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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE ENERGY RECOVERY, INC.,)	CASE NO.: 3:15-cv-00265-EMC
SECURITIES LITIGATION)	
)	
)	<u>CLASS ACTION</u>
)	
)	AMENDED STIPULATION
)	OF SETTLEMENT
)	
)	
)	

1 This Amended Stipulation of Settlement, dated as of April 3, 2017 (the “Stipulation”), is
2 made and entered into by and among the following Settling Parties (as defined further in Section
3 IV, “DEFINITIONS” hereof) to the above-captioned securities class action litigation (the
4 “Litigation”): (i) the Plaintiff (on behalf of himself and each of the Settlement Class Members), by
5 and through his counsel of record in the Litigation; and (ii) the Defendants, by and through their
6 counsel of record in the Litigation. The Stipulation is intended by the Settling Parties to fully,
7 finally, and forever resolve, discharge, and settle the Released Claims, upon and subject to the terms
8 and conditions hereof.

9 **I. THE LITIGATION**

10 On January 20, 2015, an action was filed in the United States District Court for the Northern
11 District of California as a putative securities fraud class action on behalf of purchasers of Energy
12 Recovery common stock, captioned *Sabatino v. Rooney, et al.*, Case No. 3:15-cv-00265-EMC. One
13 additional related securities class action lawsuit, *Mowdy v. Rooney, et al.*, Case No. 3:15-cv-00374
14 was subsequently filed. On May 5, 2015, the Court entered an order consolidating the related class
15 actions as *In re Energy Recovery, Inc. Securities Litigation*, Case No. 3:15-cv-00265-EMC. ECF
16 No. 37. The Court also appointed Henry Low, as Lead Plaintiff pursuant to Section 21 D(a)(3)(B)
17 of the Securities Exchange Act of 1934 (the “Exchange Act”) and appointed Levi & Korsinsky LLP
18 as Lead Counsel, and Punzalan Law as liaison counsel.

19 On June 11, 2015, Plaintiff filed the Class Action Consolidated Complaint for Violation of
20 Federal Securities Laws (the “Complaint”). ECF No. 40. The Amended Complaint alleged
21 violations of Sections 10(b) and 20(a) of the Exchange Act on behalf of a class of persons who
22 purchased Energy Recovery common stock on May 8, 2014 through March 5, 2015, inclusive. The
23 Amended Complaint alleged that Defendants made false and misleading statements regarding
24 Energy Recovery’s products and operations concerning the Company’s oil and gas segment, and
25 sought unspecified money damages and other relief.

26 On July 31, 2015, Defendants filed a motion to dismiss the Amended Complaint. ECF No.
27 45. Instead of opposing Defendants’ motion, Plaintiff filed a motion for leave to amend the
28 Amended Complaint on September 15, 2015. ECF No. 50. The Court granted Plaintiff’s motion for

1 leave to amend on October 8, 2015, while also denying Defendants' motion to dismiss as moot. ECF
2 No. 58.

3 On October 9, 2015, Plaintiff filed the Amended Class Action Consolidated Complaint for
4 Violation of Federal Securities Laws (the "Amended Complaint"). ECF No. 59. Defendants moved
5 to dismiss on November 9, 2015. ECF No. 64. The Court held a hearing on the motion on December
6 17, 2015, and subsequently issued an order denying in part and granting in part Defendants' motion
7 on January 27, 2016. ECF No. 77.

8 On February 1, 2016, Plaintiff filed an emergency application for relief in an attempt to
9 prevent the Company from allegedly destroying relevant evidence in the possession of a
10 whistleblower. ECF No. 80. The Company denied attempting to destroy any relevant documents.
11 On February 4, 2016, Plaintiff and the Company entered a stipulation resolving Plaintiff's
12 emergency application, which the Court so-ordered on February 5, 2016. ECF No. 88.

13 On February 9, 2016, Plaintiff filed an administrative motion seeking leave to file a motion
14 requesting a declaration concerning the terms of a non-disclosure agreement executed between
15 Energy Recovery and a former employee. ECF No. 89. On February 11, 2016, the Court denied
16 Plaintiff's administrative motion, but granted Plaintiff additional time to file a further amended
17 complaint. ECF No. 91.

18 On March 2, 2016, Plaintiff filed a motion to intervene in a related case being brought by
19 the former employee that was allegedly bound by the non-disclosure agreement referenced in the
20 preceding paragraph. Docket No. 16-cv-477, ECF No. 28. Plaintiff sought to intervene in the related
21 case for the purpose of opposing a motion filed by Energy Recovery seeking an order compelling
22 the former employee to return documents and other materials Plaintiff believed to be relevant
23 evidence in his class action case. The Court granted Plaintiff's motion to intervene on April 5, 2016.
24 Docket No. 16-cv-477, ECF No. 53. The Court held a hearing in connection with Energy Recovery's
25 motion to return documents on April 7, 2016, and subsequently issued an order granting in part and
26 denying in part Energy Recovery's motion. Docket No. 16-cv-477, ECF Nos. 56-60.

27 Following additional investigation, on May 26, 2016, Plaintiff filed the Second Amended
28 Class Action Consolidated Complaint for Violation of Federal Securities Laws (the "Second

1 Amended Complaint”). ECF No. 99. The Second Amended Complaint alleged violations of
2 Sections 10(b) and 20(a) of the Exchange Act on behalf of a class of persons who purchased Energy
3 Recovery common stock on March 7, 2013 through March 5, 2015, inclusive. The Second Amended
4 Complaint alleged that the Defendants made false and misleading statements regarding Energy
5 Recovery’s products and operations and seeks unspecified money damages and other relief.

6 Defendants moved to dismiss the Second Amended Complaint on June 13, 2016. ECF No.
7 100. The Court held a hearing on the motion on July 21, 2016. Following the hearing, but prior to
8 receiving any decision on Defendants’ motion from the Court, the parties agreed to attempt to
9 resolve the matter through mediation. ECF No. 115.

10 On October 12, 2016, the parties participated in a mediation session with Robert A. Meyer,
11 Esq. of JAMS. After a full day of negotiations, the parties reached an agreement in principle to settle
12 the Litigation. On November 28, 2016, the parties executed a Memorandum of Understanding
13 (“MOU”). The Settling Parties have agreed to settle this case as expressed herein.

