

1 KAREN MATTESON, Cal. Bar No. 102103
 Email: mattesonk@sec.gov
 2 DIANA K. TANI, Cal. Bar No. 136656
 Email: tanik@sec.gov
 3 SPENCER E. BENDELL, Cal. Bar No. 181220
 Email: bendells@sec.gov
 4 ROBERT H. CONRRAD, Cal. Bar. No. 199498
 Email: conrradr@sec.gov

5 Attorneys for Plaintiff
 Securities and Exchange Commission
 6 Rosalind Tyson, Acting Regional Director
 Michele Wein Laync, Associate Regional Director
 7 5670 Wilshire Boulevard, 11th Floor
 Los Angeles, California 90036
 8 Telephone: (323) 965-3998
 9 Facsimile: (323) 965-3908

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 CLERK U.S. DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 SANTA ANA

10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA

12 SECURITIES AND EXCHANGE
 13 COMMISSION,

14 Plaintiff,

15 vs.

16 TIMOTHY N. JENSON and TDH
 17 ENTERPRISES, LLC,

18 Defendants.

Case No. SACV 08 - 0241 CJC (MLGx)

COMPLAINT FOR VIOLATIONS OF
 THE FEDERAL SECURITIES LAWS

19 Plaintiff Securities and Exchange Commission ("Commission") alleges as
 20 follows:

21 JURISDICTION AND VENUE

22 1. This Court has jurisdiction over this action pursuant Sections 21(d)(1),
 23 21(d)(2), 21(d)(3)(A), 21(e) and 27 of the Securities Exchange Act of 1934
 24 ("Exchange Act"), 15 U.S.C. §§ 78u(d)(1), 78u(d)(2), 78u(d)(3)(A), 78u(e) &
 25 78aa. Defendants have, directly or indirectly, made use of the means or
 26 instrumentalities of interstate commerce, of the mails, or of the facilities of a
 27 national securities exchange, in connection with the transactions, acts, practices,
 28 and courses of business alleged in this Complaint.

1 6. In carrying out and covering up his fraud, Jenson falsified internal
2 Merisel records, circumvented internal controls, and made material
3 misrepresentations and omissions to Merisel's auditors.

4 7. As a result of his conduct, Jenson violated Sections 10(b), 13(b)(5),
5 and 14(a) of the Exchange Act, 15 U.S.C. §§ 78j(b), 78m(b)(5) & 78n(a), and
6 Rules 10b-5, 13a-14, 13b2-1, 13b2-2, and 14a-9 thereunder, 17 C.F.R. §§ 240.10b-
7 5, 240.13a-14, 240.13b2-1, 240.13b2-2 & 240.14a-9, and aided and abetted
8 Merisel's violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the
9 Exchange Act, 15 U.S.C. §§ 78m(a), 78m(b)(2)(A) & 78m(b)(2)(B), and Rules
10 12b-20, 13a-11, and 13a-13 thereunder, 17 C.F.R. §§ 240.12b-20, 240.13a-11 &
11 240.13a-13. TDH Enterprises, which Jenson controlled, aided and abetted
12 Jenson's violations of Sections 10(b) and 14(a) of the Exchange Act and Rules
13 10b-5 and 14a-9 thereunder, and Merisel's violations of Section 13(a) of the
14 Exchange Act and Rules 12b-20 and 13a-13 thereunder.

15 8. The Commission seeks a permanent injunction and civil penalties
16 against Jenson and TDH Enterprises, as well as an officer and director bar against
17 Jenson.

18 **THE DEFENDANTS**

19 9. **Timothy N. Jenson** resides in Los Alamitos, California. Jenson
20 joined Merisel, Inc. in 1993 as its treasurer, and he became its CFO in 1998. In
21 2000, Jenson became Merisel's executive vice president. In 2001, Jenson became
22 the CEO, president, and a director of Merisel. Jenson resigned from his positions
23 at Merisel effective November 22, 2004.

24 10. **TDH Enterprises, LLC**, is a California limited liability company,
25 controlled by Jenson and located in Los Alamitos, California. Its sole member is
26 the Jenson Family Trust, of which Jenson is the trustee.

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1 **OTHER RELEVANT PARTIES**

2 11. **Merisel, Inc.** is a Delaware corporation that, in 2004, was based in El
3 Segundo, California and was engaged in the software licensing business. At all
4 relevant times, Merisel's common stock was registered pursuant to Section 12(g)
5 of the Exchange Act, 15 U.S.C. §781(g), and was quoted on the Nasdaq National
6 Market.

