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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

JOHN V. BIVONA et al.,

Defendants.

Case No. 16-cv-01386-EMC

**ORDER GRANTING TEMPORARY
RESTRAINING ORDER, APPOINTMENT OF
INDEPENDENT MONITOR, AND OTHER
PRELIMINARY RELIEF**

**[Court's modifications to the Order is in yellow
highlight]**

Docket No. 4

This matter came before the Court on March 23, 2016, upon the Motion of Plaintiff Securities and Exchange Commission (the "SEC" or the "Commission") for a Temporary Restraining Order. The Court, having considered: (1) the Complaint filed by the Commission in this action; (2) the Commission's Motion for Temporary Restraining Orders, Asset Freezes, Appointment of a Monitor and Other Relief; (3) other documentation supporting the SEC's motion; (4) the response submitted by defendants John V. Bivona and Saddle River Advisors, LLC and relief defendant, Anne Bivona; and arguments made during the proceedings before the Court, finds that:

A. This Court has jurisdiction over the subject matter of this action, and as to all parties, defendants and relief defendants, and venue properly lies in this District.

B. The Commission has made a sufficient and proper showing in support of the relief granted herein, as required by Section 20(b) of the Securities Act of 1933 ("Securities Act") (15 U.S.C. § 77t(b)), Section 21(d) of the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. § 78u(b)), and Section 209 of the Investment Advisers Act ("Advisers Act") (15 U.S.C. §§ 80b-9) by evidence establishing a prima facie case and a reasonable likelihood of prevailing on its claims that

1 John V. Bivona, Saddle River Advisors, LLC (“Saddle River”), and SRA Management Associates,
2 LLC (“SRA Management”) have engaged in, are engaging in, are about to engage in, and will
3 continue to engage in, unless restrained and enjoined by order of this Court, transactions, acts,
4 practices and courses of business that constitute violations of Section 17(a) of the Securities Act (15
5 U.S.C. § 77q(a)); Section 10(b) of the Exchange Act of 1934 (15 U.S.C. § 78j(b)) and Rule 10b-5
6 thereunder (17 C.F.R. § 240.10b-5); and Sections 206(1), (2), and (4) of the Advisers Act (15 U.S.C.
7 §§80b–6(1), 80b–6(2) and 80b–6 (4)) and Rule 206(4)–8 thereunder (17 C.F.R. §275.206 (4)–8), and
8 that defendant Frank Mazzola and relief defendants Michele Mazzola and Anne Bivona, Felix
9 Investments, LLC (“Felix Investments”), SRA I, LLC, SRA II, LLC, SRA III, LLC (collectively, “the
10 SRA Funds”), and Clear Sailing Group IV, LLC and Clear Sailing Group V, LLC (together, “Clear
11 Sailing”) are in possession of the proceeds of those violations and have been unjustly enriched by
12 such receipt.

13 C. Good cause exists for the relief set forth below.

14 IT IS THEREFORE ORDERED that the SEC’s Motion for a Temporary Restraining Order is
15 GRANTED.

16 **I. Obey-the-Law Injunction**

17 IT IS FURTHER ORDERED that defendants John Bivona, Saddle River, and SRA
18 Management, hereby are temporarily restrained and enjoined from, directly or indirectly, violating the
19 anti-fraud provisions of the federal securities laws alleged against them, namely Section 17(a) of the
20 Securities Act (15 U.S.C. § 77q(a)); Section 10(b) of the Exchange Act of 1934 (15 U.S.C. § 78j(b))
21 and Rule 10b-5 thereunder (17 C.F.R. § 240.10b-5); and Sections 206(1), (2), and (4) of the Advisers
22 Act (15 U.S.C. §§80b–6(1), 80b–6(2) and 80b–6 (4)) and Rule 206(4)–8 thereunder (17 C.F.R.
23 §275.206 (4)–8).

24 **II. Injunction Against Soliciting to Purchase Any Interest in any Fund**

25 IT IS FURTHER ORDERED that defendants John Bivona, Saddle River, and SRA
26 Management, and their agents, servants, employees, attorneys, and those persons in active concert or
27 participation with any of them, until further order of this Court are temporarily restrained and
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1 enjoined from directly or indirectly soliciting any person or entity to purchase any membership
 2 interest in any fund unless approved by the Independent Monitor as set forth herein.

