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5 Court Appointed Receiver  
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8 UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

9	SECURITIES AND EXCHANGE )	Case No. ED CV 05-00351 AG
	COMMISSION, )	
10	Plaintiff, )	ASSIGNED JUDGE: HON. ANDREW
	vs. )	GUILFORD
11	)	
12	TRI ENERGY, INC., H & J ENERGY )	<b>RECEIVER'S NOTICE OF MOTION</b>
	COMPANY, INC., MARINA )	<b>AND MOTION FOR ORDERS:</b>
13	INVESTORS GROUP, INC., LOWELL )	
14	DECKER, ROBERT JENNINGS, HENRY )	<b>(1) APPROVING FOURTH REPORT</b>
	JONES, and ARTHUR SIMBURG, )	<b>AND THIRD ACCOUNT OF</b>
15	)	<b>RECEIVER;</b>
	Defendants. )	<b>(2) APPROVING AND DENYING</b>
16	and )	<b>INVESTORS' CLAIMS;</b>
17	)	<b>(3) APPROVING LOSS RECOVERY</b>
	LA VIE D'ARGENT, R.P.J. )	<b>METHODOLOGY;</b>
18	INVESTMENT GROUP, INC., T.M.A. )	<b>(4) AUTHORIZING RECEIVER TO</b>
	INVESTMENT ENTERPRISES, and )	<b>PAY APPROVED INVESTORS'</b>
19	THOMAS AVERY, ADRIENNE LAU, )	<b>AND BUSINESS CREDITORS'</b>
20	ET AL )	<b>CLAIMS;</b>
	)	<b>(5) DIRECTING CLERK OF COURT</b>
21	Relief Defendants. )	<b>TO DISBURSE FUNDS TO</b>
22	)	<b>RECEIVER;</b>
	)	<b>6) ESTABLISHING A RESERVE</b>
23	)	<b>ACCOUNT FOR FEES AND</b>
	)	<b>EXPENSES TO IMPLEMENT</b>
24	)	<b>THE APPROVED</b>
	)	<b>DISTRIBUTION PLAN AND FOR</b>
25	)	<b>CLOSING TAX RETURNS AND</b>
	)	<b>RELATED SERVICES; AND</b>
26	)	
	)	<b>(7) FOR FURTHER</b>
27	)	<b>INSTRUCTIONS TO RECEIVER</b>
28	)	

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) **MEMORANDUM OF POINTS AND**  
) **AUTHORITIES AND**  
) **DECLARATION OF RICHARD**  
) **WEISSMAN IN SUPPORT**  
) **THEREOF**

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**HEARING DATE: JUNE 23, 2014**  
**TIME: 10:00 A.M.**  
**COURTROOM: 10D**

1           **NOTICE IS HEREBY GIVEN** that, on Monday, **JUNE 23, 2014**, at 10:00 a.m.,  
2 in Courtroom 10D of the above-entitled Court, located at 411 West Fourth Street, Santa  
3 Ana, CA 92701-4516, Richard Weissman, duly appointed Permanent Receiver  
4 ("Receiver"), will move the Court for an Order: (1) Approving Fourth Report and Third  
5 Account of Receiver; (2) Approving and Denying Investors' Claims; (3) Approving Loss  
6 Recovery Methodology; (4) Authorizing Receiver to Pay Approved Investors' and  
7 Business Creditors' Claims; (5) Directing Clerk of Court to Disburse Funds to Receiver;  
8 (6) Establishing a Reserve Account for Fees and Expenses to Implement the Approved  
9 Distribution Plan and For Closing Tax Returns and Related Services; and (7) For Further  
10 Instructions to Receiver ("Report Motion").

11           This Motion is based upon the following facts:

12           A.     The Receiver is filing his Fourth Report and Third Account ("Fourth  
13 Report") concurrently with this Motion, in which the Receiver reports and accounts for  
14 his actions as Receiver during the period of September 1, 2008 through March 31, 2014  
15 ("Fourth Reporting Period"), including, without limitation, the design of the "Claims  
16 Procedure" and Distribution Plan and the implementation and administration of the  
17 Claims Procedure and a proposed disbursal plan. The Claims Procedure and the terms  
18 and conditions for the distribution of available assets were approved under this Court's  
19 Order Approving Distribution Plan, entered herein on March 21, 2011 (Doc. No. 292)  
20 ("Distribution Plan").