7 12. **D&H Services, LLC** is a California limited liability company
8 organized in July 2004. D&H Services' sole member is a close friend of Jenson.
9 Jenson controlled D&H Services.

10 **THE FRAUDULENT SCHEME**

11 **JENSON SECRETLY ORCHESTRATES THE SALE OF MERISEL'S SOFTWARE**
12 **LICENSING ASSETS TO AN ENTITY HE CONTROLS**

13 13. As part of its software licensing business, Merisel entered into license
14 agreements with software developers to distribute software to the retail market. In
15 2004, the software licensing business was Merisel's only revenue-generating
16 business. By July 2004, Merisel's primary software supplier notified Merisel that
17 it was discontinuing its business relationship. Accordingly, Merisel's board
18 unanimously authorized Merisel's management to negotiate a sale of the software
19 licensing business with potential purchasers.

20 14. Jenson proposed that Merisel sell the software licensing business to
21 D&H Services, an entity he had recently formed and secretly controlled, based on
22 terms he purportedly negotiated at arm's-length. To ensure his control of D&H
23 Services remained secret, Jenson acted as the sole point of contact between Merisel
24 and D&H Services. In a departure from past practice, Jenson instructed lower
25 level Merisel employees to provide everything to him first, and he would forward
26 the information to the purchaser.

27 15. Jenson acted as an undisclosed D&H Services principal when D&H
28 Services purchased certain assets and assumed certain liabilities from Merisel.

1 Jenson reviewed and/or drafted various internal D&H Services documents,
2 including emails and attachments, such as buyer schedules and purchase price
3 allocations related to the D&H transaction. Jenson forwarded those documents to
4 Merisel's vice president of finance, and falsely told her that D&H Services had
5 sent them to him. Jenson helped find legal counsel to represent D&H Services in
6 the transaction. Jenson continued his control of D&H Services well after the
7 closing date of the D&H transaction, as he continued to draft and/or review
8 documents on behalf of D&H Services.

9 16. As part of the D&H transaction, Merisel would sell its software
10 licensing business (comprised mostly of accounts receivable), a parcel of real
11 estate located in Cary, North Carolina (the "Cary Property"), and a promissory
12 note secured by a building (collectively, the "Software Licensing Assets"), and
13 assign the related liabilities to D&H Services. The purchase price paid by D&H
14 Services would be equal to the Software Licensing Assets' book value less the
15 value of the assumed liabilities. Merisel's board of directors approved the sale
16 under these terms. When the deal closed on August 18, 2004, D&H Services,
17 pursuant to the agreed-upon terms, paid Merisel \$727, which reflected the
18 difference between \$5,785,015 in transferred assets and \$5,784,288 in transferred
19 liabilities. As part of the same agreement, Merisel agreed to pay D&H Services
20 any accounts receivables Merisel subsequently collected on D&H Services' behalf,
21 which eventually amounted to \$1.7 million.

22 17. Jenson took advantage of his position at Merisel to deflate the D&H
23 transaction's purchase price by at least \$2.6 million. Jenson accomplished this by
24 overstating the value of transferred reserves (such as over-accrued bad debt
25 reserves) by about \$900,000 and liabilities (such as accrued expenses for amounts
26 owed, but that Jenson knew were not likely to be collected) by over \$1.7 million.
27 As Merisel's CEO and CFO, Jenson overrode the vice-president of finance with

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1 respect to determining the final book value of the reserves and liabilities
2 transferred to D&H Services.

3 18. In early August, Jenson directed Merisel's vice president of finance
4 not to write down certain liabilities that were being included in the D&H
5 transaction when, by Merisel's own accounting policies, those liabilities had little
6 chance of being paid and would be reversed soon.

7 19. On at least two occasions, Jenson falsified documents in order to
8 cover up his fraudulent scheme. First, Jenson created a memorandum, dated June
9 9, 2004, addressed to Merisel's board of directors, which he used to "paper the
10 file" purportedly disclosing the existence of an agreement that Jenson had entered
11 into on Merisel's behalf to sell the Cary Property to a third party for \$4.4 million.
12 This memorandum, however, was never provided to the board. As a result, as part
13 of the D&H transaction, Merisel's board approved the sale of the Cary Property to
14 D&H Services for its asset book value of about \$900,000.

