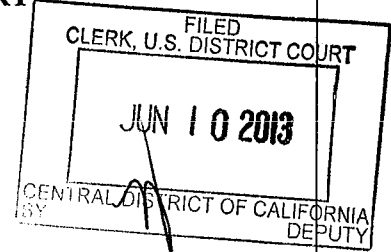


IN THE UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA



GARY REDWEN, Individually  
And On Behalf Of All Others  
Similarly Situated,

§  
§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Plaintiffs,

Case No.: 11-cv-03936 PA (SSx)

v.

SINO CLEAN ENERGY, Inc. et al.,

Defendants

OBJECTION TO THE PROPOSED SETTLEMENT

To The Honorable District Judge:

Now comes Larry Vincent ("Objector"), and files these Objections to the Proposed Settlement and Objection to Attorneys' Fees, and would show as follows:

**1. Objector is a class members**

By his signature below, Objector declares that the following statements are true and correct:

- (a) I am a member of the class as described in Paragraph 29 of the Notice. I received from the Court
- (b) The parties sent me a notice of the class settlement, with a claim form.
- (c) I object to the Settlement in Redwen v. Sino Clean Energy.

End of statement.

**2. Notice of Intention to Appear and Request to Speak at the Hearing**

1 Objector intends to appear at the hearing. Objector requests that he be allowed to appear in  
2 person or through counsel at the final approval hearing to talk about these objections, and to  
3 otherwise participate in the final approval hearing.  
4

5 **3. Objections to the Settlement**

6 **A. Adequacy of Class Compensation**

7 The “formula” for compensation devised by counsel is confusing to Objector. However,  
8 if Objector’s calculations are correct, only those class members owning a substantial number of  
9 shares are compensated. Most class members receive nothing. Such compensation is grossly  
10 unfair, and, in fact, it should be the reverse. The notice will discourage most class members  
11 from filing a claim as they will receive nothing. *Any* class member who bothers to file a claim  
12 should receive some distribution. It is within the Court’s power to make such a modification to  
13 the distribution plan and Objector requests the court to make such change.  
14

15 Class counsel and defendants know how many class members will receive a payment and  
16 how many will not, objector does not. Such information is important both for the Court and the  
17 Objector. It would allow them to better determine the formula for reimbursement. Without  
18 knowing this vital piece of information they are unable to make a rational and informed decision  
19 on whether or not to object.  
20

21 The proposed settlement is grossly unfair to the subclass owning less than the minimum  
22 number of shares for compensation. In return for nothing, the defendants receive a full release  
23 from any and all claims held by these class members. Yet, on information and belief, these class  
24 members are the ones suffering the greatest loss. This is an inequitable result.  
25

26 Although it is true that class settlements have been approved with small portions of the  
27 class receiving nothing, it is also true, as in *Mirfasihi v. Fleet Mortgage*, 356 F.3d 781 (7th Cir.  
28 2004), that where a substantial minority or even the majority, receives no benefit, the settlement

1 has been disapproved. In *Fleet Mortgage*, [The district judgment has approved a handsome fee  
2 for the class lawyers . . . despite the meagerness of the relief agreed to in settlement]... Pg. 783.  
3 [Would it be too cynical to speculate that where may be going on here is that class counsel  
4 wanted a settlement that would give them a generous fee and that Fleet wanted a settlement that  
5 would extinguish 1.4 million claims against it]. Pg. 785. In the other hand, Judge Sparks of the  
6 Western District of Texas modified just such scheme *In re: Dell, Inc.*, (1:06-cv-00726 - SS; Doc.  
7 286).  
8

9  
10 **B. Objection to Class Representative**

11 Guiding principles in selecting class representatives are:

12 (1) The class must have a “conscientious representative Plaintiff.” *Rand v.*  
13 *Monsanto*, 926 F.2d 596, 599 (7th Cir. 1991); and

14 (2) . . . class representative must . . . “fairly and adequately protect the interest of the  
15 class.” Rule 23(a)(4).  
16

17 A conflict of interest must not exist between the named Plaintiffs and the class. *Meredith*  
18 *v. Mid-Atlantic*, 129 F.R.D. 130, 133. (1989).

