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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

________, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. ENERGY RECOVERY, INC., JOEL GAY, and THOMAS ROONEY, Defendants.	Case No.: **CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS** JURY DEMANDED

Plaintiff _______ ("Plaintiff"), individually and on behalf of all other persons similarly situated, by Plaintiff's undersigned attorneys, for Plaintiff's Complaint against Defendants (defined below), alleges the following based upon personal knowledge as to Plaintiff and Plaintiff's own acts, and upon information and belief as to all other matters based on the investigation conducted by and through Plaintiff's attorneys, which included, among other things, a review of the Defendants' public documents, announcements made by Defendants, a review of U.S. Securities and Exchange Commission ("SEC") filings by Energy Recovery, Inc. ("Energy Recovery" or the "Company"), wire and press releases published by and regarding Energy Recovery, and information readily obtainable on the Internet. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. This is a federal securities class action on behalf of a class consisting of all persons other than Defendants who purchased or otherwise acquired Energy Recovery securities between April 25, 2014 and May 23, 2016, both dates inclusive, (the "Class Period"), seeking to recover compensable damages caused by Defendants' violations of the federal securities laws and pursue remedies under the Securities Exchange Act of 1934 (the "Exchange Act").

JURISDICTION AND VENUE

2. The claims asserted herein arise under and pursuant to §§10(b) and 20(a) of the Exchange Act (15 U.S.C. §§78j(b) and §78t(a)) and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. §240.10b-5).

3. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §1331 and §27 of the Exchange Act.

4. Venue is proper in this District pursuant to §27 of the Exchange Act (15 U.S.C. §78aa) and 28 U.S.C. §1391(b) as Defendants conduct business within this District and a significant portion of the Defendants' actions, and the subsequent damages, took place within this District.

5. In connection with the acts, conduct and other wrongs alleged in this Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to, the United States mail, interstate telephone communications and the facilities of the national securities exchange.

PARTIES

6. Plaintiff, as set forth in the accompanying Certification, purchased Energy Recovery securities at artificially inflated prices during the Class Period and was damaged upon the revelation of the alleged corrective disclosures.

7. Defendant Energy Recovery provides energy solutions to industrial fluid flow markets worldwide. The Company is incorporated in Delaware with principal executive offices

located at 1717 Doolittle Drive, San Leandro, CA 94577. The Company's common stock trades on the NASDAQ under the ticker symbol "ERII".

8. Defendant Joel Gay ("Gay") has been the Chief Executive Officer ("CEO") of the Company, and a member of the Company's Board of Directors since April 24, 2015. Defendant Gay served as the Company's Chief Financial Officer ("CFO") from June 27, 2014 to April 24, 2015.

9. Defendant Thomas Rooney ("Rooney") was the CEO of the Company from February 2011 until January 13, 2015.

10. Defendants Gay and Rooney are sometimes referred to herein as the "Individual Defendants."

11. Each of the Individual Defendants:

(a) directly participated in the management of the Company;

(b) was directly involved in the day-to-day operations of the Company at the highest levels;

(c) was privy to confidential proprietary information concerning the Company and its business and operations;

(d) was directly or indirectly involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein;

(e) was directly or indirectly involved in the oversight or implementation of the Company's internal controls;

(f) was aware of or recklessly disregarded the fact that the false and misleading statements were being issued concerning the Company; and/or

(g) approved or ratified these statements in violation of the federal securities laws.

12. Energy Recovery is liable for the acts of the Individual Defendants and its employees under the doctrine of *respondeat superior* and common law principles of agency

because all of the wrongful acts complained of herein were carried out within the scope of their employment.

13. The scienter of the Individual Defendants and other employees and agents of the Company is similarly imputed to Energy Recovery under *respondeat superior* and agency principles.

14. Defendant Energy Recovery and the Individual Defendants are referred to herein, collectively, as the "Defendants."

BACKGROUND

15. Energy Recovery's primary industrial fluid flow markets are water desalination and oil & gas. The Company offers the IsoBoost product line to the oil & gas market.