14 **II. CLAIMS OF PLAINTIFF AND BENEFITS OF SETTLEMENT**

15 Plaintiff believes that the claims asserted in the action have merit and that the evidence
16 developed to date supports the claims. Nevertheless, Plaintiff recognizes that a number of his claims
17 were dismissed on the motion to dismiss leaving only the claim related to a single oral statement the
18 correct interpretation of which is disputed by the parties and accordingly, he would face substantial
19 risks if he were to further litigate this case. Plaintiff also recognizes that Defendants have denied
20 the material allegations in the Second Amended Complaint and that they strongly dispute the central
21 premise of the Complaint that Energy Recovery’s products remained in the engineering prototype
22 phase during the Class Period. Plaintiff recognizes that during the Class Period, Energy Recovery
23 claims it was selling its IsoBoost products to commercial customers and that soon after the Class
24 Period Energy Recovery claims it was able to make record sales of IsoBoost to a major new
25 customer. Plaintiff and his counsel also have taken into account the uncertain outcome and the risk
26 of any litigation, especially in complex actions such as this action, as well as the difficulties and
27 delays inherent in such litigation. Plaintiff and his counsel also are mindful of the inherent problems
28 of proof, and possible defenses to the securities law violations asserted in the action and that

1 Defendants have vigorously disputed the elements of falsity, scienter and loss causation. Plaintiff
2 and his counsel believe that the settlement set forth in the Stipulation confers substantial benefits
3 upon the Settlement Class. Based on their evaluation, Plaintiff and his counsel have determined that
4 the settlement set forth in the Stipulation is in the best interests of Plaintiff and the Settlement Class.

5 **III. DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY**

6 Defendants have denied and continue to deny each and all of the claims alleged by Plaintiff
7 in the Litigation. Defendants deny all charges of wrongdoing or liability against them arising out
8 of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the
9 Litigation, especially the central premise of Plaintiff's claims that Energy Recovery's products remained
10 in the engineering prototype phase during the Class Period. Defendants assert that Plaintiff is unable
11 to prove falsity or scienter in support any of his allegations. Defendants also have denied and
12 continue to deny, among other things, the allegations that the Plaintiff or the Settlement Class have
13 suffered damages and that the Plaintiff or the Settlement Class were harmed by the conduct alleged
14 in the Complaint or its predecessor complaints. Nonetheless, Defendants have agreed to enter into
15 the Settlement to avoid the expense, distraction, and time associated with continuing the Litigation.
16 Defendants have concluded that further conduct of the Litigation would be protracted and expensive
17 and that it is desirable that the Litigation be fully and finally settled in the manner and upon the
18 terms and conditions set forth in this Stipulation. Defendants also have taken into account the
19 uncertainty and risks inherent in any litigation, especially in complex cases such as this Litigation.
20 Defendants have, therefore, determined that it is desirable and beneficial to them that the Litigation
21 be settled in the manner and upon the terms and conditions set forth in this Stipulation.

22 **IV. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT**

23 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the
24 Plaintiff, acting on behalf of himself and all Settlement Class Members, and Defendants, by and
25 through their respective counsel or attorneys of record, that, subject to the approval of the Court
26 pursuant to Federal Rule of Civil Procedure 23(e), the Litigation, the Released Claims, and all
27 matters encompassed within the scope of the releases set forth or referenced in this Stipulation shall
28 be finally, fully, and forever compromised, settled, and released, and the Litigation shall be

1 dismissed with prejudice as to all Released Persons, upon and subject to the terms and conditions of
2 the Stipulation, as follows:

3 **DEFINITIONS**

4 As used in this Stipulation, the following terms have the meanings specified below:

5 1.1 “Authorized Claimant” means any Settlement Class Member whose claim for
6 recovery has been allowed pursuant to the terms of the Stipulation.

7 1.2 “Claimant” means any Settlement Class Member who files a Proof of Claim and
8 Release in such form and manner, and within such time, as the Court shall prescribe.

9 1.3 “Claims Administrator” means Garden City Group, LLC.

10 1.4 “Complaint” means the Second Amended Class Action Consolidated Complaint for
11 Violation of Federal Securities Laws, filed in the Litigation on May 26, 2016, Docket No. 99.

12 1.5 “Counsel for the Settlement Class” means Levi & Korsinsky LLP, and includes and
13 Punzalan Law, P.C. as Liaison Counsel.

14 1.6 “Court” means the United States District Court for the Northern District of
15 California.

16 1.7 “Defendants” mean Energy Recovery, Inc., Thomas S. Rooney Jr., and Audrey Bold.

17 1.8 “Effective Date” means the first date by which all of the events and conditions
18 specified in ¶ 8.1 of the Stipulation have been met and have occurred.

19 1.9 “Escrow Account” means the interest-bearing account controlled by the Escrow
20 Agent.

21 1.10 “Escrow Agent” means Garden City Group, LLC.

22 1.11 “Final Judgment” means when the last of the following with respect to the Judgment
23 approving the Stipulation, substantially in the form of Exhibit B attached hereto, shall occur: (i) the
24 expiration of the time to file a motion to alter or amend the Judgment under Federal Rule of Civil
25 Procedure 59(e) has passed without any such motion having been filed, or if such a motion is filed,
26 an order denying such motion; (ii) the expiration of the time in which to appeal the Judgment has
27 passed without any appeal having been noticed or taken; and (iii) if any appeal is taken, immediately
28 after (a) the date of final dismissal of any appeal from the Judgment or the final dismissal of any

1 proceeding on certiorari to review the Judgment, or (b) the date of final affirmance on appeal of the
2 Judgment, the expiration of time for any further judicial review, whether, by appeal, reconsideration,
3 or a petition for writ of certiorari and if, certiorari is granted, the date of final affirmance of the
4 Judgment following review pursuant to such grant. For purposes of this paragraph, an “appeal”
5 shall include any petition for a writ of certiorari or other writ that may be filed in connection with
6 approval or disapproval of this Settlement, but shall not include any appeal that concerns only the
7 issue of attorneys’ fees and/or expenses, the Plan of Allocation of the Settlement Fund, or the
8 procedures for determining Authorized Claimants’ recognized claims; any proceeding or appeal
9 pertaining solely to one or more of these excluded issues shall not in any way delay or affect the
10 time set forth above for the Judgment to become Final, or otherwise preclude the Judgment from
11 becoming Final.

12 1.12 “Final Approval Hearing” means the hearing to determine whether the proposed
13 Settlement embodied by this Stipulation is fair, reasonable, and adequate to the Settlement Class,
14 and whether the Court should enter a Judgment approving the proposed Settlement.

15 1.13 “Energy Recovery” means Energy Recovery, Inc.

16 1.14 “Judgment” means the Final Judgment and Order of Dismissal with Prejudice to be
17 rendered by the Court, in the form attached hereto as Exhibit B, or such other substantially similar
18 form agreed to by the Settling Parties.

19 1.15 “Lead Counsel” means Levi & Korsinsky LLP, and includes and Punzalan Law, P.C.
20 as Liaison Counsel.

21 1.16 “Lead Plaintiff” and/or “Plaintiff” means Henry Low, appointed as Lead Plaintiff by
22 order of the Court dated May 5, 2015.

23 1.17 “Net Settlement Fund” means the Settlement Fund less (i) any Court-awarded
24 attorneys’ fees, costs, and expenses; (ii) any Court-approved award to Plaintiff; (iii) notice and
25 administration costs; (iv) Taxes and Tax Expenses; and (v) other Court-approved deductions that
26 occur before distribution of the proceeds of the Settlement Fund to the Settlement Class.