15 20. Second, Jenson falsified information contained in the August 10, 2004
16 board meeting minutes to reflect that he abstained from the vote to approve the
17 D&H transaction. As assistant corporate secretary, Jenson recorded the meeting
18 minutes. Jenson typically wrote the first draft of the minutes and gave them to a
19 Merisel employee, who did not attend the board meetings, for her to finalize.
20 Jenson inserted the following language in the board minutes concerning the
21 board's vote to approve the D&H transaction: "[a]s advised by outside legal
22 counsel, Mr. Jenson abstained from the vote to avoid any potential conflict of
23 interest." In fact, Jenson did not abstain from the vote.

24 21. Throughout the transaction, Jenson misled Merisel employees and
25 board members to believe that D&H Services, which he in fact controlled, was the
26 same entity as or was affiliated with D&H Distributing Co., Inc., a large
27 distribution company that sold products to Merisel and was also a competitor.
28 Merisel employees often referred to D&H Distributing simply as "D&H." For

1 example, when two outside board members asked Jenson a series of questions
2 about "D&H's" interest in acquiring the Software Licensing Assets, Jenson
3 provided information about D&H Services, such as its role as a distributor for the
4 same software supplier as Merisel, that conflicted with information on D&H
5 Distributing's website. When the board members subsequently questioned him
6 about those conflicts, Jenson falsely claimed that the website was in error.
7 Similarly, Jenson misled other Merisel employees to believe that the D&H
8 Services involved in the D&H transaction was affiliated with D&H Distributing.
9 He routinely referred to D&H Services by the shorthand, "D&H," when he was
10 aware that Merisel personnel routinely referred to D&H Distributing as "D&H."
11 He also told an employee that he thought that his contact at D&H Services was in a
12 "division" other than the one that Merisel typically bought software from and
13 therefore could not be of assistance in resolving an issue that had arisen when
14 D&H Distributing cut off Merisel's credit line.

15 22. Merisel initially disclosed the D&H transaction in a Form 8-K filed
16 with the Commission on August 16, 2004 and also reported it in a Form 8-K filed
17 on August 20, 2004, both of which Jenson signed. Merisel also reported the D&H
18 transaction as a subsequent event in its Form 10-Q filed with the Commission for
19 the quarter ended June 30, 2004, which Jenson also signed. Those filings
20 misrepresented and failed to disclose that Jenson secretly controlled D&H Services
21 and that the D&H transaction was therefore a related party transaction under
22 Generally Accepted Accounting Principles ("GAAP").

23 **JENSON PREVIOUSLY SECRETLY SELLS MERISEL ASSETS TO HIMSELF**

24 23. Jenson's sale of corporate assets in the D&H transaction was not the
25 first time that he sold Merisel assets to himself. Earlier in 2004, Jenson engaged in
26 similar fraudulent conduct involving a dormant Merisel subsidiary called RKM
27 Partners. Specifically, Jenson had (1) acquired \$900,000 in convertible promissory
28 notes on behalf of RKM Partners; (2) sold RKM Partners, which had no liabilities,

1 to TDH Enterprises for just \$1,000; and (3) subsequently assigned the convertible
2 promissory notes and a \$52,350 account receivable from RKM Partners to TDH
3 Enterprises.

4 24. In early 2002, Jenson had been in negotiations with a privately owned
5 automotive braking technology company. Jenson repeatedly told the braking
6 technology company that Merisel had capital to invest and was looking for the
7 right opportunities. Jenson ultimately invested a total of \$900,000 of Merisel's
8 money in the braking technology company. In turn, the braking technology
9 company issued four convertible promissory notes, dated April 25, 2002, April 29,
10 2002, December 31, 2002, and May 19, 2003 (the "notes"), to RKM Partners.
11 Each of those notes accrued interest at a rate of 9% per annum until April 1, 2005,
12 at which point RKM Partners had the option of converting the notes to shares in a
13 new subsidiary to be formed by the braking technology company. Each note also
14 included the following language which was inserted at Jenson's insistence, "RKM
15 Partners, Inc. may assign this note to any affiliate of Merisel, Inc. including its
16 executive officers, at any time, and promptly thereafter shall notify [the braking
17 technology company or its new subsidiary] of the assignment." Jenson signed the
18 notes as president of RKM Partners.