MATERIALLY FALSE AND MISLEADING STATEMENTS

16. On April 25, 2014, Energy Recovery published an article on *Oil and Gas Online* stating that "[s]ix years ago, we installed our energy-saving IsoBoost Technology at the 50 million cubic-foot-a-day Jackalope Amine Gas Processing Plant in Hebronville, Texas."

17. On November 11, 2014, Energy Recovery held an investor conference call to discuss the Company's earnings for the third-quarter of fiscal 2014 (the "3Q 2014 Call"). Defendants Rooney and Gay attended the call, and Defendant Rooney stated that Energy Recovery has "$100 million plus in solicited proposals", stating in pertinent part:

> Over the past year, we have provided insight as to the oil and gas opportunity, more specifically gas processing and the fruits of our sales and marking campaign in the form of proposal activity. **The $100 million plus in solicited proposals is an indication of the strength of our value proposition.** One, it allows for significant energy savings as well as an increase in capacity utilization by improving the reliability, availability and maintainability of the plant.
>
> [Emphasis added].

18. During the 3Q 2014 Call, in response to a question from an analyst, Defendant Rooney talked about the Company's "inevitable" revenue in oil and gas, and about the "significant numbers of projects in the [Company's] pipeline", stating in pertinent part:

> **Patrick Jobin, Credit Suisse:** It makes sense, potential five-year and a field-trial period. Last question is just more simple ones. In Q4 would you anticipate any mega project revenue or is it too tough to tell at this stage? The second question was on oil and gas; do you think 2015 would have meaningful or material revenue beyond the rental revenue?
>
> **Defendant Rooney:** I think, Joel, the first question was MPD revenue into the fourth quarter. I think Joel alluded to that in his comments when he said that we've got a significant MPD project that has been delayed now two quarters. Where we sit right now, we do think that that project will ship this quarter. I think you can assume that since it has delayed already two quarters, it fits in the category of – we won't know until it goes out the door.
>
> To answer your question, yes, I think we expect MPD revenue in the fourth quarter. This is an industry where that kind of thing slips all the time, so we will have to wait and see. **And then meaningful revenue on oil and gas next year, I think where we stand right now is that we see a whole wall of client activity going on and proposal activity, that give us a very wide spectrum in terms of what potential revenue could come from oil and gas next year.**
>
> We're positioning for significant revenue in 2015, but really what we've accepted is that **a significant run-up of revenue for us in oil and gas is inevitable.** Is it going to happen in the first quarter, in the fourth quarter, is it going to happen in 2016? We're taking it one step at a time. **The word internally now is that this oil and gas industry and revenue there for us is inevitable.**
>
> The strength of our value proposition has gone up dramatically through some studies that are being done by some of our clients that will beget white papers and industry conferences so the level of attention on our products is going up dramatically, creating this inevitability. Significant revenue in 2015? I would like to think so, **but really what we're more focused on is moving significant numbers of projects into the pipeline into this inevitable future for us.**
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> [Emphasis added].

19. On December 8, 2014, Defendant Rooney hosted an "Analyst Day" conference in New York City to discuss the Company's operations and business strategy with analysts. At the conference, Defendant Rooney stated that IsoBoost is used at the Jackalope Plant in Hebbronville, Texas, and announced that ConocoPhillips signed a contract with the Company to use IsoBoost in Canada, stating in pertinent part:

> This is what the technology looks like. This is called our IsoBoost, most commonly what we're using now in the gas processing industry. **We have one operating beautifully in Texas**, in China, and so on. And a number of others.

We're also very proud to announce that ConocoPhilipps has formally signed a contract to put this exact device up in Canada. That contract was just signed a week ago.

*　　*　　*

So we have a plant called the Jackalope Plant down in South Texas, near the Mexican border. It's a town called Hebbronville. Been operating for years flawlessly. Well, we took Saudi Aramco and a couple of industry players. They brought a whole entourage, a whole team down because **they've been very curious about this technology.**

Aramco bought the IsoGen technology from us, and they're deploying it in the second largest gas processing plant. But their deployment is going, shall we say, a little slower than we had hoped. And it's actually at the plant now and will be brought online.

