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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

IN RE ENERGY RECOVERY, INC.,  
SECURITIES LITIGATION

) CASE NO.: 3:15-cv-00265-EMC  
)  
)  
) CLASS ACTION  
)  
) ~~[PROPOSED]~~ ORDER GRANTING  
) PRELIMINARY APPROVAL OF  
) SETTLEMENT AND DIRECTING  
) DISSEMINATION OF NOTICE TO  
) CLASS

[FINAL]

1 WHEREAS, a consolidated securities class action is pending before the Court entitled  
2 *In re Energy Recovery, Inc., Securities Litigation*, 3:15-cv-00265-EMC (the “Litigation”); and

3 WHEREAS, Plaintiff has filed an unopposed motion pursuant to Federal Rule of Civil  
4 Procedure 23(e), for an order preliminarily approving the Settlement of this Litigation, in  
5 accordance with the Amended Stipulation of Settlement dated as of April 3, 2017 (the  
6 “Stipulation”), which, together with the Exhibits annexed thereto sets forth the terms and  
7 conditions for a proposed settlement of the Litigation and for dismissal of the Litigation with  
8 prejudice upon the terms and conditions set forth therein; and the Court having read and  
9 considered the Stipulation and the Exhibits annexed thereto;

10 NOW, THEREFORE, IT IS HEREBY ORDERED that:

11 1. This Preliminary Approval Order hereby incorporates by reference the  
12 definitions in the Stipulation, and all capitalized terms used herein, unless otherwise defined,  
13 shall have the same meanings as set forth in the Stipulation.

14 2. The Court does hereby preliminarily approve the Stipulation and the Settlement  
15 set forth therein, subject to further consideration at the Final Approval Hearing described below.

16 3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure and solely for the  
17 purposes of the proposed Settlement, the Court preliminarily certifies the following Settlement  
18 Class:

19 **All Persons who purchased the common stock of Energy Recovery during the**  
20 **period of March 7, 2013 through March 5, 2015, inclusive.**

21 Excluded from the Settlement Class are Energy Recovery, Thomas S. Rooney, Jr. and  
22 Audrey Bold (collectively, “Defendants”), the officers and directors of Energy Recovery at all  
23 relevant times, members of the Defendants’ immediate families and their legal representatives,  
24 subsidiaries of Energy Recovery, any firm, entity, or corporation in which any Defendant and/or  
25 any member(s) of a Defendant’s immediate family has or have a controlling interest, any trust  
26 of which a Defendant is the settlor or which is for the benefit of a Defendant and/or any member  
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1 of a Defendant's immediate family, and the legal representatives, heirs, or successors-in-interest  
2 or assigns of Defendants. Also excluded from the Settlement Class are those Persons who  
3 timely and validly request exclusion from the Settlement Class pursuant to the Notice of  
4 Pendency and Proposed Settlement of Class Action to be sent to the Members of the Settlement  
5 Class.

6 4. For purposes of the Settlement only, this Court preliminarily finds and concludes  
7 that the Settlement Class is ascertainable and that there is a well-defined community of interest  
8 in the questions of law and fact involved affecting the members of the Settlement Class. For  
9 purposes of the Settlement only, the Court finds and concludes that (a) the Persons who are part  
10 of the Settlement Class are so numerous that joinder of all such Persons is impracticable; (b)  
11 there are questions of law and fact common to the Settlement Class that predominate over any  
12 individual questions; (c) the claims of the Lead Plaintiff is typical of those of the Settlement  
13 Class; (d) in negotiating and entering into the Stipulation, Lead Plaintiff and his counsel have  
14 fairly and adequately represented and protected the interests of all Persons who are part of the  
15 Settlement Class; and (e) a class action is superior to other available methods for the fair and  
16 efficient adjudication of the controversy, considering (i) the interests of the Persons who are  
17 part of the Settlement Class in individually controlling the prosecution of separate actions; (ii)  
18 the extent and nature of any litigation concerning the controversy already commenced by  
19 Persons who are part of the Settlement Class; (iii) the desirability or undesirability of  
20 concentrating the litigation of the claims in this particular forum; and (iv) the difficulties likely  
21 to be encountered in the management of the Litigation as a class action.

