

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS**

DON LEE, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,	)	
	)	Civil Action
Plaintiffs,	)	No. 1:13-cv-797-SS
	)	
v.	)	CLASS ACTION
	)	
ACTIVE POWER, INC., STEVEN R. FIFE, DOUG MILNER, AND HUAN WANG,	)	
	)	
Defendants.	)	
	)	

**NOTICE OF PENDENCY AND  
SETTLEMENT OF CLASS ACTION**

If you purchased or otherwise acquired the common stock (“Stock”) of Active Power, Inc. (“Active Power” or the “Company”) between February 19, 2013 and September 5, 2013, both dates inclusive, (the “Class Period”), you could get a payment from a class action settlement (the “Settlement”).

*Under law, a federal court has authorized this notice.*

- If approved by the Court, the settlement will provide one million five hundred thousand dollars (\$1,500,000) (the “Settlement Amount”), plus interest as it accrues, to pay claims of investors who purchased Active Power common stock between February 19, 2013 and September 5, 2013.
- The Settlement represents an average recovery of \$0.086 per share of Active Power Stock for the 17.49 million shares outstanding at the end of the Class Period. This estimate solely reflects the average recovery per outstanding share of Active Power Stock. The indicated average recovery per share will be the total average recovery for all purchasers of that share. This is not an estimate of the actual recovery per share you should expect. Your actual recovery will depend on the aggregate losses of all Class Members, the date(s) you purchased and sold Active Power Stock, and the total number and amount of claims filed.
- Attorneys for Plaintiffs and the Settlement Class (“Class Counsel”) intend to ask the Court to award them fees of up to one-third of the Settlement Amount or five hundred thousand dollars (\$500,000), reimbursement of litigation expenses of no more than \$40,000 and an award to the Plaintiffs not to exceed \$10,000 in total. Collectively, the attorneys’ fees and expenses are estimated to average \$0.031 per outstanding share of Active Power Stock. If approved by the Court, these amounts will be paid from the Settlement Fund.
- The approximate recovery, after deduction of attorneys’ fees and expenses approved by the Court, is an average of \$0.054 per outstanding share of Active Power Stock. This estimate is based on the assumptions set forth in the preceding paragraph. Your actual recovery, if any, will vary depending on your purchase price and sales price, and the number and amount of claims filed.

- The Settlement resolves the lawsuit concerning whether Active Power and certain of its officers and directors violated the federal securities laws by making misrepresentations or omissions of material fact in its filings with the Securities and Exchange Commission (“SEC”) and other statements made to the investing public during the Class Period. Defendants Active Power, Steven R. Fife, Doug Milner, and Huan Wang (the “Defendants”) deny all allegations of misconduct.
- Your legal rights will be affected whether you act or do not act. If you do not act, you may permanently forfeit your right to recover on this claim. Therefore, you should read this notice carefully.

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT**

<b>SUBMIT A CLAIM FORM NO LATER THAN March 25, 2015</b>	The only way to get a payment.
<b>EXCLUDE YOURSELF NO LATER THAN April 10, 2015</b>	Get no payment. This is the only option that allows you to be part of any other lawsuit against Defendants about the legal claims in this case.
<b>OBJECT NO LATER THAN April 24, 2015</b>	Write to the Court about why you do not like the settlement.
<b>GO TO A HEARING ON May 15, 2015</b>	Speak in Court about the fairness of the settlement.
<b>DO NOTHING</b>	Get no payment. Give up rights.

**INQUIRIES**

**Please do not contact the Court regarding this notice.** All inquiries concerning this Notice, the Proof of Claim form, or any other questions by Class members should be directed to:

Active Power, Inc. Securities Litigation  
c/o Strategic Claims Services  
600 N. Jackson St., Ste. 3  
P.O. Box 230  
Media, PA 19063  
Tel.: 866-274-4004  
Fax: 610-565-7985  
info@strategicclaims.net

**or**

THE ROSEN LAW FIRM, P.A.  
275 Madison Avenue, 34<sup>th</sup> Floor  
New York, NY 10016  
Tel.: 212-686-1060  
Fax: 212-202-3827  
info@rosenlegal.com

**Definitions**

All capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Stipulation and Agreement of Settlement, dated November December 2, 2014.

## **COMMON QUESTIONS AND ANSWERS CONCERNING THE SETTLEMENT**

### **1. Why did I get this Notice?**

You or someone in your family may have acquired Active Power Stock between February 19, 2013 and September 5, 2013, both dates inclusive.