3 **III. Order Not to Dissipate Certain Assets – Anne Bivona**

4 IT IS FURTHER ORDERED that relief defendant Anne Bivona shall identify within seven
 5 (7) days of the date of this order an account, or accounts, that contains at least \$999,667, and must
 6 preserve and not dissipate \$999,667, unless and until there is a further order of this Court.

7 **IV. Asset Freeze – Frank Mazzola and Michele Mazzola**

8 IT IS FURTHER ORDERED that, except as otherwise ordered by this Court, an immediate
 9 freeze shall be placed on all monies and assets in all personal accounts at any bank, financial
 10 institution or brokerage firm, or third-payment payment processor, all certificates of deposit, and
 11 other funds or assets, held in the name of, for the benefit of, or over which account authority is held
 12 by defendant Frank Mazzola and relief defendant Michele Mazzola, including but not limited to, the
 13 accounts listed below:

Account Holder	Financial Institution	Account Number
FRANK G MAZZOLA (CHECKING)	Wells Fargo Bank	XXXXXX9095
FRANK G MAZZOLA (SAVING)	Wells Fargo Bank	XXXXXX9130
FRANK G MAZZOLA (CHECKING)	Wells Fargo Bank	XXXXXX5073
FRANK MAZZOLA (SAVING)	Wells Fargo Bank	XXXXXX5090
FRANK G MAZZOLA (CHECKING)	Wells Fargo Bank	XXXXXX3000
FRANK MAZZOLA	PNC Bank	XXXXXX0254
MICHELE MAZZOLA (RESERVE)	PNC Bank	XXXXXX6025
MICHELE MAZZOLA (SPEND)	PNC Bank	XXXXXX6017
MICHELE MAZZOLA (GROWTH)	PNC Bank	XXXXXX6033
MICHELE MAZZOLA (In Care of Minor Child)	PNC Bank	XXXXXX0521
MICHELE MAZZOLA (In Care of Minor Child)	PNC Bank	XXXXXX0599
MICHELE MAZZOLA (In Care of Minor Child)	PNC Bank	XXXXXX0564
MICHELE MAZZOLA (In Care of Minor Child)	PNC Bank	XXXXXX0548

1 Any bank, financial institution or brokerage firm, or third-party payment processor holding
2 such monies and assets described above, who receives actual notice of this Order, by personal service
3 or otherwise, including facsimile transmissions, electronic mail, or overnight delivery service, shall
4 hold and retain within its control and prohibit the withdrawal, removal, transfer or other disposal of
5 any such funds or other assets except as otherwise ordered by this Court.

6 IT IS FURTHER ORDERED that, except as otherwise ordered by this Court:

7 Defendant Frank Mazzola and relief defendant Michele Mazzola, who own the residence at
8 319 Cove Drive, Mantoloking, NJ 08738, (the “Vacation Home”), are prohibited from encumbering
9 the Vacation Home, and in the event of the sale of the Vacation Home, are prohibited from the
10 disbursement of any proceeds from the sale, except to William Kennedy Jr., as the private party
11 mortgage lender for the Vacation Home, state and local government agencies for accrued taxes and
12 fees, the title company for its escrow fees and charges, and the brokerage firms for their accrued
13 commissions and fees.

14 **V. Production Regarding Shares Being Held for the SRA Funds**

15 IT IS FURTHER ORDERED that, within seven (7) day of this order, defendants John Bivona,
16 Saddle River, and SRA Management shall produce to the SEC all agreements between Clear Sailing
17 and sellers of the shares or “economic interests” in those shares, confirming the SRA Funds’
18 ownership of shares or “economic interests” in those shares as allocated to SRA Funds’ investors.

19 **VI. Expedited Discovery-The Status of the Entities and Related Shares/Economic**
20 **Interests**

21 IT IS FURTHER ORDERED that, commencing with the time and date of this Order, the SEC
22 may proceed with expedited discovery on the following subject matters: (1) the current condition of
23 Saddle River, SRA Management, and the SRA Funds, including any assets owned and that have been
24 transferred; and (2) Clear Sailing, and the assets they are holding on behalf of any funds that are
25 associated or affiliated with John Bivona or Saddle River, including, but not limited to, the SRA
26 Funds.
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1 **VII. Evidence Preservation**