19 25. Jenson caused Merisel to pay \$900,000 for the notes in installments
20 over a period of time in 2002 and 2003. Based on Jenson's representations,
21 however, Merisel recorded the payments as due diligence or consulting expenses.
22 For the first two payments, Jenson initialed or signed wire transfer requests.
23 Jenson falsified two emails to authorize the remaining payments. The first email,
24 dated December 31, 2002, purportedly from a board member to Jenson, provided
25 wire transfer instructions to authorize a \$150,000 payment. Jenson forwarded that
26 email to Merisel's vice president of finance to effectuate a wire transfer and
27 independently told her that the funds were for due diligence expenses. The second
28 email, dated May 19, 2003, purportedly from the same board member to Jenson,

1 provided instructions to wire \$250,000. Jenson sent that email to himself, altered
2 it, printed it out, and provided it to a Merisel employee to effectuate the wire
3 transfer.

4 26. In about May or June 2004, Jenson caused Merisel to sell RKM
5 Partners to his entity, TDH Enterprises, for just \$1,000. Jenson purchased RKM
6 Partners despite having been warned previously by a Merisel paralegal that it
7 would be inappropriate for Jenson, Merisel's CEO, to sell a Merisel subsidiary to
8 his own family member. Moreover, Jenson falsely told the vice president of
9 finance and another Merisel employee that Merisel needed to sell RKM Partners
10 because another company with the same name had threatened to sue Merisel if it
11 did not sell RKM Partners to that company and cease using the RKM Partners
12 name. Jenson never disclosed in any Commission filing or to Merisel's board that
13 he, through TDH Enterprises, had purchased RKM Partners.

14 27. On September 7, 2004, Jenson assigned the notes for which Merisel
15 had paid \$900,000, and a \$52,350 account receivable from RKM Partners to TDH
16 Enterprises. The \$52,350 receivable represented amounts owed by the braking
17 technology company for services Jenson secretly performed for its new subsidiary,
18 consisting of Jenson's preparation of a strategic business plan for that subsidiary
19 while he was still employed by Merisel. On April 9, 2005, the notes were
20 superseded by five new promissory notes issued to TDH Enterprises (the "2005
21 notes") by the same braking technology company for a total amount of \$979,624,
22 which notes included the \$52,350 receivable.

23 28. Jenson never disclosed to anyone at Merisel that he used \$900,000 in
24 Merisel money to invest in the notes or that RKM Partners held those notes. He
25 also never disclosed that he had performed services on behalf of the braking
26 technology company or its subsidiary. Finally, Jenson never disclosed that he
27 purchased RKM Partners through TDH Enterprises and that he

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1 subsequently assigned these notes, purchased with \$900,000 in Merisel funds, to
2 his own company, TDH Enterprises.

3 **JENSON MAKES MATERIAL MISREPRESENTATIONS AND OMISSIONS IN**
4 **COMMISSION FILINGS AND PRESS RELEASES**

5 29. As the CEO and CFO of Merisel, Jenson reviewed, commented on,
6 and approved all Forms 8-K, Forms 10-Q, and proxy statements that Merisel filed
7 with the Commission. Merisel filed Forms 8-K on August 16, August 20, and
8 November 8, 2004, all of which Jenson signed. Jenson also reviewed and
9 commented on a proxy statement that Merisel filed on October 1, 2004.

10 **A. The August 16, 2004 Form 8-K**

11 30. On August 16, Merisel filed a Form 8-K, which disclosed that Merisel
12 entered into an asset purchase agreement with D&H Services regarding the
13 Software Licensing Assets. It also disclosed that the purchase price would equal
14 the book value of the Software Licensing Assets less certain assumed liabilities.
15 The August 16 Form 8-K, however, failed to disclose that Jenson exercised *de*
16 *facto* control of D&H Services. It also failed to disclose that Jenson overstated the
17 value of the reserves and liabilities involved in the D&H transaction by about \$2.6
18 million to Merisel's detriment because those overstatements decreased the
19 purchase price of the Software Licensing Assets. Further, the Form 8-K failed to
20 disclose that Jenson intended to use TDH Enterprises, a company in which he had
21 a beneficial interest, to purchase D&H Services for just \$50,000 after D&H
22 Services acquired the Software Licensing Assets, which included real estate with a
23 book value of about \$900,000, which, in turn, had an outstanding contract for its
24 sale at \$4.4 million.