### **2. What is this lawsuit about?**

The case is known as Lee v. Active Power, Inc., et al., Case No. 13-cv-797-SS (the “Litigation”), and the Court in charge of the case is the United States District Court for the Western District of Texas.

The Class Action involves whether Defendants violated the federal securities laws by making misrepresentations or omissions of material fact in its filings with the SEC and other statements made to the investing public. The Settlement resolves all of the claims in the Class Action against the Defendants.

The Plaintiffs allege that on February 19, 2013, the Defendants falsely stated that Active Power had entered into an agreement with a large Chinese company that would serve as its distributor there, and that on April 30, 2013, it added that the relationship was with Digital China Information Technology Systems, Inc. (“Digital China”). The Plaintiffs further allege that over the following months, Defendants Active Power, Fife, and Milner (the “Speaking Defendants”) falsely boasted of Active Power’s collaboration with Digital China in distributing Active Power’s products in China. In reality, Active Power had no relationship to Digital China. Its actual Chinese distributor was Qiyuan Network System Limited (“Qiyuan”), a small company with few or no operations in which the wife of Active Power’s China Head Defendant Huan Wang held a 20% interest. And Qiyuan had no relationship with Digital China, and was not large enough to distribute Active Power’s products. The Plaintiffs further allege that the truth that Active Power’s distributor was not Digital China was revealed by two disclosures: (a) on July 30, 2013, Active Power announced disappointing revenues, which it attributed to the fact that it did not make any sales in China in Q2 2013, which was because Qiyuan could not buy and distribute its products; and (b) on September 5, 2013, Active Power announced that its distributor was with Qiyuan, not Digital China, and that Qiyuan had no relationship with Digital China. Active Power then lowered guidance, since guidance had relied on projected sales in China, and Qiyuan was not capable to sell Active Power’s products in China.

The Defendants deny all wrongdoing.

### **3. Why is this a class action?**

In a class action, one or more persons and/or entities, called plaintiffs, sue on behalf of all persons and/or entities who have similar claims. All of these persons and/or entities are referred to collectively as a Class, and these individual persons and/or entities are known as Class Members. One court resolves all of the issues for all Class Members, except for those Class Members who exclude themselves from the Class.

### **4. Why is there a Settlement?**

Plaintiffs and the Defendants do not agree regarding the merits of Plaintiffs’ allegations with respect to liability or the average amount of damages per share that would be recoverable if Plaintiffs were to prevail at trial on each claim. The issues on which the Plaintiffs and the

Defendants disagree include: (1) whether the Defendants made false and misleading statements in its filings with the SEC and in other public statements; (2) whether the misstatements were the cause of the Class Members' alleged damages; (3) the amount of damages, if any, suffered by the Class Members; and (4) whether Huan Wang's knowledge can be imputed to Active Power.

This matter has not gone to trial and the Court has not decided in favor of either Plaintiffs or any of the Defendants. Instead, Plaintiffs and the Defendants have agreed to settle the Class Action. The Plaintiffs and Class Counsel believe the settlement is best for all Class Members because of the risks associated with continued litigation and the nature of the defenses raised by the Defendants. Among the reasons that Plaintiffs and Class Counsel believe the Settlement is fair is: (1) that there is uncertainty about whether Huan Wang's knowledge can be imputed to Active Power because no statement was specifically attributed to him, and because he purportedly acted against Active Power's interests, (2) whether Active Power made materially false statements on February 19, 2013 and (3) whether the Speaking Defendants made false statements with scienter.

Because of these reasons, even if Plaintiffs win at trial, and also prevail on any appeal, Plaintiffs might not be able to collect some, or all, of any judgment they are awarded. Moreover, because litigation of this type is usually expensive, it appears that, even if Plaintiffs' allegations are eventually found to be true, the total amount of damages to which Class Members would be entitled could be substantially reduced by litigation expenses that must be paid from the settlement fund.

**5. How do I know if I am part of the Class settlement?**

To be a Class Member, you must have purchased or otherwise acquired Active Power Stock between February 19, 2013 and September 5, 2013, both dates inclusive.

**6. Are there exceptions to being included?**

Yes. Excluded from the Class are Defendants, members of the immediate family of each of the Defendants, any person, firm, trust, corporation, officer, director or other individual or entity in which any Defendant has a controlling interest or which is related to or affiliated with any of the Defendants, and the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of any such excluded party. Also excluded from the Settlement Class are those persons who file valid and timely requests for exclusion in accordance with the Court's Order of Preliminary Approval of Settlement. Also, if you exclude yourself from the Class, as described below, you are not a part of the Class.