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1 1.18 “Notice” shall mean the Notice of Pendency and Proposed Settlement of Class
2 Action, in the form annexed hereto as Exhibit A-1 to the Preliminary Approval Order, or such other
3 substantially similar form agreed to by the Settling Parties.

4 1.19 “Person” means a natural person, individual, corporation, partnership, limited
5 partnership, association, joint stock company, joint venture, limited liability company, professional
6 corporation, estate, legal representative, trust, unincorporated association, government or any
7 political subdivision or agency thereof, and any business or legal entity and their spouses, heirs,
8 predecessors, successors, representatives or assignees.

9 1.21 “Plaintiff’s Counsel” means Lead Counsel and Counsel for the Settlement Class.

10 1.22 “Plan of Allocation” means a plan or formula of allocation of the Settlement Fund
11 whereby the Settlement Fund shall be distributed to Authorized Claimants after payment of expenses
12 of notice and administration of the Settlement, Taxes and Tax Expenses, and such attorneys’ fees,
13 costs, expenses, and interest as may be awarded by the Court. Any Plan of Allocation is not part of
14 the Stipulation, and Defendants and their Related Persons shall have no responsibility therefore or
15 liability with respect thereto.

16 1.23 “Preliminary Approval Order” means the [Proposed] Order Granting Preliminary
17 Approval of Settlement and Directing Dissemination of Notice to Settlement Class, in the form
18 annexed hereto as Exhibit A, or such other substantially similar form agreed to by the Settling
19 Parties, as entered by the Court.

20 1.24 “Related Persons” means each of the following Persons, whether or not each or all
21 of the following Persons or entities were named, served with process, or appeared in the Litigation:
22 (a) any Person that is or was related to or affiliated or associated with any or all of the Defendants
23 or in which any or all of them has or had a controlling interest; and (b) with respect to the Defendants,
24 and the individuals and entities set forth or described in (a), each of their respective spouses, heirs,
25 trusts, trustees, executors, estates, administrators, beneficiaries, distributees, agents, employees,
26 fiduciaries, partners, control persons, partnerships, general or limited partners or partnerships, joint
27 ventures, member firms, limited liability companies, corporations, parents, subsidiaries, divisions,
28 affiliates, associated entities, principals, officers, managers, directors, managing directors,

1 members, managing members, managing agents, predecessors, predecessors-in-interest, successors,
2 successors-in-interest, assigns, underwriters, brokers, dealers, attorneys, personal or legal
3 representatives, accountants, insurers, co-insurers, reinsurers, and associates, of each and all of the
4 foregoing.

5 1.25 “Released Claims” means any and all manner of claims, demands, rights, liabilities,
6 losses, obligations, potential actions, causes of action, issues and controversies of any kind, nature
7 or description whatsoever, whether known or unknown, disclosed or undisclosed, accrued or
8 unaccrued, apparent or not apparent, foreseen or unforeseen, matured or not matured, suspected or
9 unsuspected, liquidated or not liquidated, fixed or contingent (including Unknown Claims), that
10 Plaintiffs or any or all other members of the Settlement Class ever had, now have, or may have,
11 whether direct, individual, class, derivative, representative, legal, equitable or of any other type, or
12 in any other capacity, based on his, her, or its purchase, sale or ownership of Energy Recovery
13 common stock during the Settlement Class Period, against any of the Released Persons, which, now
14 or hereafter, are based upon, arise out of, relate in any way to, or involve, directly or indirectly any
15 of the statements, representations, misrepresentations, omissions, allegations, facts, or any other
16 matters, alleged in, or that could have been alleged in, the Second Amended Class Action
17 Consolidated Complaint for Violation of Federal Securities Laws dated May 26, 2016; provided,
18 however, that (i) the released claims shall not include the right to enforce the Stipulation; and (ii)
19 Defendants and Insurer shall provide a release of Plaintiff and Plaintiff’s Counsel of all claims
20 arising from the institution, prosecution, assertion, settlement, or resolution of this action.

21 1.26 “Released Persons” means each and all of the Defendants and Energy Recovery and
22 their Related Persons.

23 1.27 “Settlement” means the settlement between Plaintiff, on behalf of himself and the
24 Settlement Class Members, and the Defendants on the terms set forth in this Stipulation.

25 1.28 “Settlement Class,” “Settlement Class Member(s),” or “Members of the Settlement
26 Class” mean all Persons who purchased the common stock of Energy Recovery during the period
27 March 7, 2013 through March 5, 2015, inclusive. Excluded from the Settlement Class are
28 Defendants, the officers and directors of Energy Recovery at all relevant times, members of the

1 Defendants' immediate families and their legal representatives, subsidiaries of Energy Recovery,
2 any firm, entity, or corporation in which any Defendant and/or any member(s) of a Defendant's
3 immediate family has or have a controlling interest, any trust of which a Defendant is the settlor or
4 which is for the benefit of a Defendant and/or any member of a Defendant's immediate family, and
5 the legal representatives, heirs, or successors-in-interest or assigns of Defendants. Also excluded
6 from the Settlement Class are those Persons who timely and validly request exclusion from the
7 Settlement Class pursuant to the Notice of Pendency and Proposed Settlement of Class Action.

8 1.29 "Settlement Class Period" means the period March 7, 2013 through March 5, 2015,
9 inclusive.

10 1.30 "Settlement Fund" means the principal amount of Three Million Eight Hundred Fifty
11 Thousand Dollars (\$3,850,000), plus any accrued interest earned thereon.

12 1.31 "Settling Parties" means, collectively, the Defendants and the Plaintiff on behalf of
13 themselves and the Settlement Class Members.

14 1.32 "Stipulation" means this Stipulation of Settlement, including the recitals and Exhibits
15 hereto, each of which is incorporated by reference as though set forth in the Stipulation itself.

16 1.33 "Summary Notice" means the summary notice describing the Settlement of the
17 Litigation and the hearing on the Settlement, in the form annexed hereto as Exhibit A-3 to the
18 Preliminary Approval Order, or such other substantially similar form agreed to by the Settling
19 Parties.

20 1.34 "Supplemental Agreement" means the agreement described in ¶ 8.3.

21 1.35 "Taxes" means all taxes (including any estimated taxes, interest or penalties) arising
22 with respect to the income earned by the Settlement Fund.

23 1.36 "Tax Expenses" means any tax-related expenses and costs incurred in connection
24 with the calculation and payment of taxes or the preparation of tax returns and related documents
25 including, without limitation, expenses of tax attorneys and/or accountants and mailing and
26 distribution costs and expenses relating to filing (or failing to file) the returns described in ¶ 2.8.

