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8 Attorneys for Plaintiff  
 9 DAVID BARNES

10 UNITED STATES DISTRICT COURT  
 11  
 12 NORTHERN DISTRICT OF CALIFORNIA

13 DAVID BARNES

14 Plaintiff,

15 vs.

16 ENERGY RECOVERY, INC., a Delaware  
 17 Corporation; THOMAS ROONEY, an individual;  
 18 and JOEL GAY, an individual

19 Defendants.

Case No. 16-cv-00477-EMC

**STIPULATION, SETTLEMENT AND  
 [PROPOSED] ORDER FOR  
 DISMISSAL**

20 The parties, by and between, their respective counsel, stipulate as follows:

- 21 1. This Stipulation and Proposed Order is made pursuant to F.R.C.P. 41(a)(1)(A)(ii)  
 22 and California Labor Code § 2699(1)(2).
- 23 2. Pursuant to a confidential settlement agreement, Plaintiff David Barnes agrees to  
 24 dismiss with prejudice Causes of Action One through Ten and Cause of Action Twelve of his  
 25 First Amended Complaint.
- 26 3. Pursuant to the same confidential settlement agreement, Defendant Energy  
 27 Recovery, Inc. agrees to dismiss with prejudice its Counterclaim.

1           4.       With respect to Plaintiff's Eleventh Cause of Action under the Private Attorneys  
2 General Act (PAGA), the parties separately and independently agree to the following settlement  
3 of the PAGA claim.

4           5.       To the fullest extent permitted by law, Plaintiff agrees to dismiss with prejudice  
5 his individual claims under PAGA. Plaintiff further agrees only for purposes of this Stipulation  
6 that, if the Court grants the dismissal with prejudice of his Causes of Action One through Ten and  
7 Cause of Action Twelve, he will no longer be an alleged aggrieved employee under Labor Code §  
8 2699(g).

9           6.       The parties further agree to the dismissal without prejudice of the remainder of  
10 Plaintiff's Eleventh Cause of Action under PAGA as it relates to the State of California and any  
11 alleged aggrieved employee other than Plaintiff. Accordingly, the dismissal of this case shall  
12 have no *res judicata* or collateral estoppel effect on the State of California or any alleged  
13 aggrieved employee other than Plaintiff.

14           7.       This Stipulation and [Proposed] Order will be served on the Labor Workforce and  
15 Development Agency at the same time it is submitted to the Court in accordance with Labor Code  
16 § 2699(1)(2).

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8. Each party shall bear his or its own attorneys' fees and costs with respect to this case.

Dated: October 14, 2016

BAKER & SCHWARTZ P.C.

By:-----S-----  
Chris Baker  
Attorney for Plaintiff  
DAVID BARNES

Dated: October 14, 2016

LEWIS RICE LLC

By:-----S-----  
David W. Gearhart  
Attorney for Defendants  
ENERGY RECOVERY, INC. AND JOEL  
GAY

Dated: October 14, 2016

SIDLEY AUSTIN LLP

By:-----S-----  
Sara Brody  
Attorney for Defendant  
THOMAS ROONEY

1 **[PROPOSED] ORDER**

2 The Court, upon review of the parties' Stipulation, hereby orders as follows:

3 1. Plaintiff David Barnes' Causes of Action One through Ten and Cause of Action  
4 Twelve are hereby dismissed with prejudice.

5 2. Defendant Energy Recovery, Inc.'s Counterclaim is hereby dismissed with  
6 prejudice.

7 3. Plaintiff David Barnes' Eleventh Cause of Action under the Private Attorneys  
8 General Act is hereby dismissed with prejudice with respect to Plaintiff.

9 4. Plaintiff's Eleventh Cause of Action under the Private Attorneys General Act is  
10 hereby dismissed without prejudice as to the State of California and any aggrieved employee  
11 other than Plaintiff. This Order and the dismissal of this Action shall have no res judicata or  
12 collateral estoppel effect on the State of California or any aggrieved employee other than  
13 Plaintiff.

14 5. Each party shall bear his or its own attorneys' fees and costs.

15 6. This Order hereby disposes of this Action.

16  
17 IT IS SO ORDERED.

18  
19 Dated: 10/17/16

