was retroactively applicable to the 2008 Judgment and the Receiver's
13 right to make a claim against the MIG Funds. Instead, he renewed the MIG claim
14 based on the Receiver's right to take possession of the MIG accounts pursuant to the
15 TRO and PI entered in 2005, which clearly preceded the transfer by BOA. Counsel
16 agreed the TRO and PI established the Receiver's priority of right claim to the funds.
17 The Controller approved the renewed claim and remitted the MIG funds to the
18 Receiver, without interest.

19 20. The aggregate recovery from the California Controller is \$185,897.76.

20 21. The original call from Kevin G. Rios, above, is the basis for the
21 Receiver's recovery of the Yekaterina Funds. Mr. Rios called the Receiver after
22 conducting internet financial research of Ms. Jones and finding references to this
23 litigation and the Receivership. Mr. Rios' vocation is an asset "finder" of unclaimed
24 property held by the Controller. He is not an attorney. Mr. Rios told the Receiver he
25 assists property owners and decedents' heirs to file claims and recover their
26 property. His fee for such services is customarily 10% of the recovery. The
27 Receiver told Mr. Rios he would process the claims, given their complexity but he
28 would submit the issue of a "finder's fee" to the Court for its consideration. The

1 Receiver has spoken with Mr. Rios and he is willing to accept \$3,000 in full and
2 final settlement of such finder's fee and any other claim he may have in respect to
3 the recovered Yekaterina Funds. The Receiver recommends the Court award Mr.
4 Rios a finder's fee of \$3,000, in lieu of the approximately \$18,200 (10%) fee he
5 would have charged were he successful in recovering the Yekaterina Funds. The
6 Receiver has consulted with Commission Staff and there is no objection to the
7 recommended fee amount.

8 **IV. DISPOSITION OF RECOVERED FUNDS OF JONES AND MIG**

9 22. The recovery from the Controller of the Yekaterina and MIG Funds
10 provides an opportunity for a second distribution ("Second Distribution") to the
11 approved Eligible Claimants on account of their claims herein. The proposed
12 distribution would aggregate the overall distribution to \$825,000, or by
13 approximately fifteen percent (15%) of the Fair Fund. (Example: The second
14 distribution amount of \$125,000 is divided by the aggregate distribution of \$825,000
15 = 15.15%). The Receiver has recalculated the prorated shares of the approved
16 Eligible Claimants, based on an estimated distribution amount of \$125,000.00. The
17 Second Distribution amount is predicated on the estimated fees and expenses to
18 administer a Second Distribution, a payment to Mr. Rios (\$3,000), and the
19 Distribution Reserve for the preparation and filing of the final tax returns, storage,
20 and documents disposition earlier provided in the Distribution Order.

21 23. The Receiver and his Staff have prepared a "Second Distribution
22 Claims Report" computing the prorated percentage share and estimated disbursal
23 amount per Eligible Claimant. The Rising Tide Method has been used to calculate
24 the claimants' prorated shares in the Second Distribution. It takes into account the
25 amounts of the First Distribution to each Eligible Claimant and all Early
26 Distributions (ROI) received by him or her. A copy of the Second Distribution
27 Claims Report, with only the Assigned Claim Number of each Eligible Claimant, is
28 filed herewith, marked as Exhibit A, and made a part hereof. Each Eligible

1 Claimant is identified by the same number assigned to them for the First
2 Distribution. There are 268 Eligible Claimants who will participate in the Second
3 Distribution. The prorated distribution amounts range from a low of approximately
4 \$6.50 to a high exceeding \$4,800.00.

5 24. It is estimated a Second Distribution will take approximately four (4) to
6 six (6) months, following entry of a "Second Distribution Order." The earlier
7 timeframe is based on an immediate preparation and mailing of the checks, without
8 waiting for the expiration of the appeal period of the order. The longer term is
9 based on the disbursals after expiration of the sixty (60) day appeal period. The
10 Eligible Claimants will have ninety days from mailing (or a shorter time frame as
11 directed by the court) to deposit the checks and collect the funds. The "positive
12 pay" monitoring by the Receiver's Staff would occur during the ninety (90) day
13 collection process. All uncashed checks after the stale date will be canceled and the
14 funds will be deemed to be Residual Funds for remittance to the Commission for
15 transfer to the U.S. Treasury.