27 1.37 "Unknown Claims" means any claims that the Plaintiff or any Settlement Class
28 Member does not know or suspect to exist in his, her or its favor at the time of the release of the

1 Released Persons which, if known by him, her or it, would or might have affected his, her or its
2 settlement with and release of the Released Persons, or would or might have affected his, her or its
3 decisions with respect to this Settlement. Plaintiff and Settlement Class Members may hereafter
4 discover facts in addition to or different from those which he, she or it now knows or believes to be
5 true with respect to the subject matter of the Released Claims, but Plaintiff upon the Effective Date
6 shall expressly, fully, finally and forever settle and release, and each Settlement Class Member,
7 upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have,
8 fully, finally, and forever settled and released any and all Released Claims, known or unknown,
9 suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which
10 now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into
11 existence in the future, including, but not limited to, conduct that is negligent, intentional, with or
12 without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or
13 existence of such different or additional facts. With respect to any and all Released Claims, the
14 Settling Parties stipulate and agree that, upon the Effective Date, Plaintiff shall expressly waive, and
15 each of the Settlement Class Members shall be deemed to have waived, and by operation of the
16 Judgment shall have waived, the provisions, rights, and benefits of California Civil Code Section
17 1542, which provides:

18 **A general release does not extend to claims which the creditor**
19 **does not know or suspect to exist in his or her favor at the time of**
20 **executing the release in, which if known by him or her must have**
21 **materially affected his or her settlement with the debtor.**

22
23 Plaintiff shall expressly waive and relinquish, and each of the Settlement Class Members
24 shall be deemed to have, and by operation of the Judgment shall have, expressly waived and
25 relinquished any and all provisions, rights, and benefits conferred by any law of any state or territory
26 of the United States, or principle of common law, which is similar, comparable or equivalent to
27 California Civil Code Section 1542. Plaintiff acknowledges, and the Settlement Class Members
28 shall be deemed by operation of the Judgment to have acknowledged, that the inclusion of Unknown

1 Claims in the definition of Released Claims and the foregoing waiver were separately bargained for
2 and a key element of the Settlement of which this release is a material and essential part.

3 **THE SETTLEMENT**

4 ***The Settlement Fund***

5 2.1 In consideration of the terms of this Settlement, Energy Recovery and/or its Insurer
6 (“Insurer”) shall cause certain payment(s) to be made to the Settlement Class, as set forth below, in
7 full settlement of all Released Claims against the Released Persons. To enable timely payment,
8 Plaintiff’s Counsel shall provide Defendants’ counsel and/or Insurer with wire instructions and a
9 W-9 no later than the date on which the motion for preliminary approval of the Settlement is filed.
10 Within thirty (30) days of the entry of the Preliminary Approval Order granting preliminary approval
11 of the Settlement, the sum of \$3,850,000 (Three Million Eight Hundred Fifty Thousand Dollars)
12 shall be deposited by Insurer and/or Energy Recovery into the Settlement Fund;

13 2.2 Subject to ¶¶ 2.9 and 6.1 below, the payments described in ¶ 2.1 are the only
14 payments to be made by or on behalf of Defendants in connection with this Settlement. Subject to
15 ¶¶ 2.9, 6.2 and 7.1-7.6 below, all fees, costs, and expenses incurred by or on behalf of the Plaintiff’s
16 and the Settlement Class associated with this Settlement, including, but not limited to, Taxes, Tax
17 Expenses, any administrative costs and costs of providing notice of the Settlement to Settlement
18 Class Members, and any award of attorneys’ fees and expenses of Lead Counsel shall be paid from
19 the Settlement Fund, and in no event shall Defendants or their Related Persons bear any additional
20 responsibility or liability for any such fees, costs, taxes, or expenses.

21 ***The Escrow Agent***

22 2.3 The Escrow Agent shall invest the Settlement Fund(s) deposited pursuant to ¶ 2.1
23 hereof in short term United States agency or other Treasury securities or other instruments backed
24 by the full faith and credit of the United States Government or fully insured by the United States
25 Government or an agency thereof and shall reinvest the proceeds of these instruments as they mature
26 in similar instruments at their then-current market rates. The Released Persons shall have no
27 responsibility for, interest in, or liability whatsoever with respect to investment decisions or the
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1 actions of the Escrow Agent except to the extent such investment decisions were made in accordance
2 with the Released Persons' instruction.

3 2.4 The Escrow Agent shall not disburse the Settlement Fund except as provided in the
4 Stipulation or by an order of the Court.

5 2.5 Subject to further order and/or directions as may be made by the Court, or as provided
6 in the Stipulation, the Escrow Agent is authorized to execute such transactions as are consistent with
7 the terms of the Stipulation.

8 2.6 All funds held by the Escrow Agent shall be deemed and considered to be in *custodia*
9 *legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such
10 funds shall be distributed or returned pursuant to this Stipulation and/or further order(s) of the Court.

11 2.7 Without further order of the Court, the Settlement Fund may be used by Plaintiff's
12 Counsel to pay reasonable costs and expenses reasonably incurred in connection with providing
13 notice to the Settlement Class, locating Settlement Class Members, assisting with the filing of
14 claims, administering and distributing the Net Settlement Fund to Authorized Claimants, processing
15 Proof of Claim and Release forms, and paying escrow fees and costs, if any. If the Effective Date
16 does not occur, the Settlement Fund will be returned to Defendants and their Insurers, less any taxes
17 paid or costs or expenses incurred in connection with providing notice to the Settlement Class and
18 administering the Settlement. In no event shall the Released Persons have any responsibility for or
19 liability for the administration of the Settlement Fund.

20 ***Taxes***

21 2.8 (a) The Settling Parties and the Escrow Agent agree to treat the Settlement Fund
22 as being at all times a "qualified settlement fund" within the meaning of Treas. Reg. §1.468B-1. In
23 addition, the Escrow Agent shall timely make such elections as necessary or advisable to carry out
24 the provisions of this ¶ 2.8, including the "relation-back election" (as defined in Treas. Reg.
25 §1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the
26 procedures and requirements contained in such regulations. It shall be the responsibility of the
27 Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature
28 by all necessary parties, and thereafter to cause the appropriate filing to occur.

1 (b) For the purpose of §1.468B of the Internal Revenue Code of 1986, as
2 amended, and the regulations promulgated thereunder, the “administrator” shall be the Escrow
3 Agent. The Escrow Agent shall timely and properly file all informational and other tax returns
4 necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns
5 described in Treas. Reg. §1.468B-2(k)). Such returns (as well as the election described in ¶ 2.8(a)
6 hereof) shall be consistent with this ¶ 2.8 and in all events shall reflect that all Taxes (including any
7 estimated Taxes, interest or penalties) on the income earned by the Settlement Fund shall be paid
8 out of the Settlement Fund as provided in ¶ 2.8(c) hereof.