[Emphasis added].

20. On December 9, 2014, the Company issued a press release entitled "Energy Recovery Secures Contract With ConocoPhillips", announcing that "the Company has secured the first sale of its IsoBoost™ system for midstream gas processing to ConocoPhillips", stating in pertinent part:

SAN LEANDRO, Calif., Dec. 9, 2014 (GLOBE NEWSWIRE) -- Energy Recovery, Inc. (Nasdaq:ERII), the leader in recycling fluid pressure in the oil and gas, chemical and water industries, **announced today that the Company has secured the first sale of its IsoBoost™ system for midstream gas processing to ConocoPhillips.** Specifically designed to increase the runtime and reliability while lowering operating expenditures in natural gas processing, the IsoBoost is an integrated skid-mounted solution that improves uptime, reduces operating costs, and offers a return on investment as quick as six months.

[Emphasis added].

21. On April 1, 2015, the Company issued a press release entitled "Energy Recovery Commissions First IsoGenTM Turbogenerator System for Saudi Aramco", announcing "the commissioning of its first IsoGen™ system for a gas processing plant owned by the Saudi Arabian Oil Company", stating in pertinent part:

Energy Recovery Inc. (NASDAQ:ERII), the leader in pressure energy technology for industrial fluid flows, today **announced the commissioning of its first IsoGen ™ system for a gas processing plant owned by the Saudi Arabian Oil**

> **Company (Saudi Aramco).** This marks Energy Recovery's largest project to date in the oil and gas industry.
>
> [Emphasis added].

22. On April 1, 2016, Defendant Gay published an article on *Gas Processing News* entitled "Energy recovery as a foundational approach to value", stating that IsoBoost is installed at the Jackalope plant in Hebronville, Texas, stating in pertinent part

> **Our earliest installation of IsoBoost is in the Jackalope plant run by Energy Transfer Partners in Hebronville, Texas, where it has run without interruption for the past seven years.**
>
> [Emphasis added].

23. The statements referenced in ¶¶ 16 - 22 above were materially false and/or misleading because they misrepresented and failed to disclose the following adverse facts pertaining to the Company's business, operational and financial results, which were known to Defendants or recklessly disregarded by them. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (1) IsoBoost was not being used at the Jackalope plant in Hebronville, Texas; (2) Energy Recovery was not a qualified vendor of ConocoPhillips, Pemex, Sinopec, or Saudi Aramco; (3) Energy Recovery did not have a "$100 million" sales pipeline for its products since the true value of the pipeline was in the seven figures; (4) it was highly unlikely that ConocoPhillips would actually purchase or install IsoBoost, given the cost of installation and the fact that Energy Recovery was not yet a qualified vendor; and (5) as a result, Energy Recovery's public statements were materially false and misleading at all relevant times.

THE TRUTH EMERGES

24. On May 24, 2016, *Cannell Capital LLC* published a report on *SeekingAlpha.com* entitled "Is The Future Of Energy Recovery All Hype? Prior Chief Sales Officer Claims Pattern Of Misrepresentation" (the "*SeekingAlpha* Report"), stating, among other things, that Barnes, the former Chief Sales Officer of the Company, filed a lawsuit styled as *Barnes v. Energy Recovery, Inc. et al,* Docket No. 3:16-cv-00477 (N.D. Cal. Jan 27, 2016) (the "*Barnes* Action"), against the

Company, alleging that he was compelled by Energy Recovery executives to provide "false information to Board members and the public."