21           B.     The Fourth Report sets forth in detail the actions undertaken by the  
22 Receiver and his Staff in accordance with the Distribution Plan, including the preparation  
23 of various documents comprising the claim package for the victims; the mailing and  
24 remailing programs, the receipt and processing of claims; preparation of notices of  
25 deficiencies; continuing communications with claimants to assist them in establishing  
26 their eligibility for distribution; and other actions taken as described in the Fourth Report.  
27 The approximate funds held by the Receivership and Court aggregate to \$1,076,980.88.  
28 These funds are subject to fees and expenses of the Receiver and Tax Administrator for

1 the Fourth Reporting Period and for implementation of the Distribution Plan. By this  
2 Motion, the Receiver seeks an Order approving the administration of the claims  
3 procedure, approving and denying claims and authorizing the Receiver to pay the  
4 approved claims on a prorated basis in an aggregate amount of \$700,000.00 (Seven  
5 Hundred Thousand Dollars.).

6 C. The Receiver seeks an order approving and ratifying the use of the "Rising  
7 Tide Method" of determining the amount of loss recoverable by Eligible Claimants  
8 whose claims are approved by the Court.

9 D. The Receiver also seeks orders: (1) directing the Clerk of the Court to remit  
10 to the Receiver all funds on deposit in the CRIS Accounts of Relief Defendants Adrienne  
11 Lau, Daniel J. Merriman and Thomas Avery, less \$1,500.00, for CRIS registry fees; and  
12 (2) authorizing the Receiver to set aside a reserve for estimated fees, costs and expenses  
13 to be incurred in implementing the Court's distribution instructions and orders and for  
14 storage and document destruction, in an amount of \$39,025.00; a reserve of \$11,500 for  
15 current and estimated fees and expenses of the Tax Administrator for preparation of the  
16 Qualified Settlement Fund Income Tax Returns and final accounting services authorized  
17 by the Court; the reserve totaling \$52,025.

18 E. Finally, the Receiver seeks such other orders and instructions as the Court  
19 may deem necessary and appropriate in connection with the implementation of the  
20 Distribution Plan and otherwise regarding the Receiver's duties herein.

21 This Motion is based upon this Notice of Motion and Motion, the Memorandum of  
22 Points and Authorities and Declaration of Richard Weissman submitted in support  
23 hereof; the Fourth Report and Third Account of Receiver, and the Exhibits thereto, filed  
24 contemporaneously herewith; the Order entered on March 21, 2011 (Doc. No. 292) and

25 ///

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1 upon such other and further oral and documentary evidence as may be considered in  
2 connection with the Court's hearing and determination of this Motion.

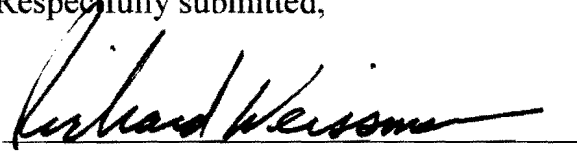
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4 DATED: May 21, 2014

Respectfully submitted,

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A handwritten signature in cursive script, appearing to read "Richard Weissman", is written over a horizontal line.

7

RICHARD WEISSMAN  
RECEIVER

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1 **MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR APPROVAL OF**  
2 **RECEIVER'S FOURTH REPORT AND FOR ORDERS ON**  
3 **DISTRIBUTION PLAN**

4 **I. PRELIMINARY STATEMENT.**

5 By this Motion, the Receiver seeks three (3) distinct but interrelated sets of orders.  
6 First, the Receiver seeks an order approving the Fourth Report and Third Account of  
7 Receiver ("Fourth Report"), which includes an account of the Receiver's activities during  
8 the period of September 1, 2008 through March 31, 2014 ("Fourth Reporting Period").  
9 The primary focus of the activities of the Receiver and his staff during the Fourth  
10 Reporting Period was the design and implementation of a Distribution Plan and  
11 administration of a claims procedure prescribed within the proposed Distribution Plan, in  
12 accordance with the Order Approving Distribution Plan, entered on March 21, 2011  
13 (Doc. No. 292) ("Distribution Plan").

