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2 UNITED STATES DISTRICT COURT
3 NORTHERN DISTRICT OF CALIFORNIA
4 SAN FRANCISCO DIVISION
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6
7 IN RE ENERGY RECOVERY INC.
8 SECURITIES LITIGATION

Master Docket No. 3:15-CV-00265-EMC

CLASS ACTION

9 ~~PROPOSED~~ ORDER APPROVING
10 DISTRIBUTION OF NET SETTLEMENT
11 FUND

Hon. Edward M. Chen

Date: February 22, 2018

Time: 1:30 p.m.

Courtroom: 5, 17th Floor

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16 Lead Plaintiff Henry Low, on notice to Defendants' Counsel, moved this Court for an order
17 approving the distribution plan for the Net Settlement Fund in the above-captioned class action (the
18 "Action"), and the Court having considered all the materials and arguments submitted in support of the
19 motion, including Lead Plaintiff's Notice of Motion and Motion of Lead Plaintiff for Distribution of
20 Net Settlement Fund, and Memorandum of Points and Authorities in Support Thereof; and the
21 Declaration of Angela Ferrante in Support of Motion For Distribution of Net Settlement Fund (the
22 "Ferrante Declaration"), submitted therewith;

23 **NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

24 1. This Order incorporates by reference the definitions in the Amended Stipulation of
25 Settlement dated April 3, 2017 (the "Stipulation," ECF No. 139-2), and all terms used herein shall
26 have the same meanings as set forth in the Stipulation and the Ferrante Declaration.

27 2. This Court has jurisdiction over the subject matter of the Action and over all parties to
28 the Action, including all Settlement Class Members.

1 3. The administrative recommendations to accept claims, including the otherwise valid
2 claims filed after the original August 4, 2017 postmark deadline (“Late But Otherwise Eligible
3 Claims”), and to reject wholly ineligible or otherwise deficient claims, as recommended by the Claims
4 Administrator, Garden City Group, LLC (“GCG”), as stated in the Ferrante Declaration, are adopted;

5 4. Lead Plaintiff’s plan for distribution of the Net Settlement Fund to Authorized
6 Claimants is **APPROVED**. Accordingly,

7 A. GCG will calculate award amounts to all Authorized Claimants by calculating their *pro*
8 *rata* share of the fund in accordance with the Court-approved Plan of Allocation (the Claimant’s
9 “Distribution Amount”).

10 B. GCG will, pursuant to the terms of the Court-approved Plan of Allocation, eliminate
11 any Authorized Claimant whose Distribution Amount calculates to less than \$10.00, when the exact
12 distributable amount is determined. Such Claimants will not receive any distribution from the Net
13 Settlement Fund and GCG will send letters to those Authorized Claimants advising them of that fact.

14 C. After eliminating Claimants who would have received less than \$10.00, GCG will
15 recalculate the *pro rata* distribution amounts for Authorized Claimants who will receive \$10.00 or
16 more pursuant to the calculations described in subparagraph B. above.

17 D. GCG will then conduct an Initial Distribution of the Net Settlement Fund by
18 distributing to Authorized Claimants who will receive \$10.00 or more their *pro rata* distribution
19 amounts.

20 E. To encourage Authorized Claimants to promptly cash their payments, all Initial
21 Distribution checks will bear a notation “CASH PROMPTLY, VOID AND SUBJECT TO RE-
22 DISTRIBUTION IF NOT CASHED WITHIN ¹⁸⁰~~90~~ DAYS AFTER ISSUE DATE.”

23 F. GCG will endeavor to make reasonable and diligent efforts to have Authorized
24 Claimants negotiate their Initial Distribution checks. Authorized Claimants who do not negotiate their
25 Initial Distribution checks within the time allotted will irrevocably forfeit all recovery from the
26 Settlement. The funds allocated to all such stale-dated checks will be available in the re-distribution to
27 other Authorized Claimants. Similarly, Authorized Claimants who do not negotiate subsequent
28 distributions within the time allotted will irrevocably forfeit any further recovery from the Settlement.

1 G. After GCG has made reasonable and diligent efforts to have Authorized Claimants
2 negotiate their Initial Distribution checks, but no earlier than six (6) months after the Initial
3 Distribution, GCG, if Lead Counsel has determined that it is feasible and practicable in light of the
4 amount of the remaining Net Settlement Fund and GCG's estimated costs for the second distribution,
5 will conduct a second distribution of the Net Settlement Fund (the "Second Distribution"). If Lead
6 Counsel has determined that a Second Distribution is feasible and practicable, then any amounts
7 remaining in the Net Settlement Fund after the Initial Distribution, and after deducting GCG's
8 estimated fees and expenses incurred in connection with administering the Second Distribution, and
9 after the payment of any estimated taxes, the costs of preparing appropriate tax returns, and any escrow
10 fees, will be distributed to all Authorized Claimants in the Initial Distribution who (1) cashed their
11 distribution payment; and (2) are entitled to at least \$10.00 from the redistribution based on their *pro*
12 *rata* share of the remaining funds.

13 H. At such time as GCG and Lead Counsel determine that further re-distribution is not
14 cost-effective, Lead Counsel will seek direction from the Court with respect to the transfer of the
15 balance of the Net Settlement Fund, if any, after payment of any unpaid expenses or fees incurred in
16 connection with administering the Net Settlement Fund the costs of additional distributions, and after
17 the payment of any estimated escrow fees or taxes and the costs of preparing appropriate tax returns, to
18 the designated *cy pres* organization, the Investor Protection Trust.

19 I. No further Proofs of Claim shall be accepted after December 15, 2017, and no further
20 adjustments to Proofs of Claim shall be made for any reason after December 15, 2017.

21 J. All persons involved in the review, verification, calculation, tabulation, or any other
22 aspect of the processing of the Proofs of Claim submitted herein, or otherwise involved in the
23 administration or taxation of the Settlement Fund or the Net Settlement Fund, are released and
24 discharged from any and all claims arising out of such involvement, and all Settlement Class Members,
25 whether or not they receive payment from the Net Settlement Fund, are barred from making any
26 further claims against the Net Settlement Fund, Lead Plaintiff, Lead Counsel, the Claims
27 Administrator, the Escrow Agent or any other agent retained by Lead Plaintiff or Lead Counsel in
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1 connection with the administration or taxation of the Settlement Fund or the Net Settlement Fund
2 beyond the amount allocated to Authorized Claimants.

3 K. Unless otherwise ordered by the Court, one year after the Initial Distribution, GCG will
4 destroy the paper copies of the Proofs of Claim and all supporting documentation, and one year after
5 the all funds have been distributed, GCG will destroy electronic copies of the same.

6 L. All of the fees and expenses incurred by GCG in connection with its administration of
7 the Settlement and to be incurred in connection with the Initial Distribution are APPROVED;
8 accordingly, Lead Counsel shall direct payment of ~~\$216,279.46~~ ^{\$165,000.00} out of the Settlement Fund to GCG for
9 such unpaid fees and expenses; and

10 5. This Court retains jurisdiction to consider any further applications concerning the
11 administration of the Settlement, and such other and further relief as this Court deems appropriate.

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13 IT IS SO ORDERED.

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15 DATED: March 19, 2018