25. The *SeekingAlpha* Report states that Barnes was instructed by Defendant Gay to overstate Energy Recovery's likely sales performance to Board members, that Energy Recovery had made a number of misrepresentations with respect to the sales pipeline for its products, the commercial viability of its Vorteq product, and companies for which it was a qualified vendor, stating in pertinent part:

> - **A lawsuit from Energy Recovery's former Chief Sales Officer raises disturbing claims about management's internal practices and external forecasts.**
>
> * * *
>
> **A lawsuit filed in January 2016 by ERII's former Chief Sales Officer**, David Barnes suggests that such a repeat could be expected here. The case is captioned *David Barnes v. Energy Recovery Inc., Thomas Rooney, and Joel Gay, United States District Court Northern District of California 3:16-cv-00477-EMC* and we obtained a copy from public court records.
>
> **Barnes' complaint states that he was compelled by certain ERII executives to provide "false information to Board members and the public."**
>
> The lawsuit argues that "defendants [ERI] made false statements to induce Plaintiff [Barnes] to leave his job at Honeywell, move from Texas to California and work for ERI." Some of the numerous representations Barnes alleges ERI made include:
>
> 1) "That ERI was a 'qualified vendor' of Saudi Aramco, Sinopec, Pemex, and ConocoPhillips (NYSE:COP) with respect to ERI's IsoBoost and IsoGen products - meaning ERI had passed all the technical and commercial requirements necessary to sell products to these companies."
>
> 2) "That ERI had more than $100 million in its sales pipeline and that ERI would be closing one order per month."
>
> 3) "That ERI's Vorteq product would be ready for commercialization within six months."
>
> According to lawsuit however, "after starting his job at ERI, Barnes discovered that many of the representations upon which he relied in agreeing to accept the job at ERI were false." For example, Barnes notes:

1) "**ERI was not a qualified vendor of ConocoPhillips, Pemex, Sinopec, or Saudi Aramco."**

2) **"ERI did not have a '$100 million' sales pipeline for its products. In fact, the true value of the pipeline was in the seven figures."**

3) "The Vorteq product was far from commercialization."

The most troubling of Barnes' allegations is that **certain ERII executives, including current CEO Joel Gay, were on several occasions involved in the misrepresentation of information to the investing public and to the Company's Board of Directors:**

1) "In addition, shortly after starting work, Defendants Rooney and Gay instructed Barnes to obtain an order for the IsoBoost product from ConocoPhillips because it was essential that they tell the market that ERI was making progress in oil and gas at the December 2014 analysts' meeting. At the time that Barnes received this instruction, ERI was not a qualified vendor of ConocoPhillips, and ERI had not included installation costs in its presentations to ConocoPhillips with respect to its return on investment on the IsoBoost. That said, Barnes was able to obtain a purchase order for the IsoBoost product. However, it was subject to cancellation. Indeed, **Defendants knew that it was unlikely ConocoPhillips would actually purchase or install the product given its issues, including the cost of installation and the fact that ERI was not yet a qualified vendor**… Nevertheless, Rooney and Gay duly announced to the market in December that 'We're also very proud to announce that ConocoPhillips has formally signed a contract to put this exact device [the IsoBoost] up in Canada.' **Rooney made this announcement even though he was aware of the information that it was unlikely ConocoPhillips would actually purchase the product**… **Unsurprisingly, ConocoPhillips canceled the IsoBoost purchase order approximately two months later**."

2) "Also in February 2015, there was a Board meeting scheduled. At this meeting, Barnes intended to inform the Board of Directors of several significant obstacles to making sales in the oil and gas sector. Among other things, ERI was not a qualified vendor. Also, ERI did not fully understand how to execute on the project requirements for installing the products. **Gay instructed Barnes to not inform the Board of these facts. Instead, Gay instructed Barnes to overstate ERI's likely sales performance to the Board members**. Barnes objected. Gay became so concerned that Barnes would be candid with the Board about ERI's performance and the true state of the company, **that he required Barnes to meet with him and another employee to completely script his remarks to the Board**."

3) "Similarly, in April 2015, Barnes stated his intent to inform the Board of the true state of ERI's sales pipeline. Gay insisted that Barnes inform the Board that ERI was on track to earn fifteen million dollars in revenue in 2015 from its oil and gas products. **Barnes objected, and informed Gay that this**

revenue number was unrealistic. Gay nevertheless created a script containing false and/or inaccurate information, and he required Barnes to follow this script in his presentation to the Board. Barnes again objected, but fearful for his job, he conveyed the false and/or misleading information to the Board misleading information to the Board."