19 In this case, the lead Plaintiffs may have suffered the same type of damage, but the  
20 number of shares held by class members is substantially different. More importantly, the  
21 proposed settlement shows clearly the imprint of partiality and self-dealing on the part of the  
22 lead Plaintiff as it is in the Class. The Court must consider: (a) disparate relief granted to  
23 different investors based on the number of shares owned, and (b) if any of the class  
24 representatives were members of the class who will be disadvantaged by the settlement and  
25 receive nothing. In *Dewey v. Volkswagon*, 681 F. 3d 170, 173 (3<sup>rd</sup> Cir. 2012) the Court held  
26  
27  
28

1 “The District Court certified a single class containing both the reimbursement group  
2 and the residual group. On appeal, objectors Joshua West, Lester Brickman, Darren  
3 McKinney, and Michael Sullivan (collectively the " West Objectors" ) argue that the  
4 representative plaintiffs in this suit, all members of the reimbursement group, cannot  
5 adequately represent the interests of the class members in the residual group. We  
6 agree. We conclude that the interests of the representative plaintiffs do not  
7 sufficiently align with those of the unnamed plaintiffs in the residual group, and that  
8 the class thus fails to satisfy Federal Rule of Civil Procedure 23(a)(4).”

9 If in advancing their own interests the named plaintiffs had also advanced the interests of  
10 the class, their burden would have been met. Unfortunately, they did not.

11 It is the law that an absent class member will not be bound to a judgment wherein he was  
12 not adequately represented. *Hornsberry v. Lee*, 311 U.S. 32, (1940). Here, the interests of one  
13 of the largest shareholders is advanced at the expense of the smaller investors. The settlement  
14 should not be approved.

### 15 **C. Objections to the Proposed Attorneys Fees**

#### 16 **(1) Legal Standards**

17 Attorney fees in class actions require particular scrutiny. MANUAL FOR COMPLEX  
18 LITIGATION 4<sup>th</sup> § 13.24, pp. 180 - 182. Here Defendants have provided Plaintiffs with a “clear  
19 sailing” agreement. (Settlement agreement, Paragraph 15). Further, Paragraph 16 provides for  
20 the immediate payment of class counsel fees.

21 Although the practice of negotiating lump sum settlements is not prohibited, it “should be  
22 reviewed for fairness of the allocation between damages and attorney fees.” (*Id.*) Since, “[i]n  
23 complex litigation . . . there is often no traditional client with the authority to negotiate the rate at  
24 which attorneys are to be paid.” MANUAL FOR COMPLEX LITIGATION 4<sup>th</sup> § 14. Therefore, the  
25 Court should carefully scrutinize any attorney fee request . Additionally, FED. R. CIV. P. 23  
26 requires that class action attorney fees must be “reasonable.”  
27  
28

1 As was noted in *In re: High Sulfur Content Gasoline Products Litigation*, 517 F. 3d, 220,  
2 227 (5<sup>th</sup> Cir. 2008)

3  
4 In a class action settlement, the district court has an independent duty under  
5 Federal Rule of Civil Procedure 23 to the class and the public to ensure that  
6 attorneys' fees are reasonable and divided up fairly among plaintiffs' counsel.  
7 *See, e.g., Strong v. Bellsouth Telecomms, Inc.*, 137 F.3d 844, 850 (5th Cir. 1998),  
8 137 F. 3d at 849, "To fully discharge its duty to review and approve class action  
9 settlement agreements, a district court must assess the reasonableness of the  
10 attorneys' fees.

11 The court's duty to review attorneys' fees is no less compelling in common fund  
12 cases, like this case, where a separate fund to pay attorneys' fees is created as  
13 part of the class action settlement. *See e.g., Strong*, 137 F.3d at 849.