16 25. All checks will be sent by regular mail, reducing the cost of
17 administrative handling and the cost of postage. To save additional expense, the
18 Receiver suggests that his final report and account and a hearing thereon be
19 "waived" by the Court, with the conclusion of administration accomplished by (a)
20 the Receiver transmitting to the Commission Staff a final Income and Expense
21 Statement and a remittance check for the Residual Funds, (b) the Receiver filing
22 with the Court a "notice of completion of the Distribution Plan and termination of
23 the Receivership." These final actions would manifest a termination of the
24 Receivership, the Distribution Plan and a full discharge and exoneration of the
25 Receiver, his agents, employees and representatives from all liability that may have
26 arisen during the entire term of the Receivership and distribution process. The
27 concluding fees and expenses of the Receiver relating to the Second Distribution
28 will be the subject of review by the Commission Staff and will be deemed approved

1 following ten days of service on the Commission Staff of the Receiver's billing
2 statements, unless specifically objected to within the ten days. No further court
3 review or approval would be required of the charged fees and expenses unless any
4 objections remained unresolved at the time for remittance of the Residual Funds.
5 The Receiver would bring the matter to the Court by a duly noticed motion.

6 **V. DISPOSITION OF RECORDS, CDS AND FILMS.**

7 26. The Receiver previously reported he has maintained in storage: several
8 thousand music CDs of MIG's "artists" which were never distributed by MIG;
9 original master tapes for some of the artists' CDs; master film tapes for a couple of
10 Jones's "films;" and numerous copies of business and bank records of TRI and MIG
11 and investors, and the investors' original Proofs of Claim and supporting documents
12 submitted to the Receiver. The Receiver has recommended to the Court the
13 destruction of all the CDs and film copies but retention of the "masters" of the CDs
14 and films for one year from the entry of a final order terminating the Receivership,
15 or as the Court may otherwise direct. The cost of storage has been previously
16 reported at \$500.00 per month. The Receiver has electronically recorded (copied)
17 the originals and copies of records in his possession of the Defendants, investors and
18 third parties. Pursuant to the Distribution Order (Doc. 317, ¶4), the Receiver will
19 retain these electronic copies for one (1) year following entry of a final order
20 terminating the Receivership, at which time the electronic files will be delivered to
21 the Commission Staff, as they may direct, for retention in accordance with the
22 Commission's retention policy. The paper files, music CD copies and Jones's film
23 copies held in storage will be destroyed within approximately 65 days following
24 entry of a final order terminating the Receivership. The Court has already approved
25 a reserve for the cost of destruction of the records and other items (\$4,000.00:
26 \$2,500-shredding; \$1,500 staff oversight).

27
28

1 **VI. ACCOUNTING.**

2 **A. Interim Accounting**

3 27. The Receiver has prepared a Fifth Interim Account comprised of a cash
4 basis income and expense statement ("Interim Account") for the interim period of
5 April 1, 2014 through March 31, 2016, relating to cash received and disbursements
6 made from the Receiver's trust accounts for which the Receiver is chargeable. The
7 Interim Account and its detailed Cash Receipts and Disbursement Journals are filed
8 herewith, collectively marked as Exhibit B, and made a part hereof.