9 (c) All Taxes and Tax Expenses shall be paid out of the Settlement Fund; in no
10 event shall the Released Persons or their counsel have any responsibility for, or liability whatsoever
11 with respect to, the Taxes or the Tax Expenses. The Escrow Agent, through the Settlement Fund,
12 shall indemnify and hold each of the Released Persons harmless for any Taxes and Tax Expenses
13 (including, without limitation, Taxes payable by reason of any such indemnification). Further,
14 Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the
15 Settlement Fund and shall be timely paid by the Escrow Agent out of the Settlement Fund without
16 prior order from the Court and the Escrow Agent shall be authorized (notwithstanding anything
17 herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary
18 to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax
19 Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. §1.468B-
20 2(1)(2)); neither the Released Persons, their counsel, or their insurers are responsible, nor shall they
21 have any liability, with respect to any Taxes or Tax Expenses. The Settling Parties agree to
22 cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent
23 reasonably necessary to carry out the provisions of this paragraph.

24 ***Termination of the Settlement***

25 2.9 In the event that the Stipulation is not approved, or is terminated, canceled, or fails
26 to become effective for any reason (*see infra* ¶¶ 8.1-8.7), the Settlement Fund, including accrued
27 interest, less any expenses and taxes paid, incurred or due and owing in connection with notice and
28 administration of the Settlement shall be refunded to such Persons that paid the Settlement Fund(s)

1 pursuant to written instructions from Defendants' counsel to the Escrow Agent in accordance with
2 Paragraph 8.4 herein.

3 **PRELIMINARY APPROVAL ORDER AND FINAL APPROVAL HEARING**

4 3.1 Promptly after execution of the Stipulation, Plaintiff's Counsel shall submit the
5 Stipulation together with its Exhibits to the Court, and Plaintiff's Counsel shall apply for entry of
6 the Preliminary Approval Order, substantially in the form of Exhibit A attached hereto, requesting,
7 among other things, the preliminary approval of the Settlement set forth in the Stipulation, and
8 approval for mailing the Notice, in the form of Exhibit A-1 attached hereto, or such other
9 substantially similar form agreed to by the Settling Parties, publication of the Summary Notice, in
10 the form of Exhibit A-3 attached hereto, or such other substantially similar form agreed to by the
11 Settling Parties, and approval for mailing a postcard reminding potential Settlement Class Members
12 of the deadline for claim submissions, in the form of Exhibit A-4 attached hereto, or such other
13 substantially similar form agreed to by the Settling Parties.

14 3.2 Plaintiff's Counsel shall request that after notice is given, the Court hold a Final
15 Approval Hearing to consider and determine whether to approve the Settlement pursuant to the
16 terms of this Stipulation as fair, reasonable, and adequate, and whether the Judgment, substantially
17 in the form of Exhibit B attached hereto, should be entered approving the Settlement as set forth
18 herein and dismissing the Litigation with prejudice. At or after the Final Approval Hearing,
19 Plaintiff's Counsel also will request that the Court approve the proposed Plan of Allocation and the
20 Fee and Expense Application.

21 **CERTIFICATION OF THE SETTLEMENT CLASS**

22 4.1 Solely for purposes of this Settlement, and subject to approval by the Court, the
23 Settling Parties agree that the Settlement Class shall be certified and Plaintiff and Lead Counsel
24 shall be appointed as representatives of the Settlement Class pursuant to Federal Rule of Civil
25 Procedure 23, as set forth in the Preliminary Approval Order. For settlement purposes only, and for
26 no other purpose than as set forth in and to effectuate this Stipulation, Defendants will not object to
27 such certification on the terms set forth in this Stipulation. If the Settlement Class is not certified,
28 the Litigation will, for all purposes with respect to the Settling Parties, revert to its status as of the

1 day immediately preceding the execution of the MOU. In such event, (i) Defendants will not be
2 deemed to have consented to the certification of any class, (ii) the Stipulation concerning the class
3 definition or class certification shall not be used as evidence or in an argument in support of class
4 definition or class certification, and (iii) Defendants will retain all rights to oppose class
5 certification.

6 **RELEASES**

7 5.1 The satisfaction of the obligations incurred pursuant to this Stipulation shall be in
8 full and final disposition of the Litigation and any and all Released Claims.

9 5.2 Upon the Effective Date, Plaintiff, and each and every Settlement Class Member
10 shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever
11 released, relinquished, discharged, and dismissed all Released Claims (including Unknown Claims)
12 against the Released Persons, whether or not such Settlement Class Member executes and delivers
13 a Proof of Claim and Release form, and whether or not such Settlement Class Member shares in the
14 Settlement Fund.

15 5.3 Upon the Effective Date, Plaintiff and all Settlement Class Members and anyone
16 claiming through or on behalf of any of them, are forever barred and enjoined from commencing,
17 instituting, or continuing to prosecute any action or proceeding in any court of law or equity,
18 arbitration tribunal, administrative forum, or other forum of any kind, asserting any of the Released
19 Claims (including Unknown Claims) against any of the Released Persons, provided, however, that
20 nothing herein shall in any way restrict or impair the rights of any Settling Party to enforce the terms
21 of the Stipulation and Settlement.

22 5.4 Upon the Effective Date, the Released Persons shall be deemed to have, and by
23 operation of the Judgment shall have, fully, finally, and forever released, relinquished, and
24 discharged Plaintiff, the Settlement Class Members, and Plaintiff's Counsel from all claims
25 (including Unknown Claims) arising out of, relating to, or in connection with the institution,
26 prosecution, assertion, settlement or resolution of the Litigation or the Released Claims, provided,
27 however, that nothing herein shall in any way restrict or impair the rights of any Settling Party to
28 enforce the terms of the Stipulation and Settlement.

1 5.5 Nothing in this Stipulation constitutes or reflects a waiver or release of any rights or
2 claims of Defendants with respect to their Insurers, including, but not limited to, any rights or claims
3 under any directors' and officers' liability insurance or other applicable insurance coverage
4 maintained by Energy Recovery.

5 **ADMINISTRATION AND CALCULATION OF CLAIMS AND SUPERVISION**
6 **AND DISTRIBUTION OF SETTLEMENT FUND**

7 6.1 The Claims Administrator, subject to such supervision and direction of Plaintiff's
8 Counsel and the Court as may be necessary or as circumstances may require, shall administer and
9 calculate the claims submitted by Settlement Class Members and shall oversee distribution of the
10 Net Settlement Fund to Authorized Claimants.