22 5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure and for purposes of  
23 the Settlement only, Lead Plaintiff Henry Low is appointed as class representative and Lead  
24 Counsel Levi & Korsinsky LLP is appointed Class Counsel, and Punzalan Law as Liaison  
25 Counsel.



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1 (including the Due Process clause); and any other applicable law, and is the best notice  
2 practicable under the circumstances and shall constitute due and sufficient notice to all Persons  
3 entitled thereto.

4 9. The Court appoints the firm of Garden City Group, LLC (“Claims  
5 Administrator”) to supervise and administer the notice procedure as well as the processing of  
6 claims as more fully set forth below:

7 (a) Not later than **April 24, 2017**, Lead Counsel shall cause a copy of the  
8 Notice and the Proof of Claim, substantially in the forms annexed hereto as Exhibits A-1 and  
9 A-2, respectively, to be mailed by first class mail to all members of the Settlement Class who  
10 can be identified with reasonable effort; and Lead Counsel shall cause the Summary Notice to  
11 be published once in the national edition of Investor’s Business Daily and on a website  
12 maintained by the Claims Administrator;

13 (b) Not later than **July 14, 2017**, Lead Counsel shall cause a postcard stating  
14 the claims submission, objection, and request for exclusion deadlines to be mailed to all  
15 members of the Settlement Class who can be identified with reasonable effort; and

16 fourteen (14)

17 (c) At least ~~seven (7)~~ **days** prior to the Final Approval Hearing, Lead  
18 Counsel shall serve on Defendants’ counsel and file with the Court proof, by affidavit or  
19 declaration, of such mailing and publishing.

20 10. Nominees who purchased Energy Recovery common stock for beneficial  
21 owners who are members of the Settlement Class shall send the Notice and the Proof of Claim  
22 to such beneficial owners of Energy Recovery common stock within ten (10) days after receipt  
23 thereof, or send a list of the names and addresses of such beneficial owners to the Claims  
24 Administrator within ten (10) days of receipt thereof in which event the Claims Administrator  
25 shall promptly mail the Notice and Proof of Claim to such beneficial owners. A nominee’s  
26 failure to transmit the Notice and Proof of Claim to a beneficial owner shall not impact whether  
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1 that beneficial owner is considered a member of the Settlement Class. Nothing in this Order  
2 creates any duties, liabilities, obligations, responsibilities, or rights as between any nominee  
3 and any beneficial owner that do not already otherwise exist in contract or by law.

4 11. All members of the Settlement Class that do not request exclusion from the  
5 Settlement Class in the manner stated in this Preliminary Approval Order shall be bound by all  
6 determinations and judgments in the Litigation concerning the Settlement, whether favorable  
7 or unfavorable to the Settlement Class.

8 12. Any potential Settlement Class Member may request to be excluded from the  
9 Settlement Class. Such request for exclusion must be postmarked on or before **August 4, 2017**  
10 and delivered to the Claims Administrator as set forth in the Notice. Such requests shall clearly  
11 indicate the name, address, and telephone number of the person seeking exclusion; the date(s),  
12 price(s), and number(s) of shares of all purchases, other acquisitions, and sales of Energy  
13 Recovery common stock during the Settlement Class Period; and a statement that the sender  
14 requests to be excluded from the Settlement Class in *In re Energy Recovery, Inc. Securities*  
15 *Litigation*, Case No. 3:15-cv-00265-EMC, and must be signed by such person. A request for  
16 exclusion shall not be effective unless it provides the required information and is made within  
17 the time stated above, or the request for exclusion is otherwise accepted by the Court.