2 IT IS FURTHER ORDERED that, except as otherwise ordered by this Court, each of the
 3 defendants, John Bivona, Saddle River, SRA Management, and Frank Mazzola, and the relief
 4 defendants, the SRA Funds, Felix Investments, Michele Mazzola, Anne Bivona, and Clear Sailing,
 5 and their officers, agents, servants, employees, attorneys, subsidiaries, and affiliates, and those
 6 persons in active concert or participation with any of them, who receive actual notice of this Order,
 7 by personal service or otherwise, and each of them, be and hereby are restrained and enjoined from,
 8 directly or indirectly: destroying, mutilating, concealing, transferring, altering, or otherwise disposing
 9 of, in any manner, any documents, which includes all books, records, computer programs, computer
 10 files, computer printouts, contracts, emails, correspondence, memoranda, brochures, or any other
 11 documents of any kind in their possession, custody or control, however created, produced, or stored
 12 (manually, mechanically, electronically, or otherwise), pertaining in any manner to any of the
 13 defendants or relief defendants.

14 **VIII. Appointment of An Independent Monitor**

15 IT IS FURTHER ORDERED that Michael A. Maily of Sherwood Partners, 1100 La Avenida
 16 Street, Building A, Mountain View, CA 94043, Telephone: 650-454-8001 is hereby appointed to act
 17 as an Independent Monitor for Saddle River, SRA Management, the SRA Funds, Clear Sailing, and
 18 Felix Investments as follows:

19 **Independent Monitor – Responsibilities and Duties**

20 The Independent Monitor shall be empowered to:

- 21 1. Have full and complete access to Saddle River, SRA Management, the SRA
 22 Funds', Clear Sailing book and records;
- 23 2. Have full and complete access to Saddle River's, SRA Management's, the SRA
 24 Funds', and Clear Sailing's principals, officers, employees, agents, consultants, or
 25 anyone else who is otherwise associated with those entities to carry out the
 26 Independent Monitor's assignment.
- 27 3. Review and monitor all proposed purchases and sales of securities or interests in
 28 securities by Saddle River, SRA Management, the SRA Funds, Clear Sailing and

1 to object to any purchase or sale that the Independent Monitor determines is not in
2 the best interests of the SRA Funds and its investors.

- 3 4. Enter into the offices and premises of Saddle River, SRA Management, the SRA
4 Funds, or Clear Sailing.
- 5 5. Review and monitor all proposed transfers of money or assets by Saddle River,
6 SRA Management, the SRA Funds, or Clear Sailing and to object to any transfer
7 of money or assets that the Independent Monitor determines is not in the best
8 interests of the SRA Funds and its investors.
- 9 6. Identify and locate all money, assets, securities and interests in securities held by,
10 or for the benefit of, Saddle River, SRA Management, the SRA Funds or Clear
11 Sailing.
- 12 7. Identify all investors in the SRA Funds and determine whether those investors
13 have received the securities or economic interests in securities that the investors
14 have paid for.
- 15 8. Identify all debts, accounts payable, liabilities and unpaid obligations of the SRA
16 Funds.
- 17 9. Review and monitor all bills or invoices sent to Saddle River, SRA Management,
18 the SRA Funds, or Clear Sailing and expenditures that Saddle River, SRA
19 Management, the SRA Funds, or Clear Sailing intends to make and to object to
20 any expenditure that the Independent Monitor determines is not in the best
21 interests of the SRA Funds and its investors.
- 22 10. Apply to the Court for an order compelling compliance with this Order or seeking
23 a modification of this Order.

24 **Independent Monitor – Payment**

25 Saddle River and SRA Management shall pay, upon approval of this Court as set forth below,
26 the reasonable costs, fees and expenses of the Independent Monitor incurred in connection with the
27 performance of the respective powers and duties described herein, including, but not limited to, the
28 reasonable costs, fees, and expenses of all persons retained by the Independent Monitor with the

1 Court's approval to assist in carrying out the Independent Monitor's powers and duties. All
2 applications for costs, fees and expenses of the Independent Monitor and those employed by the
3 Independent Monitor, including but not limited to any attorney or accountant retained by the
4 Independent Monitor, shall be made by application to the Court, with notice to all parties and an
5 opportunity to be heard, setting forth in reasonable detail the nature of such costs, fees, and expenses.
6 The Monitor is directed to be as economical as is reasonably possible in performing the duties set for
7 herein, including by assigning staff located in the New York region, if possible and practical, to
8 minimize the costs and expenses incurred.