14 Second, this Motion seeks an order approving: (a) the Receiver's  
15 recommendations as to approval and denial of claims, (b) the use of the "Rising Tide  
16 Method" to calculate the losses each Eligible Claimant suffered, and the percentage share  
17 each Eligible Claimant to the Distribution Fund, and (c) the proposed amount (\$700,000)  
18 to be distributed to the Eligible Claimants and authorizing payments thereto. The  
19 proposed distribution, and the method by which each Eligible Claimant's percentage  
20 share of the distribution has been calculated, are set forth in the Receiver's Revised  
21 Claims Distribution Report, which is submitted as Exhibit F to the Fourth Report. The  
22 facts and transactions underlying this Motion are described in detail in the Fourth Report,  
23 under the Declaration of Richard Weissman and the Exhibits submitted in support  
24 thereof. The Receiver marshaled assets and realized cash in the sum of \$2,312,860.43.

25 Third, a reserve is sought in the sum of \$52,025.00, comprised of \$39,050.00, to  
26 pay the Receiver's administrative fees and expenses and actions leading to the closure of  
27 the Receivership, of effectuating the distribution, a reserve of \$1,500.00 for Court  
28 registry fees (CRIS), and a reserve of \$11,500.00 for the Special Tax Administrator,

1 Damasco & Associates (“Tax Administrator”), to cover fees and expenses for preparation  
2 of the final Receivership Qualified Settlement Fund Income Tax Returns for 2013 and  
3 2014 and any related required final accounting services. The Receiver moves for further  
4 instructions and orders regarding his remaining duties herein, as the Court deems  
5 appropriate.

6  
7 **II. AN ORDER APPROVING RECEIVER’S FOURTH REPORT AND**  
8 **THIRD ACCOUNT IS NECESSARY AND PROPER.**

9 The receiver shall serve and file with the Court a report showing receipts and  
10 expenditures of the Receivership and a report of the actions and transactions performed  
11 by the Receiver during the reporting period. Fed.R.Civ.P. 66, L.R. 66-6.1.

12 Notice of hearing on all reports by the receiver must be given to all parties and  
13 creditors of the receivership entities. Fed.R.Civ.P. 66, L.R. 66-6.7(c).

14 The Fourth Report describes in detail the activities undertaken and services  
15 provided by the Receiver and his Staff during the Fourth Reporting Period. The Receiver  
16 requests an Order approving and ratifying the acts and transactions of the Receiver for the  
17 Fourth Reporting Period. Based upon the foregoing and on the contents of the verified  
18 Fourth Report, it is respectfully submitted that the Court should issue an Order approving  
19 and affirming the Fourth Report and Third Account of Receiver.

20  
21 **III. AUTHORITY OF COURT TO DEVELOP AND IMPLEMENT A**  
22 **DISTRIBUTION PLAN.**

23 **A. The Court Has Inherent Power to Issue The Requested Order**  
24 **Approving and Denying Claims.**

25 It is well established that a district court has the equitable authority to impose a  
26 receivership to preserve assets against further misappropriation and dissipation, and to  
27 clarify the financial affairs of the entities involved for the benefit of innocent investors.  
28 See *SEC v. Wencke*, 622 F.2d 1363, 1372 (9<sup>th</sup> Cir. 1980) (“Wencke II”); *SEC v. Wencke*,

1 577 F.2d 619, 623 (9<sup>th</sup> Cir. 1978) (“Wencke I”); *SEC v. American Principals Holding,*  
2 *Inc.*, 962 F.2d 1402, 1405-06 (9<sup>th</sup> Cir. 1992); *SEC v. Manor Nursing Centers, Inc.*, 458  
3 F.2d 1082, 1105 (2<sup>nd</sup> Cir. 1972). As the Court of Appeals for the Ninth Circuit stated in  
4 *SEC v. Wencke*, 783 F.2d 829 (9<sup>th</sup> Cir. 1986) (“Wencke III”):