11 6.2 The Settlement Fund shall be applied as follows:

12 (a) to pay the fees and expenses reasonably and actually incurred in connection
13 with providing notice, including:

14 i. Printing and mailing of the (y) Notice and Proof of Claim and Release
15 to the Settlement Class and (z) postcard reminding potential Settlement Class Members of the claims
16 submission deadline;

17 ii. Publication of the Summary Notice;

18 iii. The Claims Administrator's costs and fees for services performed in
19 connection with the administration of the Settlement contemplated by this Stipulation;

20 iv. Costs to reimburse brokers or nominees in connection with
21 dissemination of the Notice to the Class;

22 v. Fees and expenses reasonably and actually incurred in locating
23 Settlement Class Members;

24 (b) to pay the fees and expenses reasonably and actually incurred in connection
25 with assisting with the filing of claims, administering and distributing the Net Settlement Fund to
26 Authorized Claimants, and processing Proofs of Claim;

27 (c) to pay escrow fees and costs, if any;

28 (d) to pay Taxes and Tax Expenses;

1 (e) after the Judgment is Final, to pay Plaintiff's Counsel's attorneys' fees and
2 expenses if and to the extent allowed by the Court (the "Fee and Expense Award"); and

3 (f) after the Effective Date, to distribute the balance of the Net Settlement Fund
4 to Authorized Claimants as allowed by the Stipulation and Plan of Allocation, as approved by the
5 Court.

6 6.3 After the Effective Date, and in accordance with the terms of the Stipulation, the Plan
7 of Allocation, or such further approval and further order(s) of the Court as may be necessary or as
8 circumstances may require, the Net Settlement Fund shall be distributed to Authorized Claimants,
9 subject to and in accordance with the following. Within 105 days after the mailing of the Notice or
10 such other time as may be set by the Court, each Person claiming to be an Authorized Claimant shall
11 be required to submit to the Claims Administrator a completed Proof of Claim and Release,
12 substantially in the form of Exhibit A-2 attached hereto, signed under penalty of perjury and
13 supported by such documents as are specified in the Proof of Claim. All Proofs of Claim must be
14 submitted by the date specified in the Notice, unless such period is extended by the Court.

15 6.4 Except as otherwise ordered by the Court, all Settlement Class Members who fail to
16 timely submit a Proof of Claim within such period, or such other period as may be ordered by the
17 Court, or otherwise allowed, shall be forever barred from receiving any payments pursuant to the
18 Settlement, but will in all other respects be subject to and bound by the provisions of the Stipulation,
19 the releases contained herein, and the Judgment. Notwithstanding the foregoing, Plaintiff's Counsel
20 shall have the discretion to accept late-submitted claims so long as distribution of the Net Settlement
21 Fund is not materially delayed thereby.

22 6.5 The Net Settlement Fund shall be distributed to Authorized Claimants substantially
23 in accordance with a Plan of Allocation set forth in the Notice and approved by the Court. If there
24 is any balance remaining in the Net Settlement Fund after six (6) months from the date of distribution
25 of the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise),
26 Plaintiff's Counsel shall, if feasible, reallocate such balance among Authorized Claimants in an
27 equitable and economic fashion. Thereafter, any balance which still remains in the Net Settlement
28 Fund shall be, subject to the payment of any additional previously unreimbursed fees, costs, and

1 expenses related to the administration of the Settlement, donated to an appropriate, non-profit
2 501(c)(3) charitable organization as determined by Plaintiff's Counsel.

3 6.6 Defendants and Defendants' counsel shall have no role in, responsibility for, interest
4 in, or liability with respect to any of the following: (a) any act, omission, or determination of
5 Plaintiff's Counsel, the Escrow Agent, or the Claims Administrator, or any of their respective
6 designees or agents, in connection with administering the Settlement; (b) the management,
7 investment or distribution of the Settlement Fund; (c) the Plan of Allocation; (d) the review,
8 determination, administration, calculation, or payment of any claims asserted against the Settlement
9 Fund; (e) any losses suffered by, or fluctuations in the value of, the Settlement Fund; or (f) the
10 payment or withholding of any taxes, expenses, and/or costs incurred in connection with the taxation
11 of the Settlement Fund or filing of any returns; provided, however, Energy Recovery agrees to
12 provide the Claims Administrator with record stockholder lists as requested. No Person shall have
13 any claim of any kind against the Released Persons with respect to the administration, investment,
14 distribution, and/or supervision of the Settlement Fund, and Plaintiff, the Settlement Class Members,
15 and Plaintiff's Counsel release Defendants and Defendants' counsel from any and all liability arising
16 from or with respect to the administration, investment, distribution, and/or supervision of the
17 Settlement Fund.

18 6.7 It is understood and agreed by the Settling Parties that any proposed Plan of
19 Allocation of the Net Settlement Fund including, but not limited to, any adjustments to an
20 Authorized Claimant's claim set forth therein, is not a part of this Stipulation and is to be considered
21 by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy
22 of the Settlement set forth in this Stipulation. It is further understood and agreed by the Settling
23 Parties that any order or proceeding relating to the Plan of Allocation shall not operate to terminate
24 or cancel this Stipulation or affect or delay the finality of the Court's Judgment approving this
25 Stipulation and the Settlement set forth herein (including the releases contained herein), or any other
26 orders entered pursuant to this Stipulation.

1 **PLAINTIFF’S COUNSEL’S ATTORNEYS’ FEES AND EXPENSES**

2 7.1 Plaintiff’s Counsel may submit an application or applications (the “Fee and Expense
3 Application”) for an award of attorneys’ fees not to exceed 25% of the Settlement Fund, plus
4 expenses incurred in connection with prosecuting the Litigation, plus any interest on such attorneys’
5 fees and expenses at the same rate and for the same time periods as earned by the Settlement Fund
6 (until paid), as may be awarded by the Court. Plaintiff’s Counsel reserve the right to make additional
7 applications for fees and expenses incurred in connection with the preservation of the Settlement
8 Fund and/or the administration of the Settlement. Defendants shall take no position with respect to
9 Plaintiff’s Counsel’s Fee and Expense Application.

10 7.2 The Fee and Expense Award, if and to the extent allowed by the Court, shall be
11 available for distribution to Plaintiff’s Counsel after entry of an order by the Court awarding such
12 fees and expenses, in accordance with ¶ 6.2.

13 7.3 In the event that the Effective Date does not occur, or the Judgment or the order
14 making the Fee and Expense Award is reversed or modified, or the Stipulation is canceled or
15 terminated for any other reason, and in the event that the Fee and Expense Award has been paid to
16 any extent, then Plaintiff’s Counsel shall within ten (10) days from receiving notice from
17 Defendants’ counsel or from a court of appropriate jurisdiction, refund (less the deductions provided
18 in ¶¶ 2.7 and 2.8) to the Settlement Fund the fees and expenses previously paid to Plaintiff’s Counsel
19 from the Settlement Fund, plus interest thereon at the same rate as earned by the Settlement Fund in
20 an amount consistent with such reversal or modification. Plaintiff’s Counsel receiving fees and
21 expenses, agree as a condition of receiving such fees and expenses, that they are subject to the
22 jurisdiction of the Court for the purpose of enforcing this paragraph.