14 MANUAL FOR COMPLEX LITIGATION 4<sup>th</sup> § 14.11. ("The court must distribute the [fee  
15 award] among the various plaintiffs' attorneys, which may include class counsel, court-  
16 designated lead and liaison counsel, and individual plaintiff's counsel").

17 The district court's close scrutiny of fee awards serves to "protect the nonparty members  
18 of the class from unjust or unfair settlements affecting their rights as well as to minimize  
19 conflicts that may arise between the attorney and the class, between the named plaintiffs and the  
20 absentees, and between various subclasses." *Id.* (internal quotations and citations omitted.) The  
21 court's review also "guards against the public perception that attorneys exploit the class action  
22 device to obtain large fees at the expense of the class." *Id.* (citing *In re GM Trucks*, 55 F.3d at  
23 820 (emphasizing that the "court's oversight function" serves to deflect the "potential public  
24 misunderstandings that may cultivate in regard to the interests of class counsel") (internal  
25 quotations an citations omitted); *Foster v. Boise-Cascade, Inc.*, 420 F. Supp. 674, 680 (S.D.  
26 Tex. 1976), *aff'd* 577 F.2d 335 (5th Cir. 1978) (explaining that the court has the "obligation in  
27 any Rule 23 class action to protect [the class action device] from misuse" because the "most  
28 commonly feared abuse is the possibility that Rule 23 encourages strike suits promoted by  
attorneys who simply are seeking fat fees")(internal quotations and citations omitted).

1 To fulfill its duty, “the district court must not cursorily approve the attorneys’ fee  
2 provision of a class settlement or delegate that duty to the parties.” *Strong*, 137 F.3d at 850.  
3 Although exacting judicial review of fee applications may be burdensome, it is “necessary to  
4 discharge the [court’s] obligation to award fees that are reasonable and consistent with governing  
5 law.” MANUAL FOR COMPLEX LITIGATION § 14.231 (4th ed. 2004.)

7 Although 25% of a common fund seems to be a typical benchmark, such benchmarks are  
8 subject to considerable fluctuation and should be applied, if at all, with the caveat that “[t]he  
9 benchmark percentage should be adjusted, replaced by a lodestar calculation, when special  
10 circumstances indicate that the percentage recovery would be either too small or too large in  
11 light of the hours devoted to the case or other relevant factors.” *See Six (6) Mexican Workers v.*  
12 *Ariz. Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990).

14 When the settlement fund *vis-a-vis* the pool of potential class members is (1) small and  
15 (2) where actual common benefit is difficult to determine and, for some of the class members,  
16 non-existent, the “normal” percentage fee should be reduced.

18 The motion for fees was filed on May 31<sup>st</sup>, 2013.

19 **(2) The Fee Petition was not timely filed**

20 Fed. R. Civ. P. 23(h) provides, in relevant part:

21 (h) Attorney’s Fees and Nontaxable Costs. In a certified class  
22 action, the court may award reasonable attorney’s fees and  
23 nontaxable costs that are authorized by law or by the parties’  
24 agreement. The following procedures apply:

25 (1) A claim for an award must be made by motion under  
26 Rule 54(d)(2), subject to the provisions of this subdivision (h),  
27 at a time the court sets. Notice of the motion must be served on  
28 all parties and, for motions by class counsel, directed to class  
members in a reasonable manner.

(2) A class member, or a party from whom payment is  
sought, may object to the motion.

1  
2 *Moore's Federal Practice*, §23.124[4] (*Mathew Bender*, 3d ed. 2009)  
3 counsels that "any objection deadline set by the court should provide the eligible  
4 parties with an adequate opportunity to review all the materials that may have  
5 been submitted in support of the motion and, in appropriate cases, conduct  
6 discovery concerning the fee request."

7 "The plain text of the rule requires a district court to set the  
8 deadline for objections to counsels' fee request on a date  
9 after the motion and documents supporting it have been  
10 filed."