25 **B. The August 16, 2004 Form 10-Q**

26 31. Also on August 16, Merisel filed its Form 10-Q for the period ended
27 June 30, 2004. Jenson signed that Form 10-Q after reviewing it and providing
28 significant input on the disclosure of the D&H Services transaction. That Form

1 10-Q included a description of the sale of Software Licensing Assets to D&H
2 Services, but did not disclose the related party nature of that sale. Additionally,
3 with respect to the RKM Partners sale, the Form 10-Q failed to disclose that (1)
4 Jenson sold RKM Partners to TDH Enterprises for just \$1,000 even though RKM
5 Partners maintained ownership of the promissory notes for which Merisel had paid
6 \$900,000; and (2) TDH Enterprise's purchase of RKM Partners was a related party
7 transaction. Accompanying that Form 10-Q was a certification as to the absence of
8 untrue statements or omissions of material fact, signed by Jenson as Merisel's
9 principal executive and financial officers.

10 **C. The August 20, 2004 Form 8-K**

11 32. Thereafter, Merisel filed the August 20 Form 8-K, which announced
12 that the sale of Merisel's Software Licensing Assets to D&H Services had been
13 completed. Jenson specifically added the affirmative misrepresentation to this
14 report that D&H Services was "an unrelated third party."

15 **D. The October 1, 2004 Proxy Statement**

16 33. On October 1, 2004, Merisel filed a definitive proxy statement, which
17 Jenson reviewed and approved for filing, that disclosed, among other things, that:

18 There are no material proceedings to which any of our directors or
19 executive officers or any of their associates, is a party adverse to the
20 Company or any of its subsidiaries, or has a material interest to the
21 company or any of its subsidiaries.

22 That disclosure is false in light of Jenson's role in selling the Software Licensing
23 Assets to D&H Services, an undisclosed related party he controlled, and his role in
24 using TDH Enterprises, another undisclosed related party he controlled, to
25 purchase RKM Partners. The proxy statement included no mention of the D&H
26 Services or RKM Partners transactions or Jenson's relationship to them.

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1 **E. The November 8, 2004 Form 8-K**

2 34. Merisel issued a press release announcing its third quarter results on
3 November 5, 2004, and filed a Form 8-K attaching the press release with the
4 Commission three days later. This Form 8-K for the three-month period ended
5 September 30, 2004, failed to disclose Merisel's \$2.6 million loss resulting from
6 the D&H transaction. Although the Form 8-K should have disclosed a net loss of
7 \$3,311,000, it instead reported a \$711,000 net loss, a 78.5% understatement.
8 Similarly, for the nine months ended September 30, 2004, the November 5 press
9 release and November 8 Form 8-K should have reported a net loss of about
10 \$2,633,000, but instead reported a \$33,000 loss, a 99% understatement.

11 **JENSON LIES TO MERISEL'S AUDITORS**

12 35. Jenson signed an August 16, 2004 management representation letter to
13 Merisel's auditors in connection with the filing of the Form 10-Q for the period
14 ended June 30, 2004. Given his role in the D&H transaction and the RKM
15 Partners sale, Jenson knew the letter falsely represented, among other things, that:
16 (1) the interim consolidated financial statements had been prepared and presented
17 in conformity with GAAP; (2) there were no material transactions that had not
18 been properly recorded in the accounting records underlying the interim
19 consolidated financial information; (3) there were no reportable conditions or
20 material weaknesses in the companies' internal controls; (4) Merisel had no
21 knowledge of any fraud involving its management that would have a material
22 effect on the interim consolidated financial statements; (5) related party
23 transactions had been appropriately identified and properly recorded and disclosed
24 in the interim consolidated financial statements; and (6) no events had occurred
25 through the date of the letter that would require disclosure in the interim
26 consolidated financial reports.

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1 **FIRST CLAIM FOR RELIEF**

2 **FRAUD IN CONNECTION WITH THE PURCHASE OR SALE OF SECURITIES**
3 **Violations and Aiding and Abetting Violations of Section 10(b) of the**
4 **Exchange Act and Rule 10b-5 thereunder**
5 **(Against All Defendants)**

6 36. The Commission realleges and incorporates by reference paragraphs 1
7 through 35 above.