23 7.4 The procedure for and the allowance or disallowance by the Court of any applications
24 by Plaintiff’s Counsel for attorneys’ fees and expenses, to be paid out of the Settlement Fund, are
25 not part of the Settlement set forth in this Stipulation, and are to be considered by the Court
26 separately from the Court’s consideration of the fairness, reasonableness, and adequacy of the
27 Settlement set forth in this Stipulation, and any order or proceeding relating to the Fee and Expense
28 Application, or any appeal from any order relating thereto or reversal or modification thereof, shall

1 not operate to terminate or cancel this Stipulation, or affect or delay the finality of the Judgment
2 approving the Stipulation and the Settlement of the Litigation set forth herein.

3 7.5 The Released Persons shall have no responsibility for, or liability with respect to, the
4 payment of any Fee and Expense Award to Plaintiff's Counsel out of the Settlement Fund.

5 7.6 The Released Persons shall have no responsibility for the allocation among
6 Plaintiff's Counsel and/or any other Person who may assert some claim thereto, and the Released
7 Persons take no position with respect to such matters.

8 **CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL,**
9 **CANCELLATION OR TERMINATION**

10 8.1 The Effective Date of this Stipulation shall be the date when all of the following shall
11 have occurred and is conditioned on the occurrence of all of the following events:

12 (a) The Court has entered the Preliminary Approval Order as described in ¶ 3.1
13 hereof;

14 (b) Defendants' Insurers have paid or caused to be paid into the Escrow Account
15 the amount(s) set forth in ¶ 2.1;

16 (c) Defendants have not exercised their option to terminate the Settlement
17 pursuant to ¶ 8.3 hereof;

18 (d) The Court has entered the Judgment, substantially in the form of Exhibit B
19 attached hereto, or such other substantially similar form agreed to by the Settling Parties; and

20 (e) A Final Judgment, as defined in ¶ 1.11 hereof.

21 8.2 Upon the occurrence of all of the events referenced in ¶ 8.1 hereof, any and all
22 remaining interest or right of Defendants or their insurers in or to the Settlement Fund, if any, shall
23 be absolutely and forever extinguished. If all of the conditions specified in ¶ 8.1 hereof are not met,
24 then the Stipulation shall be canceled and terminated subject to ¶ 8.5 hereof unless Plaintiff's
25 Counsel and counsel for Defendants mutually agree in writing to otherwise proceed with the
26 Stipulation.

27 8.3 Defendants shall have the option in their sole and absolute discretion the option to
28 withdraw and terminate the Settlement in the event the aggregate number of shares of Energy

1 Recovery common stock purchased or otherwise acquired by Persons who would otherwise be
2 entitled to participate as Settlement Class Members but who timely and validly request exclusion
3 from the Class, equals or exceeds a percentage (“Opt-Out Threshold”) to be agreed to in a separate,
4 confidential supplemental agreement (the “Supplemental Agreement”) executed between Plaintiff’s
5 Counsel and Defendants’ counsel, which is incorporated by reference into this Stipulation. The
6 Supplemental Agreement will not be filed with the Court unless requested by the Court or unless a
7 dispute among the Settling Parties concerning its interpretation or application arises and in that
8 event, the parties shall request that the Supplemental Agreement be filed and maintained under seal.
9 In the event of a termination of this Settlement pursuant to the Supplemental Agreement, this
10 Stipulation shall become null and void and of no further force and effect.

11 8.4 Unless otherwise ordered by the Court, in the event the Stipulation shall terminate,
12 or be canceled, or the Effective Date shall not occur for any reason, then within ten (10) days after
13 written notification of such event is sent by counsel for Defendants or Plaintiff’s Counsel to the
14 Escrow Agent, the Settlement Fund (including accrued interest), less any expenses and costs
15 reasonably and actually incurred pursuant to ¶ 2.7 and Taxes and Tax Expenses that have been paid
16 pursuant to ¶ 2.8 hereof, shall be refunded by Plaintiff’s Counsel to the entity or entities that
17 provided the funds, based on their *pro rata* contribution to the Settlement Fund, as indicated in
18 writing to Plaintiff’s Counsel and the Escrow Agent by Defendants’ counsel. The Escrow Agent or
19 its designee shall apply for any tax refund owed on the Settlement Fund and pay the proceeds, after
20 deduction of any fees or expenses incurred in connection with such application(s) for refund, in a
21 similar *pro rata* manner, pursuant to written instructions from Defendants’ counsel.

22 8.5 In the event that the Stipulation is not approved by the Court or the Settlement set
23 forth in the Stipulation is terminated or rendered null and void and of no force and effect as to all
24 Settling Parties the certification of the Settlement Class shall, except as provided herein, be deemed
25 vacated, the Litigation shall proceed as though the Class had never been certified, and no reference
26 to the certification of the Class, or to the Stipulation or any documents related thereto, shall be made
27 by the Settling Parties for any purpose, except as expressly authorized by the terms of the
28 Stipulation. In such event, the Settling Parties shall be deemed to have reverted to their respective

1 status and litigation positions in the Litigation as of the date and time immediately prior to the
2 execution of the MOU. Moreover, in such event, the terms and provisions of the Stipulation, with
3 the exception of ¶¶ 2.7-2.9, 8.3-8.4, 8.7, and 9.4-9.6 hereof, shall have no further force and effect
4 with respect to the Settling Parties and shall not be used in this Litigation or in any other proceeding
5 for any purpose, and any judgment or order entered by the Court in accordance with the terms of
6 the Stipulation shall be treated as vacated, *nunc pro tunc*. No order of the Court or modification or
7 reversal on appeal of any order of the Court concerning the Plan of Allocation or the amount of any
8 attorneys' fees, costs, expenses, and interest awarded by the Court shall constitute grounds for
9 cancellation or termination of the Stipulation. Defendants reserve the right to oppose certification
10 of any plaintiff class in any proceeding (including, but not limited to, any proceedings in the
11 Litigation).

12 8.6 Defendants will provide to Plaintiff's Counsel such reasonable documentary
13 confirmatory discovery as is reasonably necessary for Plaintiff to confirm the fairness,
14 reasonableness and adequacy of the Settlement and the parties will attempt in good faith to complete
15 such discovery within a reasonable period of time. Plaintiff shall agree to the terms of a reasonable
16 confidentiality order to govern confirmatory discovery. If, after conducting such discovery, counsel
17 for the Plaintiff, or any of them, conclude that the Settlement is not fair, reasonable and adequate,
18 they shall so inform counsel for Defendants in writing within 5 calendar days and at that point the
19 Settlement will be null and void.

20 8.7 Notwithstanding any provision herein to the contrary, if the Effective Date does not
21 occur, or if the Stipulation is terminated pursuant to its terms, neither the Plaintiff nor Lead Counsel
22 shall have any obligation to repay any amounts actually and properly disbursed pursuant to ¶¶ 2.7-
23 2.8 hereof. In addition, any expenses already incurred and properly chargeable pursuant to ¶ 2.7
24 hereof at the time of such termination or cancellation, but which have not been paid, shall be paid
25 by the Escrow Agent in accordance with the terms of the Stipulation prior to the balance being
26 refunded in accordance with ¶¶ 2.9 and 8.4 hereof.