5           Our court, like many others has recognized that as part of court’s  
6 equitable powers under the Securities Acts of 1933 and 1934, it may  
7 impose receiverships in securities fraud actions to prevent further  
8 dissipation of defrauded investors’ assets. (citing *SEC v. Wencke*, 622 F.2d  
9 at 1369). . . The primary purpose of allowing courts to establish  
10 receiverships in securities fraud actions is to prevent further dissipation of  
11 the assets of the defrauded investors; the use of summary post-judgment  
12 proceedings helps to effectuate this. *SEC v. Wencke*, 783 F.2d 829 (9<sup>th</sup> Cir.  
13 1986) (“Wencke III”): Where the Court is authorized by statute to provide  
14 the equitable remedy of an injunction, it also has “the authority to award  
15 ancillary equitable relief, including restitution.” *CFTC v. Brockbank*, 505 F.  
16 Supp.2d 1169, 1175 (D. Utah 2007)(internal quotes removed). The goal of  
17 restitution is to restore the status quo and return to investors what is  
18 properly theirs. *Id.* Under the broad discretion afforded district courts, a  
19 plan generally will be upheld if it serves to orderly and efficiently distribute  
20 funds to investors. *CFTC v. Topworth Int’l Ltd.*, 205 F. 3d 1107, 1115 (9<sup>th</sup>  
21 Cir. 1999) Plans for distribution of funds will be reviewed for abuse of  
22 discretion. (*Id.*, at p. 1115-1116)

23           Clearly, the Court’s March 21, 2011 Order Approving Distribution Plan and its  
24 subsequent Orders are well within the Court’s inherent power to provide for the  
25 administration of an investors’ claims procedure to achieve an orderly distribution of  
26 funds to Eligible Claimants in this case to restore, at least partially, that of which they  
27 were defrauded.

1                   Where investors' assets are commingled and the recoverable assets  
2                   in a receivership are insufficient to fully repay the investors, "equality is  
3                   equity." *Cunningham v. Brown*, 265 U.S. 1, 13, 44 S.Ct. 424, 68 L.Ed. 873  
4                   (1924); *U.S. v. Real Property Located at 13328 and 13324 State Highway*  
5                   *75 North, Blaine County, Idaho*, 89 F.3d 551( 9<sup>th</sup> Cir. 1996). Distribution  
6                   of assets on a pro rata basis ensures that investors with substantively similar  
7                   claims to repayment receive proportionately equal distributions. Courts  
8                   have routinely endorsed pro rata distribution plans as an equitable way to  
9                   distribute assets held in receivership in this situation. *S.E.C. v. Forex Asset*  
10                  *Management LLC* 242 F.3d 325, 331-32 (5th Cir. 2001) (affirming pro rata  
11                  distribution even where objecting investors' funds were segregated in a  
12                  separate account and never commingled, noting that whether funds are  
13                  commingled or traceable is "a distinction without a difference"); *SEC v.*  
14                  *Credit Bancorp, Ltd.*, 290 F.3d 80, 88–90 (2d Cir.2002) (finding that pro  
15                  rata distribution is particularly appropriate where funds are commingled  
16                  and investors are similarly situated); *United States v. Durham*, 86 F.3d 70,  
17                  72–73 (5th Cir.1996); *SEC v. Elliott*, 953 F.2d 1560, 1569–70 (11th  
18                  Cir.1992) (finding that tracing is inequitable and approving pro rata  
19                  distribution); *In re Reserve Fund Secs. & Derivative Litig.*, 673 F.Supp.2d  
20                  182, 195–96 (S.D.N.Y.2009); *SEC v. Byers*, 637 F.Supp.2d 166, 176–77  
21                  (S.D.N.Y.2009).

22                  In cases where the aggregate amount of the claims exceeds the funds available for  
23                  distribution, the Court is obligated to "devise a system of equitable priority or pro ration."  
24                  *United States v. Stover*, 93 F.3d 1379 (9th Cir.1996). The courts have "broad authority. . .  
25                  to approve a plan of distribution proposed by [the] receiver" (*S.E.C. v. Byers*, 637 F.  
26                  Supp. 2d 166, 174 (S.D.N.Y. 2009) (citing *S.E.C. v. Credit Bancorp, Ltd.*, 290 F.3d 80,  
27                  82-83 (2d Cir. 2002); *S.E.C. v. Forex Asset Mgmt. LLC*, 242 F.3d 325, 332 (5th Cir.  
28                  2001); *S.E.C. v. Wang*, 944 F.2d 80, 88 (2d Cir. 1991)), and the court has the power to

1 approve any plan as long as it is "fair and reasonable." *Byers*, 637 F. Supp. 2d at 174  
2 (quoting Wang, 944 F.2d at 81); *S.E.C. v. P.B. Ventures*, 1991 WL 269982, at \*2 (E.D.  
3 Pa. Dec. 11, 1991) ("No specific distribution scheme is mandated so long as the  
4 distribution is 'fair and equitable.'") (citation omitted).