9 28. The Fifth Interim Account (4/1/14 – 3/31/16) is summarized as
10 follows:

11	Balance of Cash on Deposit: March 31, 2014 Income	\$722,576.88
12	Interim Cash Receipts 4/1/2014 - 3/31/2016:	
13	CRIS Funds	\$353,284.73
14	Y. Jones Funds – Controller	\$182,496.83
15	MIG Funds – Controller	\$ 3,440.93
16	Interest	\$ 442.60
17		
18	Subtotal: Interim Receipts	\$539,665.09
19	Subtotal: Interim Cash Receipts:	<u>\$1,262,241.97</u>
20		
21	Disbursements/Expenses 4/1/2014 - 3/31/2016:	
22		
23	Investors Distributions (Cashed Checks)	(\$ 693,494.71)
24	Subtotal Cash Balance:	\$ 568,747.66
25	Court Approved Fees (2014)	(\$ 320,000.00)
26	Reimbursable Expenses (2014)	(\$ 455.00)
27	Subtotal Approved Fees/Expenses:	(\$ 320,455.00)
28		

1	Subtotal Cash Balance:		\$ <u>248,292.26</u>
2	Distribution Expenses:		
3	Storage Fees -	\$ 5,287.19	
4	Electronic Copying -	\$ 6,426.97	
5	Receiver & Staff's Fees-		
6	SEC Approved	\$ 78,839.50	
7	Positive Pay/Bank Charges -	\$ 1,489.71	
8	Postal Fees -	\$ 1,529.82	
9	Special Supplies -	\$ 562.27	
10			
11	Subtotal: Distribution Fees/Expenses -		(\$ 94,134.97)
12			
13	Tax Administrator's Fees/Expenses-Paid:		(\$ <u>7,814.18</u>)
14	NET INTERIM CASH BALANCE (3/31/2016):		<u>\$ 146,342.62</u>
15			

16 29. The Receiver has prepared a cumulative cash basis income and expense
17 statement ("Cumulative Account") covering the entire term of the Receivership,
18 from May 2, 2005 through March 31, 2016. A copy is filed herewith, marked as
19 Exhibit C, and made a part hereof. The Cumulative Account does not include the
20 previously filed detailed Receipts and Disbursements Journals.

21
22 The Cumulative Account is summarized as follows:

23 **Receipts: 5/2/05 - 3/31/16**

24	CRIS Account Funds	\$353,284.73
25	Personal Property Sales	\$925,787.86
26	Frozen Funds	\$512,716.75
27	Y. Jones Funds-BOA	\$226,484.00
28		

1	Y. Jones Funds-Controller	\$182,496.23	
2	MIG Funds-Controller	\$ 3,440.93	
3	Coal Mine Operations	\$ 99,540.70	
4	Misc. FFE (Sales) - MIG	\$107,151.75	
5	Mining Equipment (Sales)	\$273,471.75	
6	Misc. Income	\$105,756.51	
7	Interest Income	\$ 62,394.31	
8			
9	Subtotal: Receipts		<u>\$2,852,525.52</u>
10	Disbursements: (5/2/2005 - 3/31/2016)		
11	First Distribution: (Cashed Checks)		(\$ 693,494.71)
12			
13	Subtotal Cash Balance:		<u>\$2,159,030.81</u>
14	Operations and Distribution Expenses:		
15	(5/2/05 - 3/31/16)		
16	Mine Operations	\$499,700.52	
17	Contract Labor	\$ 17,650.00	
18	Hannum Property	\$ 28,686.36	
19	Harbor Crossing Property	\$ 8,079.91	
20	Property Recovery	\$ 19,770.00	
21	Storage Rental	\$ 60,751.88	
22	Electronic Copying	\$ 6,426.97	
23	Receiver's Fees/Exp. 2nd Rept.	\$452,127.84	
24	Receiver's Fees/Exp. 3rd Rept.	\$339,512.84	
25	Receiver's Fees/Exp. 4th Rept.	\$320,455.00	
26	SEC Approved Receiver Fees	\$ 78,839.50	
27			
28			

1	Approved Professional Fees	\$133,559.68
2	Tax Administrator-Paid	\$ 7,814.18
3	Misc. Expenses	\$ 39,313.51
4	Subtotal: First Distribution	
5		
6	And All Paid Expenses:	<u>(\$2,012,688.19)</u>
7	Net Cash Balance: Entire Term (5/2/05 - 3/31/16)	<u>\$ 146,342.62</u>
8		

9 The foregoing Cumulative Account shows the Net Cash Balance of the
 10 Receivership accounts as of March 31, 2016. The closing fees and expenses are
 11 based on estimates set forth hereinbelow.