**7. I am still not sure whether I am included.**

If you are still not sure whether you are included, you can ask for free help. For more information, you can contact the Claims Administrator, Strategic Claims Services, by phone at (866) 274-4004 or by facsimile at (610) 565-7985, visiting the website [www.strategicclaims.net](http://www.strategicclaims.net), or filling out and returning the claim form described in Question 9, to see if you qualify.

**8. What does the Settlement provide?**

**a. What is the Settlement Fund?**

The proposed Settlement calls for Active Power's insurer, on behalf of the Defendants, to create a settlement fund in the amount of one million five hundred thousand dollars (\$1,500,000). The Settlement is subject to Court approval. Also, subject to the Court's approval, a portion of the Settlement Fund will be used to pay Plaintiffs' attorneys' fees and reasonable litigation expenses and any award to Plaintiffs. A portion of the Settlement Fund also will be used to pay taxes due on interest earned by the Settlement Fund, if necessary, and any notice and claims administration expenses permitted by the Court. After the foregoing deductions from the Settlement Fund have been made, the amount remaining (the "Net Settlement Fund") will be distributed to Class Members who submit valid claims.

**b. What can you expect to receive under the proposed Settlement?**

Your share of the Net Settlement Fund will or may depend on: (1) the number of claims filed; (2) the dates you purchased and sold Active Power Stock; (3) the prices of your purchases and sales; (4) the amount of administrative costs, including the costs of notice; and (5) the amount awarded by the Court to Plaintiffs and Class Counsel for attorneys' fees, costs, and expenses.

The Claims Administrator will determine each Class Member's *pro rata* share of the Net Settlement Fund based upon each Class Member's valid "Recognized Loss." The Recognized Loss formula is not intended to be an estimate of the amount that a Class Member might have been able to recover after a trial; it also is not an estimate of the amount that will be paid to Class Members pursuant to the Settlement. The Recognized Loss formula is the basis upon which the Net Settlement Fund will be proportionately allocated to the Class Members with valid claims.

The Net Settlement Fund will be distributed to Class Members who submit valid, timely claim forms ("Authorized Claimants") under the below Plan of Allocation, which reflects Plaintiffs' contention that because of the alleged misrepresentations made by Defendants, the price of Active Power common stock was artificially inflated during the Class Period and that disclosures and materialization of the true facts caused changes in the inflated stock price.

Plan of Allocation

For purposes of determining the amount an Authorized Claimant will recover from the Settlement, Lead Counsel with the aid of a financial consultant, has developed the Plan of Allocation. It is designed to fairly allocate the proceeds of the Net Settlement Fund to Authorized Claimants.

The Court has not made any finding that the Released Parties are liable to the Class or that the Class has suffered any compensable damages, nor has the Court made any finding that the payments allowed under this Plan of Allocation are an accurate measure of damages.

The Claims Administrator will determine each Class Member's *pro rata* share of the Net Settlement Fund based upon each claimant's "Recognized Claim" from transactions in Active Power Stock as a member of the Class. No distribution will be made on a claim where the potential distribution amount is less than ten dollars (\$10.00) in cash.

## THE BASIS FOR CALCULATING YOUR RECOGNIZED CLAIM

(I) Recognized Claim Calculation for Common Stock Purchased or Otherwise Acquired during the Class Period:

- A) For each share sold during the Class Period, Recognized Claim per share will be the lesser of (1) inflation per share upon purchase less inflation per share upon sale (see TABLE A below for the estimated inflation per share during the Class Period); or (2) purchase price per share minus sale price per share.
- B) For each share retained as of the close of trading on September 5, 2013, Recognized Claim will be the lesser of (1) inflation per share upon purchase (see TABLE A); or (2) purchase price per share minus \$2.94 per share.

TABLE A

<u>Date Shares Purchased</u>	<u>Inflation</u>
February 19, 2013 to July 29 2013, inclusive	\$0.73 per share
July 30, 2013	\$0.62 per share
July 31, 2013 to September 5, 2013, inclusive	\$0.48 per share
On or after September 6, 2013	\$0.00 per share

