

1 JINA L. CHOI (N.Y. Bar No. 2699718)  
JOHN S. YUN (Cal. Bar No. 112260)  
2 yunj@sec.gov  
MARC D. KATZ (Cal. Bar No. 189534)  
3 katzma@sec.gov  
JESSICA W. CHAN (Cal. Bar No. 247669)  
4 chanjes@sec.gov

5 Attorneys for Plaintiff  
SECURITIES AND EXCHANGE COMMISSION  
6 44 Montgomery Street, Suite 2800  
San Francisco, CA 94104  
7 Telephone: (415) 705-2500  
Facsimile: (415) 705-2501  
8  
9

10  
11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 SAN FRANCISCO DIVISION

14 SECURITIES AND EXCHANGE COMMISSION,

Case No. 3:16-cv-01386-EMC

15 Plaintiff,

**[PROPOSED] FINAL JUDGMENT OF  
PERMANENT INJUNCTIONS AND  
OTHER RELIEF AGAINST DEFENDANT  
FRANK GREGORY MAZZOLA AND  
RELIEF DEFENDANT MICHELE J.  
MAZZOLA**

16 v.

17 JOHN V. BIVONA; SADDLE RIVER  
18 ADVISORS, LLC; SRA MANAGEMENT  
ASSOCIATES, LLC; FRANK GREGORY  
19 MAZZOLA,

20 Defendants, and

21 SRA I LLC; SRA II LLC; SRA III LLC;  
22 FELIX INVESTMENTS, LLC; MICHELE  
J. MAZZOLA; ANNE BIVONA; CLEAR  
23 SAILING GROUP IV LLC; CLEAR  
SAILING GROUP V LLC,

24 Relief Defendants.  
25  
26  
27  
28

1 The Securities and Exchange Commission having filed a Complaint and Defendant Frank G.  
2 Mazzola and Relief Defendant Michele J. Mazzola having entered a general appearance; consented to  
3 the Court’s jurisdiction over Defendant and Relief Defendant and the subject matter of this action;  
4 consented to entry of this Final Judgment without admitting or denying the allegations of the  
5 Complaint (except as to jurisdiction and except as otherwise provided herein in paragraph VIII);  
6 waived findings of fact and conclusions of law; and waived any right to appeal from this Final  
7 Judgment:

8 I.

9 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Frank Mazzola  
10 is permanently restrained and enjoined from violating Section 5 of the Securities Act of 1933 (the  
11 “Securities Act”) [15 U.S.C. § 77e], by, directly or indirectly, in the absence of any applicable  
12 exemption:

13 (a) Unless a registration statement is in effect as to a security, making use of any means or  
14 instruments of transportation or communication in interstate commerce or of the mails to sell such  
15 security through the use or medium of any prospectus or otherwise; or

16 (b) Making use of any means or instruments of transportation or communication in  
17 interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any  
18 prospectus or otherwise any security, unless a registration statement has been filed with the  
19 Commission as to such security, or while the registration statement is the subject of a refusal order or  
20 stop order or (prior to the effective date of the registration statement) any public proceeding or  
21 examination under Section 8 of the Securities Act [15 U.S.C. § 77h].

22 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal  
23 Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive  
24 actual notice of this Final Judgment by personal service or otherwise: (a) Defendant’s officers,  
25 agents, servants, employees, and attorneys; and (b) other persons in active concert or participation  
26 with Defendant or with anyone described in (a).

## II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from directly or indirectly violating Section 203(f) of the Investment Advisers Act of 1949 (“Advisers Act”) [15 U.S.C. § 80b-3(f)] by willfully becoming associated with an investment adviser without the consent of the Commission while an order barring him from being associated with an investment adviser is in effect.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant’s officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

## III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from directly or indirectly violating Section 15(b)(6)(B)(i) of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. § 78o(b)(6)(B)(i)] by willfully becoming associated with a broker or dealer in contravention of an order by the Commission to bar him from being associated with a broker or dealer.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant’s officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

## IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from directly or indirectly violating the Commission’s Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial

1 Sanctions, instituted on March 20, 2014, in *In the Matter of Frank Mazzola and Felix Investments,*  
2 *LLC*, Administrative Proceeding File No. 3-15807.

3 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal  
4 Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive  
5 actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers,  
6 agents, servants, employees, and attorneys; and (b) other persons in active concert or participation  
7 with Defendant or with anyone described in (a).

8 V.

9 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Relief Defendant Michele  
10 Mazzola shall pay, jointly and severally with Defendant Frank Mazzola and Defendant John Bivona,  
11 disgorgement in the amount of \$1,800,000.00, representing profits gained as a result of the conduct  
12 alleged in the Complaint. Relief Defendant shall satisfy this obligation by paying \$1,800,000, within  
13 thirty calendar days from the entry of this Final Judgment, by check, United States Postal money  
14 order, or electronic payment, to the Receiver, Sherwood Partners, Inc. The Receiver shall hold the  
15 disgorgement amounts in a separately identified account, pending further orders by the Court.