11 *In Re: Mercury Interactive Corp. Securities Litigation*, 618 F.3d 988, 993.(9<sup>th</sup> Cir. 2010).

12 *In Re: Mercury Interactive Corp. Securities Litigation*, 618 F.3d 988 (9th Cir. 2010), is a  
13 case strikingly similar to this appeal. It is also the leading case that has addressed the abusive  
14 practice of setting objection deadlines prior to the deadline for filing motions for attorney fees in  
15 class actions. In holding that Rule 23(h) and due process require the fee motion to precede the  
16 objection deadline, the *Mercury* court held, at p. 993-94:

17 The Advisory Committee Notes to the 2003 amendments to Rule 23(h)  
18 further support this reading of the rule. They elaborate that "[i]n setting the  
19 date objections are due, the court should provide sufficient time after the full  
20 fee motion is on file to enable potential objectors to examine the motion."  
21 Fed. R. Civ. P. 23, 2003 Advisory Committee Notes, ¶ 68. The Advisory  
22 Committee Notes further contemplate that, in appropriate cases, the court  
23 will permit an "objector discovery relevant to the objections." *Id.* ¶ 69.  
24 Clearly, the rule's drafters envisioned a process much more thorough than  
25 what occurred in this case.

26 Commentators also agree with this logical interpretation of the rule...  
27 Allowing class members an opportunity thoroughly to examine counsel's fee  
28 motion, inquire into the bases for various charges and ensure that they are  
adequately documented and supported is essential for the protection of the  
rights of class members. It also ensures that the district court, acting as a  
fiduciary for the class is presented with adequate, and adequately-tested,  
information to evaluate the reasonableness of a proposed fee.

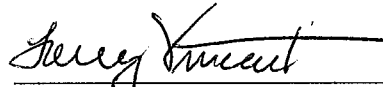
In this case, Teachers was denied such an opportunity. At the time that its  
objections to the fee request were due, Teachers could make only generalized  
arguments about the size of the total fee because they were only provided  
with generalized information. Teachers could not provide the court with

1 critiques of the specific work done by counsel when they were furnished with  
2 no information of what that work was, how much time it consumed, and  
3 whether and how it contributed to the benefit of the class.

4 The fee petition was filed with the Court a mere three business days ago.  
5 Certainly not sufficient time for an adequate review of the application.  
6

7  
8 **4. RELIEF REQUESTED**  
9

10 WHEREFORE, Objector prays that the Court deny the proposed settlement, deny  
11 certification of the settlement class, deny the requested fees to Class Counsel and grant Objector  
12 such other and further relief as to which Objector may be entitled.  
13

14   
15 \_\_\_\_\_  
16 Larry Vincent  
17 c/o Gary W. Sibley.  
18 The Sibley Firm  
19 2602 McKinney Avenue, Suite 210  
20 Dallas, TX 75204  
21 (214) 522-5222  
22 (214) 855-7878 (Fax)  
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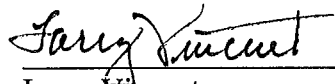
Certificate of Service

I hereby certify that a copy of the above and foregoing document has been served upon the following by mail on June 5, 2013:

Clerk of the Court  
United States District Court  
For The Central District of California  
United States Courthouse  
312 North Spring Street  
Los Angeles, CA 90012

Gold Bennett Cera & Sidener LLP  
Solomon B. Cera Esq.  
Thomas C. Bright Esq.  
595 Market Street, Suite 2300  
San Francisco, CA 94105

Loeb & Loeb LLP  
Jonathan Neil Strauss, Esq.  
Eugene Licker, Esq.  
345 Park Ave.  
New York, NY 10154



Larry Vincent  
c/o Gary W. Sibley.  
The Sibley Firm  
2602 McKinney Avenue, Suite 210  
Dallas, TX 75204  
(214) 522-5222  
(214) 855-7878 (Fax)