[Emphasis added].

26. The Barnes Action also alleged, among other things, that IsoBoost was not being used in the Jackalope plant in Texas, stating in pertinent part:

a. ERI was not a qualified vendor of ConocoPhillips, Pemex, Sinopec, or Saudi Aramco.

b. Neither Pemex nor ConocoPhillips were ready to purchase the IsoBoost product.

c. The IsoBoost product was not being used in the Jackalope plant in Texas. The Jackalope plant used a different product developed by Pump Engineering, Inc. (a company purchased by ERI). This was well-known to ERI. Indeed, Defendant Gay informed Plaintiff that he wished Defendant Rooney would stop telling the market that the IsoBoost product was running in Jackalope, because it was not.

d. The IsoBoost product installed in Sinopec had significant problems. It did not run consistently. Sinopec was not prepared to purchase more of the IsoBoost products.

e. ERI did not have a "$100 million dollar" sales pipeline for its products. In fact, the true value of the pipeline was perhaps 2.1 million in the seven figures.

f. The Vorteq product was far from commercialization.

27. On this news, shares of Energy Recovery fell $1.48 per share or approximately 13% from its previous closing price to close at $9.66 per share on May 24, 2016, damaging investors.

28. As a result of Defendants' wrongful acts and omissions, and the precipitous decline in the market value of the Company's securities, Plaintiff and other Class members have suffered significant losses and damages.

PLAINTIFF'S CLASS ACTION ALLEGATIONS

29. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased or otherwise acquired Energy Recovery securities traded on the NASDAQ during the Class Period (the "Class"); and were damaged upon the revelation of the alleged corrective disclosures. Excluded from the Class are Defendants herein, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

30. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Energy Recovery securities were actively traded on the NASDAQ. While the exact number of Class members is unknown to Plaintiff at this time and can be ascertained only through appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Energy Recovery or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

31. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

32. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

33. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- whether the federal securities laws were violated by Defendants' acts as alleged herein;

- whether statements made by Defendants to the investing public during the Class Period misrepresented material facts about the business, operations and management of Energy Recovery;
- whether the Individual Defendants caused Energy Recovery to issue false and misleading public statements during the Class Period;
- whether Defendants acted knowingly or recklessly in issuing false and misleading public statements;
- whether the prices of Energy Recovery securities during the Class Period were artificially inflated because of the Defendants' conduct complained of herein; and,
- whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

34. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

35. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-on-the-market doctrine in that:

- Defendants made public misrepresentations or failed to disclose material facts during the Class Period;
- the omissions and misrepresentations were material;
- Energy Recovery securities are traded in efficient markets;
- the Company's shares were liquid and traded with moderate to heavy volume during the Class Period;
- the Company traded on the NASDAQ, and was covered by multiple analysts;
- the misrepresentations and omissions alleged would tend to induce a reasonable investor to misjudge the value of the Company's securities; and
- Plaintiff and members of the Class purchased and/or sold Energy Recovery securities between the time the Defendants failed to disclose or misrepresented

material facts and the time the true facts were disclosed, without knowledge of the omitted or misrepresented facts.

36. Based upon the foregoing, Plaintiff and the members of the Class are entitled to a presumption of reliance upon the integrity of the market.

37. Alternatively, Plaintiff and the members of the Class are entitled to the presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens of the State of Utah v. United States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as Defendants omitted material information in their Class Period statements in violation of a duty to disclose such information, as detailed above.

COUNT I

For Violations of Section 10(b) And Rule 10b-5 Promulgated Thereunder (Against All Defendants)

38. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

39. This Count is asserted against Energy Recovery and the Individual Defendants and is based upon Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder by the SEC.