5 **B. The Court Has Broad Discretion In Determining the Method of Loss**  
6 **Recovery.**

7 The "Rising Tide Method" of determining the percentage shares of loss which  
8 may be recovered appears to be the method most commonly used (and judicially  
9 approved) for apportioning receivership assets and equalizing the distributions among  
10 investors. See, e.g., *In re Receiver*, No. 3:10-3141-MBS, 2011 WL 2601849, at \*2, \*4  
11 (D.S.C. July 1, 2011); *CFTC v. Lake Shore Asset Management Ltd.*, No. 07 C 3598, 2010  
12 WL 960362, at \*7-10 (N.D.Ill. March 15, 2010); *CFTC v. Equity Financial Group, LLC*,  
13 No. Civ. 04-1512 RBK AMD, 2005 WL 2143975, at \*24-25 (D.N.J. Sept.2, 2005);  
14 *United States v. Cabe*, 311 F.Supp.2d 501, 509-11 (D.S.C.2003); *CFTC v. Hoffberg*, No.  
15 93 C 3106, 1993 WL 441984, at \*2-3 (N.D.Ill. Oct.28, 1993).

16 The "Net Loss Method" is also sometimes used. See, *SEC v. Byers*, 637 F.Supp.2d  
17 166, 182 (S.D.N.Y.2009); *CFTC v. Barki, LLC*, No. 3:09 CV 106-MU, 2009 WL  
18 3839389, at \*2 (W.D.N.C. Nov.12, 2009); *SEC v. AmeriFirst Funding, Inc.*, No. 3:07-  
19 CV-1188-D, 2008 WL 919546, at \*6 (N.D.Tex. March 13, 2008); *CFTC v. Franklin*,  
20 652 F.Supp. 163, 169-70 (W.D.Va.1986). The Net Loss Method is not proposed to be  
21 applied herein. While both the Net Loss (or "money in-money out" or "MIMO") and  
22 Rising Tide methods effect deductions of ROI from a gross claim, the aggregate  
23 percentage of recovery value by an investor receiving ROI ("ROI Recipient") may be  
24 significantly greater by the Net Loss (MIMO) Method than if the "equalizing  
25 percentage" Rising Tide Method were applied. An investor not receiving any ROI ("Non-  
26 ROI Recipient") will have a lesser percentage of recovery if it is from only a Court's  
27 distribution. The Net Loss Method does not purport to "equalize" the percentage of  
28

1 recovery among claimants. It merely recognizes an amount of ROI, with the gross claim  
2 reduced by the ROI amount received. (Compare the Example below for RTM.)  
3

4 **IV. THE REQUESTED ORDERS REGARDING THE CLAIMS PROCEDURE**  
5 **AND DISTRIBUTION PLAN ARE NECESSARY AND PROPER.**

6 **Utilization of “Rising Tide Method.”**

7 The Distribution Plan does not state any specific loss recovery methodology for  
8 determining the applicable percentage share of each Eligible Claim. In an effort to  
9 equalize the percentage of financial benefit that might have been secured by investors  
10 filing claims who received early (priority) distributions from the Defendants, in the form  
11 of interest, profits, return of capital investments, referral fees or other amounts  
12 (collectively “ROI”), to the detriment of the investors who did not receive any payments  
13 of ROI, the Receiver has used the “Rising Tide Method” (“RTM”) to calculate each  
14 Eligible Claimant’s percentage share of the Distribution Fund. This methodology  
15 endeavors to equalize as reasonably practicable the percentage shares of the Eligible  
16 Claimants in recognition of the economic value of the ROI to those receiving it. RTM  
17 reduces the net claim of Eligible Claimants receiving ROI (“ROI Recipients”), possibly  
18 to zero, to account for the percentage value of their priority in receiving these early  
19 distributions. The Distribution Fund will be comprised of all of the funds held by the  
20 Receiver and on deposit in the related CRIS Accounts, less reserves. The approved  
21 business creditors’ claims will be prorated with the Eligible Investors’ claims but are not  
22 subject to the RTM.