12 31. The foregoing accounting summaries and the detailed accountings and
 13 supporting documents under Exhibits B and C constitute the Receiver's Fifth
 14 Account for the Receivership, for the interim period of April 1, 2014 through March
 15 31, 2016, and for the cumulative term, from May 2, 2005 through March 31, 2016,
 16 respectively.

17
 18 **VII. RECEIVER'S INTERIM FEES AND EXPENSES**

19 32. The Commission Staff approved the Receiver's fees relating to the
 20 First Distribution, recovery of the Yekaterina and MIG Funds and the Fifth and
 21 Sixth Reports, pursuant to billing statements submitted showing Receiver's fees of
 22 \$54,749.50 and Staff fees of \$24,080.00, totaling \$78,839.50, through December
 23 31, 2015. These fees have been paid. (Order, Doc. 317, Par. 3) Distribution
 24 expenses the Receiver paid from the Distribution Reserve, as of March 31, 2016,
 25 aggregate to \$15,185.12 and are detailed in the Interim Account (Exhibit B).

26 **VIII. SECOND DISTRIBUTION FEES AND EXPENSE RESERVE**

27 33. The current cash held by the Receiver is \$146,342.62. The Receiver
 28 proposes a Second Distribution in the sum of \$125,000.00. The Receiver estimates

1 closing fees and costs of the Receiver, Tax Administrator and Kevin Rios finder's
 2 fee in the approximate amount of \$21,285.12, as follows: (A) Tax Administrator -
 3 \$3,685; (B) Rios finder's fee - \$3,000; (C) Receiver's distribution expenses - \$2,500;
 4 (D) Receiver's distribution fees - \$ 4,600.00; and (E) final closing expense reserves -
 5 \$7,500. The foregoing is summarized as follows:

6	Cash Balance as of 3/31/2016:		\$ 146,342.62
7	SECOND DISTRIBUTION FEES/EXPENSES:		
8	2nd Cash Distribution:		\$ 125,000.00
9			
10	Subtotal Cash Balance:		\$ <u>21,342.62</u>
11	Expenses/Reserves:		
12	Tax Administrator Fee Reserve:	\$ 3,685.12	
13	Document Destruction (revised)	4,000.00	
14	Storage Reserve	3,500.00	
15	Finder's Fee (Rios)	3,000.00	
16	Distribution Expenses (Direct)	2,500.00	
17	Receiver/Staff Fees-final	4,600.00	
18	Subtotal Final Expenses/Reserves:		(\$ 21,285.12)
19	Net Estimated Cash at Closing:		<u>\$ 57.50</u>
20			

21 34. To achieve a distribution of \$125,000, the Receiver has reduced his fee
 22 estimate to a nominal \$4,600.00, inclusive of all of the time of the Receiver and his
 23 Staff to monitor the Eligible Claimants' cash collections and to close the estate. The
 24 direct costs associated with the final administration of the Receivership and Fair
 25 Fund are noted hereinabove.


26 **IX. CONCLUSION.**

27 35. The foregoing constitutes the Receiver's Sixth and Final Report and
 28 Fifth and Final Account. The Receiver requests the Court to approve the Fifth and

1 Sixth Reports and grant the other relief and instructions prayed for in the Receiver's
2 Report Motion.

3 I declare under penalty of perjury under the laws of the United States of
4 America and the State of California that the foregoing is true and correct to the
5 extent of the facts within my personal knowledge, and I believe the facts provided
6 to me by third persons to be true.

7 Executed on May 10, 2016, at Los Angeles, California.

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9 
10 Richard Weissman

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