18 13. Members of the Settlement Class who wish to participate in the proposed  
19 Settlement shall complete and submit Proofs of Claim in accordance with the instructions  
20 contained therein. Unless the Court orders otherwise, all Proofs of Claim must be submitted  
21 no later than **August 4, 2017**. Any member of the Settlement Class who does not submit a  
22 Proof of Claim within the time provided for shall be barred from sharing in the distribution of  
23 the proceeds of the Settlement Fund, unless otherwise determined by Lead Counsel or ordered  
24 by the Court.

25 14. Any member of the Settlement Class may enter an appearance at the Final  
26 Approval Hearing, individually or through counsel of their own choice, at their own expense.

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1 If they do not enter an appearance, members of the Settlement Class will be represented by  
2 Lead Counsel.

3 15. Pending final determination of whether the proposed Settlement should be  
4 approved, Plaintiff's Counsel, the Lead Plaintiff, and any Settlement Class Member, either  
5 directly, representatively, or in any other capacity, are barred from commencing or prosecuting  
6 any action asserting any Released Claims against any Released Persons.

7 16. Any member of the Settlement Class may appear and show cause, if he, she, or  
8 it has any reason why the proposed Settlement of the Litigation should or should not be  
9 approved as fair, reasonable and adequate, or why the Judgment should or should not be entered  
10 thereon, why the Plan of Allocation should or should not be approved, or why attorneys' fees  
11 and expenses should or should not be awarded to Lead Counsel; provided, however, that no  
12 member of the Settlement Class or any other Person shall be heard or entitled to contest the  
13 approval of the terms and conditions of the proposed Settlement, or, if approved, the Judgment  
14 to be entered thereon approving the same, or the order approving the Plan of Allocation, or the  
15 attorneys' fees and expenses to be awarded to Lead Counsel unless that Person has delivered,  
16 in the manner set forth in the Notice, written objections and copies of any papers and briefs in  
17 support thereof such that they are received, not simply postmarked, on or before **August 4,**  
18 **2017**, by Nicholas I. Porritt, Esq., Levi & Korsinsky LLP, 1101 30<sup>th</sup> Street, N.W., Suite 115,  
19 Washington, DC 20007, and filed said objections, papers and briefs with the Clerk of the United  
20 States District Court for the Northern District of California, San Francisco Division, 450 Golden  
21 Gate Avenue, San Francisco, CA 94102, on or before **August 4, 2017**. Any member of the  
22 Settlement Class who does not make his, her or its objection in the manner provided shall be  
23 deemed to have waived such objection and shall forever be foreclosed from making any  
24 objection to the fairness or adequacy of the proposed Settlement as incorporated in the  
25 Stipulation, the Plan of Allocation, and/or the Fee and Expense Award, unless otherwise  
26 ordered by the Court.





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1 tribunal. The Released Persons may file the Stipulation and/or the Judgment in any action that  
2 may be brought against them in order to support a defense or counterclaim based on principles  
3 of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or  
4 any other theory of, without limitation, claim preclusion or issue preclusion or similar defense  
5 or counterclaim.

6 24. The Court reserves the right to adjourn the date of the Final Approval Hearing  
7 without further notice to the members of the Settlement Class, and retains jurisdiction to  
8 consider all further applications arising out of or connected with the proposed Settlement. The  
9 Court may approve the Settlement, with such modifications as may be agreed to by the Settling  
10 Parties, if appropriate, without further notice to the Settlement Class. If the Settlement is not  
11 approved or consummated for any reason whatsoever, this Order shall be rendered null and  
12 void to the extent provided by and in accordance with the Stipulation and shall be vacated, and,  
13 in such event, all orders entered and releases delivered in connection herewith shall be null and  
14 void to the extent provided by and in accordance with the Stipulation. Each party shall be  
15 restored to his, her, or its respective position as it existed immediately prior to the execution of  
16 the Stipulation.

17  
18 IT IS SO ORDERED.

19 DATED: 4/11/17  
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