23 The “Rising Tide Method” explicitly factors in ROI amounts on a par (dollar for  
24 dollar) with the projected pro-rata share of an investor’s claim. Generally, investors who  
25 received little or no payments during the course of the investment scheme stand to  
26 receive a greater percentage in the current distribution under the Rising Tide Method than  
27 the dollar recoveries by Investors who received larger amounts of ROI. The Receiver  
28 recommends the use of the RTM, based on the following factors:

1 (a) The majority of investor claimants did not receive any payments  
2 from the Defendants, meaning that the RTM would result in larger percentage recoveries  
3 by the majority of the Eligible Claimants;

4 (b) The funds used by Defendants to make ROI payments to investors  
5 were monies invested by later investors, most of whom are current Eligible Claimants;

6 (c) The RTM provides the most equitable and efficient means of  
7 equalizing the claims of those receiving ROI with the claims of investors who did not  
8 receive any return on their investments. If a ROI Recipient will receive a distributive  
9 share from this Distribution Fund, the share will be the same aggregate percentage  
10 distribution (between the ROI and current distribution) as the percentage of recovery by  
11 the "Non-ROI Claimants." To accomplish this parity, the value of the ROI in dollars will  
12 reduce the amount of actual cash to be distributed from the Distribution Fund to the ROI  
13 Recipient, thus diminishing the dollar amount of the current distribution.

14 EXAMPLE: presume the recoverable loss from the Distribution Fund by all  
15 Eligible Claimants will be 4% of their total investment. If the actual value  
16 of the ROI (Early Distribution) recovered by a ROI Recipient currently  
17 equals 3% of the proposed disbursement from the Distribution Fund to all  
18 other Eligible Claimants, a further distribution to this Eligible Claimant  
19 would increase his or her overall recovery percentage (value) from the  
20 defendants' operations to 7%. The ROI Recipient's overall percentage  
21 recovery of 7% exceeds the Non-ROI Recipients by 4%. RTM takes into  
22 account the 4% value of the earlier disbursement by deducting the ROI  
23 received directly from the currently proposed dollar distribution. The  
24 deduction is not a percentage of ROI. In this example, the percentage share  
25 of the Distribution Fund disburseable to the ROI Recipient would be limited  
26 to 1% of her loss. Her aggregate percentage recovery will be 4%, the same  
27 percentage amount as a Non-ROI Claimant. An important caveat to the  
28 foregoing is: to the extent a percentage of investment loss recovery through

ROI exceeds (e.g., 5%) the proposed percentage share of each Eligible Claimant from the Distribution Fund (4%), the claim against the current Distribution Fund will become zero resulting from the dollar for dollar deduction of the ROI from the amount of the proposed prorated distribution. Based on the amount of current distribution, the ROI Recipient will not be receiving any distribution. (See calculations in Exhibit F.)

For the foregoing reasons, and based upon the cases cited above, the Receiver is recommending to the Court it issue an Order approving distributions determined by the "Rising Tide Method," so that the overall percentage loss recovery and the value of distribution to each Eligible Claimant is taken into account and equalized among all Eligible Claimants to the extent reasonably practicable.

**V. RESERVES.**

The Receiver requests the Court to authorize a reserve from the Distribution Fund for the following projected fees and expenses to implement the distribution order and to position the Receivership for closure:

Distribution: Postage forms etc.	\$ 500.00	
Accounting fees-Disbursal	\$ 5,600.00	
Accounting fees-Financial Reports	\$ 4,275.00	
Bank Charges	\$ 1,000.00	
Staff Fees	\$ 3,800.00	
Reserve	\$ 5,000.00	
Receiver Fees	\$ 8,850.00	
<b>SUBTOTAL EST. DISTRIBUTION FEES/EXPENSES:</b>		<b>\$29,025.00</b>
Storage/Electronic Copying	\$ 6,000.00	
Destruction of Documents/CDs	\$ 4,000.00	
<b>SUBTOTAL OF STORAGE/DESTRUCTION:</b>		<b>\$10,000.00</b>
<b>TOTAL EST. DISTRIBUTION FEES/EXPENSES:</b>		<b><u>\$39,025.00</u></b>
<b>COURT FEES:</b>		<b>\$ 1,500.00</b>



1 RESERVE FOR TAX RETURN PREPARATION: \$11,500.00

2 TOTAL RESERVES: FEES AND EXPENSES: \$52,025.00

3 **VI. CONCLUSION.**

4 For all the foregoing reasons, the Court is requested to enter an Order:

5 A. Approving the Fourth Report and Third Account of Receiver in their  
6 entirety;

7 B. Approving Receiver's use of the loss recovery methodology, the  
8 Rising Tide Method, for determining each claimant's damages and their proportionate  
9 share of the funds available for distribution;

10 C. Approving the Receiver's Revised Claims Distribution Report and  
11 authorizing prorated payments from the Distribution Fund of \$700,000 to Eligible  
12 Investors and Eligible Business Creditors (EBC) (collectively, "Eligible Claimants"), in  
13 accordance with the Revised Claims Distribution Report (Exhibit F to Fourth Report);

14 D. Directing the Clerk of the Court to transfer to the Receiver all funds  
15 held in the related CRIS Accounts of Lau, Merriman and Avery.