9 **Independent Monitor – Limitation on Liability**

10 The Independent Monitor shall not be responsible for the operation of Saddle River, SRA
11 Management, the SRA Funds or Clear Sailing or for the preservation or sale of any assets. The
12 Independent Monitor shall have all of the immunities afforded to a court-appointed receiver in a
13 federal action. The Independent Monitor and all persons who may be engaged or employed by the
14 Independent Monitor to assist him in carrying out his duties or obligations hereunder shall not be
15 liable for any act or omission of the Independent Monitor or such person, respectively, or any of their
16 partners, employees, agents or attorneys, unless it shall be proven that the Independent Monitor or
17 such other person acted recklessly or in bad faith. In particular, the Independent Monitor shall not,
18 under any circumstances, be liable for any losses in connection with any of the Saddle River's or
19 SRA Management's investment funds, including but not limited to the SRA Funds and Clear Sailing,
20 arising out of or related to the Independent Monitor's work hereunder, including, but not limited to,
21 losses from either the sale or failure to sell securities or delays in the sale of securities during the
22 course of the Independent Monitor's term. No claim may be filed against the Independent Monitor
23 without first obtaining Court approval to file such an action. This provision shall apply to claims
24 based on conduct during the term of any agreement that may be entered into between the Independent
25 Monitor and any other person who may be engaged or employed by the Independent Monitor
26 hereunder, even if such claims are filed after the termination of such agreement.

27 **Independent Monitor – Indemnification**

28 Saddle River and SRA Management shall indemnify, defend and hold harmless the

1 Independent Monitor and his/her/its agents, employees, consultants, successors, and assigns, from
2 and against all actions (pending or threatened and whether at law or in equity in any forum),
3 liabilities, damages, losses, costs, and expenses, including but not limited to reasonable attorneys' and
4 other professionals' fees, arising from the conduct or omission of the Independent Monitor or
5 his/her/its agents, employees and consultants under the terms of this Order, except for any such
6 conduct or omission adjudged by the Court to be the result of gross negligence or willful misconduct.

7 **Independent Monitor – Access**

8 John V. Bivona, Saddle River, SRA Management, the SRA Funds and Clear Sailing and their
9 respective principals, officers, directors, equity holders, agents, servants, employees, and attorneys,
10 shall provide to the Independent Monitor and any other person engaged or employed by the
11 Independent Monitor hereunder with the access to their premises, persons, and information as
12 reasonably requested by the Independent Monitor in connection with his/her/its powers and duties
13 under this Order; shall provide all reasonable cooperation to the Independent Monitor and any other
14 person engaged or employed by the Independent Monitor in carrying out the powers and duties
15 herein; and shall take no action, directly or indirectly, to hinder, obstruct, delay or otherwise interfere
16 in any manner with the actions of the Independent Monitor or any other person engaged or employed
17 by the Independent Monitor to assist in carrying out the powers and duties herein. The Independent
18 Monitor may authorize any party or party representative to accompany and assist the Independent
19 Monitor in carrying out the Independent Monitor's duties.

20 **Independent Monitor – Approval of All Contemplated Transfers**

21 So that the Independent Monitor can review and monitor all contemplated transfers of money
22 or assets, purchases, sales, or expenditures by Saddle River, SRA Management, the SRA Funds,
23 Clear Sailing, and Felix Investments, the Court hereby directs Saddle River, SRA Management, the
24 SRA Funds, Clear Sailing, and Felix Investments to provide the Independent Monitor with three-
25 business-days' notice of such contemplated transfers of money or assets, purchases, sales, or
26 expenditures. Until such time as the Independent Monitor has had the opportunity to review the
27 books and records of Saddle River, SRA Management, the SRA Funds, Clear Sailing, and Felix
28 Investments and to review contemplated transfers of money or assets, purchases, sales, or

1 expenditures by those entities, the Court hereby prohibits Saddle River, SRA Management, the SRA
2 Funds, Clear Sailing, and Felix Investments from engaging in any transfers of money or assets,
3 purchases, sales, or expenditures. If the Independent Monitor objects to any transfer, purchase, sale,
4 or expenditure, Saddle River, SRA Management, the SRA Funds, Clear Sailing, and Felix
5 Investments may move the Court on shortened time for administrative relief pursuant to Civil Local
6 Rule 7-11 of the Northern District of California.

