

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
San Francisco Division

DAVID BARNES,  
Plaintiff,  
v.  
ENERGY RECOVERY, INC., et al.,  
Defendants.

Case No. 16-cv-00477-EMC (LB)

**DISCOVERY ORDER**

The parties called the court with a discovery dispute about the scope of the deposition of ERI’s CEO Joel Gay. The plaintiff wants to ask Mr. Gay about the circumstances surrounding the departure of ERI’s former CEO Thomas Rooney, who left the company in January 2015. ERI and Mr. Rooney’s counsel resist the questioning as irrelevant to this lawsuit, harassing, and possibly based on the ulterior purpose of getting discovery for the related securities action.

The court orders the following. The plaintiff may depose Mr. Gay about Mr. Rooney’s alleged misrepresentations to the plaintiff and similar (alleged) misrepresentations to the public (whether to the “market,” analysts, or the press) and internally at ERI. (*See* Complaint — ECF No. 34, ¶¶ 10-15, 18-24.) He also may ask about whether these alleged misrepresentations factored into Mr. Rooney’s ending his employment with ERI. The discovery is allowed to facilitate the upcoming mediation on July 28 and (with the parties’ agreement) is designated confidential under the protective order absent stipulation of the parties or further order of the court. The court allows

ORDER (No.16-cv-00477-EMC (LB))

1 some flexibility in questioning but expects the questioning to be tethered to the representations  
2 made to Mr. Barnes before and during his employment at ERI, whether Mr. Rooney made those  
3 representations elsewhere (whether to the public or internally in the company), and whether those  
4 representations factored into Mr. Rooney's separation from ERI.

5 **IT IS SO ORDERED.**

6 Dated: July 19, 2016



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8 LAUREL BEELER  
United States Magistrate Judge

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