16 E. Authorizing a reserve for estimated fees, costs and expenses to be  
17 incurred in implementing the Court's distribution instructions and orders in the sum of  
18 \$52,025.00 for storage, electronic copying and destruction of records, in an amount of  
19 \$39,025.00; plus a reserve of \$1,500.00 for Court CRIS Account costs; a reserve of  
20 \$11,500.00 for all closing Qualified Settlement Fund Income Tax Returns by the Tax  
21 Administrator and any related accounting services; all reserves totaling \$52,025.00.

22 F. Such additional orders as the Court may deem necessary and appropriate  
23 to implement the Distribution Plan and regarding the Receiver's duties herein.

24 DATED: May 21, 2014

Respectfully submitted,

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27 RICHARD WEISSMAN  
28 RECEIVER

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**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. No. 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. 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. No. 32) ("Receivership Order").

2. The attached Notice of Motion and Motion for Orders: (1) Approving Receiver's Fourth Report and Third Account ("Fourth Report"); (2) Approving and Denying Investors' Claims; (3) Approving Loss Recovery Methodology; (4) Authorizing Receiver to Pay Approved Investors' and Business Creditors' Claims; (5) Directing Clerk of Court to Disburse Funds to Receiver; (6) Establishing a Reserve Account for Fees and Expenses to Implement the Approved Distribution Plan and For Closing Tax Returns and Related Services; and (7) For Further Instructions to Receiver ("Fourth Report Motion") is based upon the facts and evidence submitted in the Fourth Report and Third Account

1 of Receiver and Declaration of Richard Weissman in Support Thereof, filed concurrently  
2 herewith.

3 3. I prepared the Fourth Report, which describes in detail the activities of the  
4 Receiver and his staff during the period of September 1, 2008 through March 31, 2014,  
5 including without limitation, the Receiver's design and implementation of a Distribution  
6 Plan and claims procedure, and his recommendations regarding the calculations of losses  
7 and the proposed distribution of funds to Eligible Claimants. The Fourth Report, the  
8 Declaration of Richard Weissman and Exhibits A through F to the Fourth Report, are  
9 incorporated in full herein by this reference and made a part hereof.

10 4. For the reasons stated in the Fourth Report, the Court is requested to enter  
11 an Order:

12 A. Approving the Receiver's Fourth Report and Third Account in their  
13 entirety;

14 B. Approving the Receiver's use of the loss recovery methodology known  
15 as the Rising Tide Method, for determining each claimant's damages and their  
16 proportionate share in the funds available for distribution;

17 C. Approving the Receiver's Revised Claims Distribution Report and  
18 authorizing the prorated payments from the Distribution Fund of \$700,000 to Eligible  
19 Investors and Eligible Business Creditors (EBC) (collectively, "Eligible Claimants"), in  
20 accordance with the Revised Claims Distribution Report (Exhibit F to Fourth Report);


21 D. Directing the Clerk of the Court to transfer to the Receiver all of the  
22 funds in the related CRIS Accounts of Lau, Merriman and Avery.

23 E. Authorizing a reserve for estimated fees, costs and expenses to be  
24 incurred in implementing the Court's distribution instructions and orders and for storage,  
25 electronic copying and destruction of records, in an amount of \$39,025.00; plus a reserve  
26 of \$500.00 for Court CRIS Account costs; a reserve of \$11,500.00 for all closing  
27 Qualified Settlement Fund Income Tax Returns by the Tax Administrator and any related  
28 accounting services; all reserves totaling \$51,025.00.

1 F. Such additional orders as the Court may deem necessary and appropriate  
2 to implement the Distribution Plan and regarding the Receiver's duties herein.

3 I declare under penalty of perjury under the laws of the United States of America  
4 and the State of California that the foregoing is true and correct.

5 Executed on May 21, 2014, at Los Angeles, California.

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7  
8 Richard Weissman