**c. Are there any further limitations on the amount I may receive?**

- i) Each Class Member with a Recognized Loss that satisfies the requirements approved by the Court (“Authorized Claimant”) will receive the percentage of the Net Settlement Fund that each Authorized Claimant’s Recognized Loss bears to the total Recognized Losses of all Authorized Claimants. Thus, if the total Recognized Losses of all Authorized Claimants exceeds the Net Settlement Fund, then Class Members will receive less than their Recognized Loss, and if the total Recognized Loss is less than the Net Settlement Fund, then Class Members will receive more than their Recognized Loss.
- ii) For Class members who conducted multiple transactions in Active Power Stock, the earliest subsequent sale shall be matched first against those shares in the Claimant’s opening position on the first day of the Class Period, and then matched chronologically thereafter against each purchase made during the Class Period.
- iii) Transactions during the Class Period resulting in a gain shall be netted against the Class Members transactions resulting in a loss to arrive at the Recognized Loss.
- iv) Any Class members whose collective transactions in Active Power Stock during the Class Period resulted in a net gain shall not be entitled to share in the Net Settlement Fund.
- v) The purchase and sales prices exclude any brokerage commissions, transfer taxes or other fees.
- vi) The covering purchase of a short sale is not an eligible purchase. Gifts and transfers are not eligible purchases.

**9. How can I get a payment?**

To qualify for a payment, you must send in a form entitled “Proof of Claim and Release” form. This claim form is attached to this Notice. You may also obtain a claim form on the Internet at [www.strategicclaims.net](http://www.strategicclaims.net). Read the instructions carefully, fill out the form, sign it in the location indicated, and mail the claim form together with all documentation requested in the form, postmarked no later than March 25, 2015, to:

Active Power, Inc. Securities Litigation  
c/o Strategic Claims Services  
600 N. Jackson St., Ste. 3  
P.O. Box 230  
Media, PA 19063  
Tel.: 866-274-4004  
Fax: 610-565-7985  
info@strategicclaims.net

The Claims Administrator will process your claim and determine whether you are an “Authorized Claimant.”

**10. What am I giving up to get a payment or stay in the Class?**

Unless you exclude yourself, you will remain in the Class. That means that if the Settlement is approved, you and all Class Members will release (agreeing never to sue, continue to sue, or be part of any other lawsuit) all claims against the Defendants and each and all of their respective current, former, or future parents, subsidiaries, affiliates, successors and assigns, general and limited partners and partnerships, and each and all of their respective present or former joint venturers, officers, directors, principals, shareholders, members, agents, employees, employers, attorneys, trustees, financial advisors, commercial bank lenders, investment bankers, representatives, insurers and its respective businesses, affiliates, subsidiaries, parents and affiliated corporations, divisions, predecessors, shareholders, partners, joint venturers, principals, insurers, reinsurers, successors and assigns, and their respective past, present and future employees, officers, directors, attorneys, agents and representatives, reinsurers, advisors, associates, spouses and/or any other individual or entity in which any Defendant has or had a controlling interest or which is or was related to or affiliated with any Defendant, and/or any trust of which any Defendant is the settlor or which is for the benefit of any Defendant, and the current, former, and future legal representatives, heirs, successors-in-interest, or assigns of any Defendant (“Released Parties”) in connection with your acquisition Active Power Stock as a member of the Class, except that you do not release the Released Parties from any claim or action to enforce the Settlement. It also means that all of the Court’s orders will apply to you and legally bind you. If you sign the claim form, you are agreeing to a “Release of Claims,” which will bar you from ever filing a lawsuit against any Released Party to recover losses from the acquisition or sale of Active Power Stock as a member of the Class, except to enforce the Settlement. That means you will accept a share in the Net Settlement Fund as sole compensation for any losses you have suffered in the acquisition and sale of Active Power Stock as a member of the Class.

**11. How do I get out of the Settlement?**

If you do not want to receive a payment from this Settlement, and you want to keep any right you may have to sue or continue to sue Defendants on your own based on the legal claims raised in this Class Action, then you must take steps to get out of the Settlement. This is called excluding yourself from – or “opting out” of – the Settlement. To exclude yourself from the Settlement, you must mail a letter stating you want to be excluded as a Class Member from Lee v. Active Power, Inc., et al., Case No. 13-cv-797-SS. You must include your name, address, telephone number, e-mail address and your signature, along with an accurate list of all of your purchases and sales of Active Power Stock between February 19, 2013 and September 5, 2013, both dates inclusive. You must mail your exclusion request, to be received no later than April 10, 2015, to the Claims Administrator at the following address:

Active Power, Inc. Securities Litigation  
c/o Strategic Claims Services  
600 N. Jackson St., Ste. 3  
P.O. Box230  
Media, PA 19063  
Tel.: 866-274-4004  
Fax: 610-565-7985  
info@strategicclaims.net

You cannot exclude yourself by telephone or by e-mail.