16 Relief Defendant shall simultaneously transmit photocopies of evidence of payment and case  
17 identifying information to the Commission's counsel in this action. By making this payment, Relief  
18 Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the  
19 funds shall be returned to Relief Defendant.

20 The Commission may enforce the Court's judgment for disgorgement and prejudgment  
21 interest by moving for civil contempt (and/or through other collection procedures authorized by law)  
22 at any time after thirty days following entry of this Final Judgment. Relief Defendant shall pay post  
23 judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

24 VI.

25 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant  
26 Frank Mazzola is liable for disgorgement of \$4,655,000, representing profits gained as a result of the  
27 conduct alleged in the Complaint, which is joint and several with Defendant John Bivona, and  
28

1 \$1,800,000 of which is joint and several with Relief Defendant Michele Mazzola. Defendant shall  
2 satisfy this obligation by paying \$4,655,000, within thirty calendar days from the entry of this Final  
3 Judgment, by check, United States Postal money order, or electronic payment, to the Receiver,  
4 Sherwood Partners, Inc. The Receiver shall hold the disgorgement amounts in a separately identified  
5 account, pending further orders by the Court.

6 Defendant shall simultaneously transmit photocopies of evidence of payment and case  
7 identifying information to the Commission's counsel in this action. By making this payment,  
8 Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the  
9 funds shall be returned to Defendant.

10 The Commission may enforce the Court's judgment for disgorgement and prejudgment  
11 interest by moving for civil contempt (and/or through other collection procedures authorized by law)  
12 at any time after thirty days following entry of this Final Judgment. Defendant shall pay post  
13 judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

14 VII.

15 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant  
16 Frank Mazzola is liable for a civil penalty in the amount of \$200,000 pursuant to Section 20(d) of the  
17 Securities Act [15 U.S.C. §77t(d)], Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)], and  
18 Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)]. Defendant shall satisfy this obligation by  
19 paying \$200,000 to the Securities and Exchange Commission within thirty calendar days after entry  
20 of this Final Judgment.

21 Defendant may transmit payment electronically to the Commission, which will provide  
22 detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a  
23 bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>.  
24 Defendant may also pay by certified check, bank cashier's check, or United States postal money  
25 order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

26 Enterprise Services Center

27 Accounts Receivable Branch

28

1 6500 South MacArthur Boulevard

2 Oklahoma City, OK 73169

3 and shall be accompanied by a letter identifying the case title, civil action number, and name of this  
4 Court; Frank G. Mazzola as a defendant in this action; and specifying that payment is made pursuant  
5 to this Final Judgment.

6 Defendant shall simultaneously transmit photocopies of evidence of payment and case  
7 identifying information to the Commission's counsel in this action. By making this payment,  
8 Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the  
9 funds shall be returned to Defendant.

10 The Commission may enforce the Court's judgment for disgorgement and prejudgment  
11 interest by moving for civil contempt (and/or through other collection procedures authorized by law)  
12 at any time after thirty days following entry of this Final Judgment. Defendant shall pay post  
13 judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961. The Commission shall  
14 hold the funds, together with any interest and income earned thereon (collectively, the "Fund"),  
15 pending further order of the Court.

16 The Commission may propose a plan to distribute the Fund subject to the Court's approval.  
17 Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of  
18 Section 308(a) of the Sarbanes-Oxley Act of 2002. The Court shall retain jurisdiction over the  
19 administration of any distribution of the Fund. If the Commission staff determines that the Fund will  
20 not be distributed, the Commission shall send the funds paid pursuant to this Final Judgment to the  
21 United States Treasury.

22 Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as  
23 civil penalties pursuant to this Judgment shall be treated as penalties paid to the government for all  
24 purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Defendant  
25 shall not, after offset or reduction of any award of compensatory damages in any Related Investor  
26 Action based on Defendant's payment of disgorgement in this action, argue that he is entitled to, nor  
27 shall he further benefit by, offset or reduction of such compensatory damages award by the amount of  
28

1 any part of Defendant’s payment of a civil penalty in this action (“Penalty Offset”). If the court in  
2 any Related Investor Action grants such a Penalty Offset, Defendant shall, within 30 days after entry  
3 of a final order granting the Penalty Offset, notify the Commission’s counsel in this action and pay  
4 the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission  
5 directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to  
6 change the amount of the civil penalty imposed in this Judgment. For purposes of this paragraph, a  
7 “Related Investor Action” means a private damages action brought against Defendant by or on behalf  
8 of one or more investors based on substantially the same facts as alleged in the Complaint in this  
9 action.

10 VIII.

11 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, solely for purposes of  
12 exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the  
13 allegations in the complaint are true and admitted by Defendant and Relief Defendant, and further,  
14 any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant  
15 and Relief Defendant under this Final Judgment or any other judgment, order, consent order, decree  
16 or settlement agreement entered in this proceeding, is a debt for the violation by Defendant of the  
17 federal securities laws or any regulation or order issued under such laws, as set forth in Section  
18 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

19 IX.

20 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain  
21 jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

22  
23 IT IS SO ORDERED.

24  
25 Dated: 12/22, 2017