40. During the Class Period, Energy Recovery and the Individual Defendants, individually and in concert, directly or indirectly, disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

41. Energy Recovery and the Individual Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that they:

- employed devices, schemes and artifices to defraud;
- made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

- engaged in acts, practices and a course of business that operated as a fraud or deceit upon plaintiff and others similarly situated in connection with their purchases of Energy Recovery securities during the Class Period.

42. Energy Recovery and the Individual Defendants acted with scienter in that they knew that the public documents and statements issued or disseminated in the name of Energy Recovery were materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated, or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the securities laws. These defendants by virtue of their receipt of information reflecting the true facts of Energy Recovery, their control over, and/or receipt and/or modification of Energy Recovery's allegedly materially misleading statements, and/or their associations with the Company which made them privy to confidential proprietary information concerning Energy Recovery, participated in the fraudulent scheme alleged herein.

43. Individual Defendants, who are the senior officers and/or directors of the Company, had actual knowledge of the material omissions and/or the falsity of the material statements set forth above, and intended to deceive Plaintiff and the other members of the Class, or, in the alternative, acted with reckless disregard for the truth when they failed to ascertain and disclose the true facts in the statements made by them or other Energy Recovery personnel to members of the investing public, including Plaintiff and the Class.

44. As a result of the foregoing, the market price of Energy Recovery securities was artificially inflated during the Class Period. In ignorance of the falsity of Energy Recovery's and the Individual Defendants' statements, Plaintiff and the other members of the Class relied on the statements described above and/or the integrity of the market price of Energy Recovery securities during the Class Period in purchasing Energy Recovery securities at prices that were artificially inflated as a result of Energy Recovery's and the Individual Defendants' false and misleading statements.

45. Had Plaintiff and the other members of the Class been aware that the market price of Energy Recovery securities had been artificially and falsely inflated by Energy Recovery's and the Individual Defendants' misleading statements and by the material adverse information which

Energy Recovery and the Individual Defendants did not disclose, they would not have purchased Energy Recovery securities at the artificially inflated prices that they did, or at all.

46. As a result of the wrongful conduct alleged herein, Plaintiff and other members of the Class have suffered damages in an amount to be established at trial.

47. By reason of the foregoing, Energy Recovery and the Individual Defendants have violated Section 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder and are liable to the plaintiff and the other members of the Class for substantial damages which they suffered in connection with their purchase of Energy Recovery securities during the Class Period.

COUNT II

Violations of Section 20(a) of the Exchange Act (Against the Individual Defendants)

48. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

49. During the Class Period, the Individual Defendants participated in the operation and management of Energy Recovery, and conducted and participated, directly and indirectly, in the conduct of Energy Recovery's business affairs. Because of their senior positions, they knew the adverse non-public information about Energy Recovery's misstatement of revenue and profit and false financial statements.

50. As officers and/or directors of a publicly owned company, the Individual Defendants had a duty to disseminate accurate and truthful information with respect to Energy Recovery's financial condition and results of operations, and to correct promptly any public statements issued by Energy Recovery which had become materially false or misleading.

51. Because of their positions of control and authority as senior officers, the Individual Defendants were able to, and did, control the contents of the various reports, press releases and public filings which Energy Recovery disseminated in the marketplace during the Class Period concerning Energy Recovery's results of operations. Throughout the Class Period, the Individual Defendants exercised their power and authority to cause Energy Recovery to engage in the wrongful acts complained of herein. The Individual Defendants therefore, were

1 "controlling persons" of Energy Recovery within the meaning of Section 20(a) of the Exchange Act. In this capacity, they participated in the unlawful conduct alleged which artificially inflated the market price of Energy Recovery securities.

52. By reason of the above conduct, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act for the violations committed by Energy Recovery.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against defendants as follows:

A. Determining that the instant action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as the Class representative;

B. Requiring defendants to pay damages sustained by Plaintiff and the Class by reason of the acts and transactions alleged herein;

C. Awarding Plaintiff and the other members of the Class prejudgment and post-judgment interest, as well as their reasonable attorneys' fees, expert fees and other costs; and

D. Awarding such other and further relief as this Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury.

Dated:

Respectfully submitted,

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By:______________________
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