If you properly exclude yourself, you will not receive a settlement payment, you cannot object to the Settlement and you will not be legally bound by the judgment in this case.

**12. If I do not exclude myself, can I sue Defendants for the same thing later?**

No. Unless you followed the procedure outlined in the Notice to exclude yourself, you give up any right to sue the Defendants for the claims that this Settlement resolves. If you have a pending lawsuit, speak to your lawyer in that case immediately, since you may have to exclude yourself from this Class to continue your own lawsuit. You must have excluded yourself from the Settlement to continue your own lawsuit against the Defendants

**13. Do I have a lawyer in this case?**

The Court appointed The Rosen Law Firm, P.A. as Lead Counsel, also referred to as Class Counsel, and Payne Mitchell Law Group as Liaison Counsel to represent you and the other Class Members. If you want to be represented by your own lawyer, you may hire one at your own expense. Contact information for The Rosen Law Firm is provided above.

**14. How will the lawyers be paid?**

Class Counsel have expended considerable time litigating this action on a contingent fee basis, and have paid for the expenses of the litigation themselves and have not been paid attorneys’ fees in advance of this Settlement. Class Counsel have done so with the expectation that if they are successful in recovering money for the Class, they will receive attorneys’ fees and be reimbursed for their litigation expenses from the Settlement Fund, as is customary in this type of litigation. Class Counsel will not receive attorneys’ fees or be reimbursed for their litigation expenses except from the Settlement Fund. Therefore, Class Counsel will file a motion asking



the Court at the Settlement Hearing to make an award of attorneys' fees in an amount not to exceed \$500,000 for reimbursement of reasonable litigation expenses not to exceed \$40,000, and an award to Plaintiffs in an amount not to exceed \$10,000 in total. The Court may award less than these amounts. Any amounts awarded by the Court will come out of the Settlement Fund.

**15. How do I tell the Court that I do not like the Settlement?**

You can tell the Court you do not agree with the Settlement, any part of the Settlement, or Class Counsel's motion for attorneys' fees, and that you think the Court should not approve the Settlement, by mailing a letter stating that you object to the Settlement in the matter of Lee v. Active Power, Inc., et al., Case No. 13-cv-797-SS. All objections must include the following information: (1) your name, address, and telephone number, (2) a list of all your purchases and sales of Active Power Stock in order to show your membership in the Class, (3) all grounds for the objection, including any legal support, and (4) the number of times you have filed an objection to a class action settlement in the last five years and the nature of each such objection in each case. Be sure to mail the objections to the three different places listed below, to be received no later than April 24, 2015, so the Court will consider your views:

Clerk of the Court  
United States District Court  
Western District of Texas - Austin Division  
501 West Fifth Street, Suite 1100  
Austin, TX 78701

Laurence M. Rosen, Esq.  
THE ROSEN LAW FIRM, P.A.  
275 Madison Avenue, 34<sup>th</sup> Floor  
New York, New York 10016  
Telephone: (212) 686-1060  
Fax: (212) 202-3827

*Class Counsel*

Paul R. Bessette, Esq.  
KING & SPALDING LLP  
401 Congress Avenue, Suite 3200  
Austin, Texas 78701  
Telephone: (512) 457-2000  
Fax: (512) 457-2100

*Counsel for Defendants Active Power, Inc., Doug Milner, and Steven R. Fife*

**16. What is the difference between objecting and requesting exclusion?**

Objecting is simply telling the Court you do not like something about the Settlement. You can object only if you stay in the Class. Requesting exclusion is telling the Court you do not want to be part of the Class and Settlement. If you exclude yourself, you cannot object to the

Settlement because it no longer concerns you. If you stay in the Class and object, but your objection is overruled, you will not be allowed a second opportunity to exclude yourself.

**17. When and where will the Court decide whether to approve the Settlement?**

The Court will hold a Settlement Hearing on May 15, 2015, at 10:00 a.m., at the United States District Court for the Western District of Texas, 501 West Fifth Street, Courtroom 2, Austin, TX 78701.

At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate and whether to approve the Settlement. If there are objections, the Court will consider them, and the Court will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay Class Counsel for attorneys' fees and expenses.

**18. Do I have to come to the hearing?**

No. Class Counsel will answer any questions the Court may have. However, you are welcome to attend at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mail your written objection on time, the Court will consider it.

**19. What happens if I do nothing at all?**

If you do nothing, you will not receive a payment from the Settlement. However, unless you exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendants about the claims made in this case ever again.

DATED: January 7, 2015

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BY ORDER OF THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF TEXAS