1 **MISCELLANEOUS PROVISIONS**

2 9.1 The Settling Parties (a) acknowledge that it is their intent to consummate this
3 Settlement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and
4 implement all terms and conditions of the Stipulation and to exercise their reasonable best efforts to
5 accomplish the foregoing terms and conditions of the Stipulation.

6 9.2 Pending final determination of whether the Stipulation should be approved,
7 Plaintiff's Counsel, Plaintiff, and the Settlement Class Members are barred and enjoined from
8 commencing or prosecuting any action asserting any Released Claims against any Released Persons.

9 9.3 The Settling Parties intend this Settlement to be a final and complete resolution of
10 all disputes between them with respect to the Litigation. The Settlement compromises claims that
11 are contested and shall not be deemed an admission by any Settling Party as to the merits of any
12 claim or defense. The Final Judgment will contain a finding that, during the Course of the Litigation,
13 the parties and their respective counsel at all times complied with the requirements of Federal Rule
14 of Civil Procedure 11. The Settling Parties agree that the terms of the Settlement were negotiated
15 in good faith by the Settling Parties and reflect a settlement that was reached voluntarily after
16 consultation with competent legal counsel.

17 9.4 Whether or not the Settlement is approved by the Court, and whether or not the
18 Settlement is consummated, the fact and terms of this Stipulation, including its exhibits, all
19 negotiations, discussions, drafts, and proceedings in connection with this Settlement, and any act
20 performed or document signed in connection with the Settlement, shall not, in this or any other
21 court, administrative agency, arbitration forum, or other tribunal, constitute an admission of, or
22 evidence of, or be deemed to create any inference of: (i) any acts of wrongdoing or lack thereof;
23 (ii) any liability on the part of any of the Defendants or the Released Persons to Plaintiff, the
24 Settlement Class, or anyone else; (iii) any deficiency of any claim or defense that has been or could
25 have been asserted in the Litigation; or (iv) any damages, or lack of damages, suffered by Plaintiff,
26 the Settlement Class, or anyone else.

27 9.5 Neither the Stipulation nor the Settlement contained herein, nor any act performed
28 or document executed pursuant to or in furtherance of the Stipulation or the Settlement: (a) is or

1 may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released
2 Claim, or of any wrongdoing or liability of Defendants; or (b) is or may be deemed to be or may be
3 used as an admission of, or evidence of, any fault or omission of any Defendant in any civil, criminal
4 or administrative proceeding in any court, administrative agency or other tribunal. Defendants and
5 their Related Persons may file the Stipulation and/or the Judgment in any action that may be brought
6 against them in order to support a defense or counterclaim based on principles of *res judicata*,
7 collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of,
8 without limitation, claim preclusion or issue preclusion or similar defense or counterclaim.

9 9.6 All agreements made and orders entered during the course of the Litigation relating
10 to the confidentiality of information shall survive this Stipulation.

11 9.7 All of the Exhibits to the Stipulation are material and integral parts hereof and are
12 fully incorporated herein by this reference.

13 9.8 This Stipulation shall not be construed more strictly against one Settling Party than
14 another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for
15 one of the Settling Parties, it being recognized that it is the result of arm's-length negotiations
16 between the Settling Parties and that all Settling Parties have contributed substantially and materially
17 to the preparation of this Stipulation.

18 9.9 The Stipulation may be amended or modified only by a written instrument signed by
19 or on behalf of all Settling Parties or their respective successors-in-interest.

20 9.10 The Stipulation and the Exhibits attached hereto and the Supplemental Agreement
21 constitute the entire agreement among the Settling Parties hereto and no representations, warranties
22 or inducements have been made to any Settling Party concerning the Stipulation or its Exhibits or
23 the Supplemental Agreement other than the representations, warranties, and covenants contained
24 and memorialized in such documents. Except as otherwise provided herein, each Settling Party
25 shall bear its own costs.

26 9.11 Plaintiff's Counsel, on behalf of the Settlement Class, are expressly authorized by
27 the Plaintiff to take all appropriate action required or permitted to be taken by the Settlement Class
28 pursuant to the Stipulation to effectuate its terms and also are expressly authorized to enter into any

1 modifications or amendments to the Stipulation on behalf of the Settlement Class that they deem
2 appropriate.

3 9.12 Each counsel or other Person executing the Stipulation or any of its Exhibits on
4 behalf of any Settling Party hereto hereby warrants that such Person has the full authority to do so.

5 9.13 The waiver by one party of any breach of this Stipulation by any other party shall not
6 be deemed a waiver of any other prior or subsequent breach of this Stipulation.

7 9.14 The Stipulation may be executed in one or more counterparts, including by signature
8 transmitted by email in pdf format. All executed counterparts and each of them shall be deemed to
9 be one and the same instrument. A complete set of executed counterparts shall be filed with the
10 Court.

11 9.15 The Stipulation shall be binding upon, and inure to the benefit of, the successors and
12 assigns of the parties hereto.

13 9.16 The Court shall retain jurisdiction with respect to implementation and enforcement
14 of the terms of the Stipulation, and all Settling Parties submit to the jurisdiction of the Court for
15 purposes of implementing and enforcing the Settlement embodied in the Stipulation.

16 9.17 The Stipulation and the Exhibits hereto shall be considered to have been negotiated,
17 executed and delivered, and to be wholly performed, in the State of California, and the rights and
18 obligations of the parties to the Stipulation shall be construed and enforced in accordance with, and
19 governed by, the internal, substantive laws of the State of California without giving effect to that
20 State's choice-of-law principles.

21 9.18 This Stipulation supersedes the MOU dated November 28, 2016.

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23 [Signatures on following page]
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IN WITNESS WHEREOF, the parties hereto have caused the Stipulation to be executed,
by their duly authorized attorneys dated as of April 3, 2017.

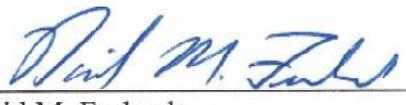
Dated: April 3, 2017

LEVI & KORSINSKY LLP
Nicholas I. Porritt
Adam M. Apton
1101 30th Street NW, Suite 115
Washington, DC 20007
Telephone: (202) 524-4290
Facsimile: (202) 333-2121

By: 
Nicholas I. Porritt
Attorneys for Lead Plaintiff Henry Low

Dated: April 3, 2017

PILLSBURY WINTHROP SHAW PITTMAN LLP
David M. Furbush
James M. Lindfelt
2550 Hanover Street
Palo Alto, CA 94304-1115
Tel: (650) 233-4500
Fax: (650) 233-4545

By: 
David M. Furbush
Attorneys for Defendants