8 37. Jenson, by engaging in the conduct described above, directly or
9 indirectly, in connection with the purchase or sale of a security, by the use of
10 means or instrumentalities of interstate commerce, of the mails, or of the facilities
11 of a national securities exchange, with scienter:

- 12 a. employed devices, schemes, or artifices to defraud;
- 13 b. made untrue statements of a material fact or omitted to state a
14 material fact necessary in order to make the statements made,
15 in the light of the circumstances under which they were made,
16 not misleading; or
- 17 c. engaged in acts, practices, or courses of business which
18 operated or would operate as a fraud or deceit upon other
19 persons.

20 38. By engaging in the conduct described above, Jenson violated, and
21 unless restrained and enjoined will continue to violate, Section 10(b) of the
22 Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §
23 240.10b-5.

24 39. TDH knowingly provided substantial assistance to Jenson's violations
25 of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

26 40. By engaging in the conduct described above and pursuant to Section
27 20(e) of the Exchange Act, 15 U.S.C. § 78t(e), TDH aided and abetted Jenson's
28 violations, and unless restrained and enjoined will continue to aid and abet

1 violations, of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule
2 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

3 **SECOND CLAIM FOR RELIEF**

4 **ISSUER REPORTING VIOLATIONS**

5 **Aiding and Abetting Violations of Section 13(a) of the Exchange Act and**
6 **Rules 12b-20, 13a-11, and 13a-13 thereunder**

7 **(Against All Defendants, Except as to Rule 13a-11, Which Is Against**
8 **Defendant Jenson Only)**

9 41. The Commission realleges and incorporates by reference paragraphs 1
10 through 35 above.

11 42. Merisel violated Section 13(a) of the Exchange Act, 15 U.S.C. §
12 78m(a), and Rules 12b-20, 13a-11, and 13a-13 thereunder, 17 C.F.R. §§ 240.12b-
13 20, 240.13a-11, & 240.13a-13, by filing with the Commission materially false and
14 misleading current reports on Form 8-K, filed August 16, 2004, August 20, 2004,
15 and November 8, 2004, and a quarterly report on Form 10-Q for the quarter ended
16 June 30, 2004, filed August 16, 2004.

17 43. Jenson and TDH knowingly provided substantial assistance to
18 Merisel's violations of Section 13(a) of the Exchange Act and Rules 12b-20, and
19 13a-13 thereunder, and Jenson additionally knowingly provided substantial
20 assistance to Merisel's violation of Exchange Act Rule 13a-11.

21 44. By engaging in the conduct described above and pursuant to Section
22 20(e) of the Exchange Act, 15 U.S.C. § 78t(e), Jenson and TDH aided and abetted
23 Merisel's violations, and unless restrained and enjoined will continue to aid and
24 abet violations, of Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), and
25 Rules 12b-20 and 13a-13 thereunder, 17 C.F.R. §§ 240.12b-20 & 240.13a-13, and
26 Jenson aided and abetted Merisel's violations, and unless restrained and enjoined
27 will continue to aid and abet violations of Rule 13a-11, 17 C.F.R. § 240.13a-11.

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1 **THIRD CLAIM FOR RELIEF**

2 **RECORD KEEPING VIOLATIONS**

3 **Aiding and Abetting Violations of Section 13(b)(2)(A) of the Exchange Act**
4 **and Violations of Rule 13b2-1 thereunder**
5 **(Against Defendant Jenson)**

6 45. The Commission realleges and incorporates by reference paragraphs 1
7 through 35 above.

8 46. Merisel violated Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C.
9 § 78m(b)(2)(A), by failing to make or keep books, records and accounts, which, in
10 reasonable detail, accurately and fairly reflected its transactions and disposition of
11 its assets.

12 47. Jenson knowingly provided substantial assistance to Merisel's
13 violation of Section 13(b)(2)(A) of the Exchange Act.

14 48. By engaging in the conduct described above and pursuant to Section
15 20(e) of the Exchange Act, 15 U.S.C. § 78t(e), Jenson aided and abetted Merisel's
16 violations, and unless restrained and enjoined will continue to aid and abet
17 violations, of Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. § 78m(b)(2)(A).

18 49. By engaging in the conduct described above, Jenson violated
19 Exchange Act Rule 13b2-1 by, directly or indirectly, falsifying or causing to be
20 falsified Merisel's books, records, and/or accounts subject to Section 13(b)(2)(A)
21 of the Exchange Act. Unless restrained and enjoined, Jenson will continue to
22 violate Rule 13b2-1, 17 C.F.R. § 240.13b2-1.