7 **Independent Monitor – Report to Court**

8 The Independent Monitor shall provide the Court and the SEC written reports at least weekly
9 regarding his review of the records, assets, liabilities, expenditures and operations of Saddle River,
10 SRA Management, the SRA Funds and Clear Sailing. By no later than the date of the hearing on the
11 motion for preliminary injunction, the Independent Monitor shall submit a written report to the Court,
12 the SEC, and the counsel for Mr. Bivona containing (1) a preliminary accounting for Saddle River,
13 SRA Management, the SRA Funds, and Clear Sailing for the limited purpose of determining what
14 assets the SRA Funds own and whether the SRA Funds own the shares of pre-IPO companies to
15 which investors are entitled and (2) a recommendation for how to wind down the SRA Funds that
16 minimizes investor harm.

17 **Independent Monitor – Prohibition Against Bankruptcy Filing**

18 Saddle River, SRA Management, the SRA Funds and Clear Sailing are hereby enjoined from
19 filing a voluntary petition in bankruptcy without at least five (5) days' notice to the Independent
20 Monitor and Commission (by notice to the attorneys appearing on the Commission's behalf in this
21 matter). Upon receiving such notice, the Independent Monitor or the Commission may seek
22 appropriate expedited relief from this Court.

23 **Independent Monitor – Compliance**

24 The Independent Monitor and any party may apply to the Court for an order compelling
25 compliance with this Order. The Commission or the Independent Monitor may, in their discretion,
26 petition the Court to modify this Order. The Commission shall have the right to petition the Court for
27 immediate relief if the Commission deems that any defendant's or relief defendant's ongoing
28 activities are contrary to the best interests of the SRA Funds' investors.

1 In accordance with Rule 65(d)(2) of the Federal Rules of Civil Procedure, this Order
2 Appointing Independent Monitor shall be binding upon all persons who receive actual notice of it
3 through personal service or otherwise.

4 **IX. Preliminary Injunction Hearing Date and Briefing Schedule**

5 IT IS HEREBY FURTHER ORDERED, that pursuant to stipulation, John Bivona, Saddle
6 River Advisors, LLC, and relief defendant Anne Bivona shall appear before this Court at 1:30 p.m.,
7 on the 12th day of May, 2016, in Courtroom 5 of the United States Courthouse, 450 Golden Gate
8 Ave., San Francisco, California 94102, to show cause, if any exists, why this Court should not enter a
9 preliminary injunction extending the asset freeze and other relief granted in this Order until a final
10 adjudication on the merits may be had. Such Defendants and Relief Defendant shall file with the
11 Court, and serve any papers in opposition to such relief, by hand delivery, overnight courier service,
12 or electronic mail to the Commission's counsel, John S. Yun, Securities and Exchange Commission,
13 44 Montgomery Street, Suite 2800, San Francisco, CA 94104, yunj@sec.gov, no later than April 22,
14 2016 at 5:00 p.m. A courtesy copy shall also be hand-delivered to Chambers no later than 5:00 p.m.
15 that day, April 22, 2016. The Commission may serve and file a reply no later than May 3, 2016 at
16 5:00 p.m., and shall serve such reply brief, if any, on Defendants and Relief Defendant by the most
17 expeditious means available. A courtesy copy shall also be hand-delivered to Chambers no later than
18 5:00 p.m. that day, May 3, 2016.

19 IT IS HEREBY FURTHER ORDERED, that each of the other Defendants and the Relief
20 Defendants or their attorneys shall appear before this Court at 3:30 o'clock, p.m., on the 5th day of
21 April, 2016, in Courtroom 5 of the United States Courthouse, 450 Golden Gate Ave., San Francisco,
22 California 94102, to show cause, if any exists, why this Court should not enter a preliminary
23 injunction extending the asset freeze and other relief granted in this Order until a final adjudication on
24 the merits may be had. Such Defendants and Relief Defendant shall file with the Court, and serve
25 any papers in opposition to such relief, by hand delivery, overnight courier service, or electronic mail
26 to the Commission's counsel, John S. Yun, Securities and Exchange Commission, 44 Montgomery
27 Street, Suite 2800, San Francisco, CA 94104, yunj@sec.gov, no later than March 29, 2016 at 5:00
28 p.m. A courtesy copy shall also be hand-delivered to Chambers no later than 5:00 p.m. that day,

1 March 29, 2016. The Commission may serve and file a reply no later than April 1, 2016 at 5:00 p.m.,
2 and shall serve such reply brief, if any, on Defendants and Relief Defendant by the most expeditious
3 means available. A courtesy copy shall also be hand-delivered to Chambers no later than 5:00 p.m.
4 that day, April 1, 2016.

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IT IS SO ORDERED.

Dated: March 25, 2016