23 **FOURTH CLAIM FOR RELIEF**

24 **INTERNAL CONTROLS VIOLATIONS**

25 **Aiding and Abetting Violations of Section 13(b)(2)(B) of the Exchange Act**
26 **(Against Defendant Jenson)**

27 50. The Commission realleges and incorporates by reference paragraphs 1
28 through 35 above.

1 51. Merisel violated Section 13(b)(2)(B) by failing to devise and maintain
2 a system of internal accounting controls sufficient to provide reasonable assurances
3 that:

- 4 a. transactions were executed in accordance with management's
5 general or specific authorization;
- 6 b. transactions were recorded as necessary (I) to permit
7 preparation of financial statements in conformity with generally
8 accepted accounting principles or any other criteria applicable
9 to such statements, and (II) to maintain accountability for
10 assets;
- 11 c. access to assets was permitted only in accordance with
12 management's general or specific authorization; and
- 13 d. the recorded accountability for assets was compared with the
14 existing assets at reasonable intervals and appropriate action
15 was taken with respect to any differences.

16 52. Jenson knowingly provided substantial assistance to Merisel's
17 violations of Section 13(b)(2)(B) of the Exchange Act.

18 53. By engaging in the conduct described above and pursuant to Section
19 20(e) of the Exchange Act, 15 U.S.C. § 78t(e), Jenson aided and abetted Merisel's
20 violations, and unless restrained and enjoined will continue to aid and abet
21 violations, of Section 13(b)(2)(B) of the Exchange Act, 15 U.S.C. § 78m(b)(2)(B).

22 **FIFTH CLAIM FOR RELIEF**

23 **CIRCUMVENTION OF INTERNAL CONTROLS AND FALSIFICATION OF RECORDS**

24 **Violations of Section 13(b)(5) of the Exchange Act**

25 **(Against Defendant Jenson)**

26 54. The Commission realleges and incorporates by reference paragraphs 1
27 through 35 above.

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1 55. Jenson, by engaging in the conduct described above, knowingly
2 circumvented or knowingly failed to implement a system of internal accounting
3 controls, or knowingly falsified books, records, or accounts described in Section
4 13(b)(2) of the Exchange Act.

5 56. By engaging in the conduct described above, Jenson violated, and
6 unless restrained and enjoined, will continue to violate, Section 13(b)(5) of the
7 Exchange Act, 15 U.S.C. § 78m(b)(5).

8 **SIXTH CLAIM FOR RELIEF**

9 **VIOLATIONS OF CERTIFICATION REQUIREMENTS**

10 **Violations of Exchange Act Rule 13a-14**

11 **(Against Defendant Jenson)**

12 57. The Commission realleges and incorporates by reference paragraphs 1
13 through 35 above.

14 58. Jenson, by engaging in the conduct described above, in signing the
15 certifications included with Merisel's Form 10-Q for the quarter ended June 30,
16 2004, filed August 16, 2004, falsely certified, among other things, that: (1) the
17 report did not contain any untrue statement of material fact or omit to state a
18 material fact necessary to make the statements made, in light of the circumstances
19 under which such statements were made, not misleading; and (2) the financial
20 statements and other financial information included in the Form fairly presented, in
21 all material respects, the financial condition, results of operations, and cash flows
22 of Merisel.

23 59. By engaging in the conduct described above, Jenson violated, and
24 unless restrained and enjoined will continue to violate, Exchange Act Rule 13a-14,
25 17 C.F.R. § 240.13a-14.

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2 **SEVENTH CLAIM FOR RELIEF**
3 **FALSE STATEMENTS TO ACCOUNTANTS**
4 **Violations of Exchange Act Rule 13b2-2**
5 **(Against Defendant Jenson)**

6 60. The Commission realleges and incorporates by reference paragraphs 1
7 through 35 above.

8 61. Jenson, by engaging in the conduct described above, directly or
9 indirectly:

10 a. made or caused to be made a materially false or misleading
11 statement to an accountant in connection with; or

12 b. omitted to state, or caused another person to omit to state, a
13 material fact necessary in order to make statements made, in
14 light of the circumstances under which such statements were
15 made, not misleading, to an accountant in connection with:

16 i. an audit, review or examination of the financial
17 statements of the issuer required to be made pursuant to
18 this subpart; or

19 ii. the preparation or filing of any document or report
20 required to be filed with the Commission.

21 62. By engaging in the conduct described above, Jenson violated, and
22 unless restrained and enjoined, will continue to violate, Exchange Act Rule 13b2-
23 2, 17 C.F.R. § 240.13b2-2.

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1 **EIGHTH CLAIM FOR RELIEF**

2 **VIOLATIONS OF PROXY SOLICITATION REQUIREMENTS**

3 **Violations and Aiding and Abetting Violations of Section 14(a) of the**

4 **Exchange Act and Rule 14a-9 thereunder**

5 **(Against All Defendants)**

6 63. The Commission realleges and incorporates by reference paragraphs 1
7 through 35 above.

8 64. Jenson, by engaging in the conduct described above, engaged in
9 solicitations by means of a proxy statement, form of proxy, notice of meeting or
10 other communication, written or oral, that contained a statement which, at the time
11 and in light of the circumstances under which it was made, was false or misleading
12 with respect to a material fact, or which omitted to state a material fact necessary
13 in order to make the statements therein not false or misleading.

14 65. By engaging in the conduct described above, Jenson violated, and
15 unless restrained and enjoined will continue to violate, Section 14(a) of the
16 Exchange Act, 15 U.S.C. § 78n(a), and Rule 14a-9 thereunder, 17 C.F.R. §
17 240.14a-9.

18 66. TDH knowingly provided substantial assistance to Jenson's violation
19 of Section 14(a) of the Exchange and Rule 14a-9 thereunder.

20 67. By engaging in the conduct described above and pursuant to Section
21 20(e) of the Exchange Act, 15 U.S.C. § 78t(e), TDH aided and abetted Jenson's
22 violations, and unless restrained and enjoined will continue to aid and abet
23 violations, of Section 14(a) of the Exchange Act, 15 U.S.C. § 78n(a), and Rule
24 14a-9 thereunder, 17 C.F.R. § 240.14a-9.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, the Commission respectfully requests that the Court:

3 **I.**

4 Issue findings of fact and conclusions of law that the Defendants committed
5 the alleged violations.

6 **II.**

7 Issue a judgment, in a form consistent with Fed. R. Civ. P. 65(d),
8 permanently enjoining Defendant Jenson and his agents, servants, employees, and
9 attorneys, and those persons in active concert or participation with any of them,
10 who receive actual notice of the judgment by personal service or otherwise, and
11 each of them, from violating Sections 10(b), 13(b)(5), and 14(a) of the Exchange
12 Act, 15 U.S.C. §§ 78j(b), 78m(b)(5), & 78n(a), and Rules 10b-5, 13a-14, 13b2-1,
13 13b2-2, and 14a-9 thereunder, 17 C.F.R. §§ 240.10b-5, 240.13a-14, 240.13b2-1,
14 240.13b2-2, & 240.14a-9, and from aiding and abetting violations of Sections
15 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act, 15 U.S.C. §§ 78m(a),
16 78m(b)(2)(A), & 78m(b)(2)(B), and Rules 12b-20, 13a-11, and 13a-13 thereunder,
17 17 C.F.R. §§ 240.12b-20, 240.13a-11, & 240.13a-13.

18 **III.**

19 Issue a judgment, in a form consistent with Fed. R. Civ. P. 65(d),
20 permanently enjoining TDH and its officers, agents, servants, employees, and
21 attorneys, and those persons in active concert or participation with any of them,
22 who receive actual notice of the judgment by personal service or otherwise, and
23 each of them, from violating Sections 10(b) and 14(a) of the Exchange Act, 15
24 U.S.C. §§ 78j(b) & 78n(a), and Rules 10b-5 and 14a-9 thereunder, 17 C.F.R. §§
25 240.10b-5 & 240.14a-9, and aiding and abetting violations of Section 13(a) of the
26 Exchange Act, 15 U.S.C. § 78m(a), and Rules 12b-20 and 13a-13 thereunder, 17
27 C.F.R. §§ 240.12b-20 & 240.13a-13.

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IV.

Order Defendant Jenson to pay a civil penalty pursuant to Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

V.

Enter an order, pursuant to Section 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2), barring Jenson from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act, 15 U.S.C. §78l, or that is required to file reports pursuant to Section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d).

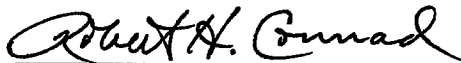
VI.

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

VII.

Grant such other and further relief as this Court may determine to be just and necessary.

DATED: March 4, 2008



Robert H. Conrad
Attorney for Plaintiff
Securities and Exchange Commission