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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SC

C No. 13 3791

[REDACTED])
[REDACTED] individually and on Behalf of)
All Others Similarly Situated,)

Plaintiffs,)

vs.)

ECOTALITY, INC., H. RAVI BRAR and)
SUSIE HERRMANN,)

Defendants.)

) CLASS ACTION
) COMPLAINT FOR VIOLATIONS OF THE
) FEDERAL SECURITIES LAWS
)
)
) DEMAND FOR JURY TRIAL

1 Plaintiffs [REDACTED] (“Plaintiffs”), individually and on
2 behalf of all other persons similarly situated, by Plaintiffs’ undersigned attorneys, for Plaintiffs’
3 complaint against Defendants, alleges the following based upon personal knowledge as to Plaintiffs
4 and Plaintiffs’ own acts, and upon information and belief as to all other matters based on the
5 investigation conducted by and through Plaintiffs’ attorneys, which included, among other things, a
6 review of Securities and Exchange Commission (“SEC”) filings by ECOTality, Inc. (“ECOTality” or
7 the “Company”), as well as conference call transcripts and media and analyst reports about the
8 Company. Plaintiffs believe that substantial evidentiary support will exist for the allegations set
9 forth herein after a reasonable opportunity for discovery.

10 **NATURE OF THE ACTION**

11 1. This is a securities class action on behalf of all purchasers of the common stock of
12 ECOTality between April 16, 2013 and August 9, 2013, inclusive (the “Class Period”). Plaintiffs
13 seek to pursue remedies against ECOTality and several of its most senior executives under §§10(b)
14 and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), and Rule 10b-5 promulgated
15 thereunder.
16

17 **JURISDICTION AND VENUE**

18 2. Jurisdiction is conferred by §27 of the Exchange Act. The claims asserted herein
19 arise under §§10(b) and 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder. This
20 Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§1331 and 1337, and
21 §27 of the Exchange Act.

22 3. Venue is proper in this District pursuant to §27 of the Exchange Act and 28 U.S.C.
23 §1391(b) as the Company is headquartered in this District and the alleged misconduct was transacted
24 in and emanated from this District.
25

26 4. In connection with the acts alleged in this Complaint, Defendants, directly or
27 indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to,
28 the mails, interstate telephone communications and the facilities of the national securities markets.

PARTIES

1
2 5. Plaintiffs, [REDACTED] as set forth in the
3 accompanying Certifications, which are incorporated by reference herein, purchased the common
4 stock of ECOTality during the Class Period and have been damaged thereby.

5 6. Defendant ECOTality is an electric transportation and storage technologies company
6 that sells electric vehicle supply equipment (“EVSE”) through its customer-facing brand of smart
7 electric vehicle chargers, Blink. The Company’s common stock is listed on the NASDAQ, an
8 efficient market, under the ticker symbol “ECTY” and, as of April 9, 2013, the Company had more
9 than 25.6 million shares of its common stock outstanding.
10

11 7. Defendant H. Ravi Brar (“Brar”) is, and was throughout the Class Period, ECOTality’s
12 Chief Executive Officer (“CEO”), President and a director. Defendant Brar joined the Company as
13 Chief Financial Officer (“CFO”) in November 2010 and was named CEO, President and a director in
14 September 2012.
15

16 8. Defendant Susie Herrmann (“Herrmann”) is, and was throughout the Class Period,
17 ECOTality’s CFO. Until September 2012, when she was named CFO, Defendant Herrmann served
18 as the Company’s Vice President of Corporate Finance and has been with the Company since
19 February 2008.

20 9. The defendants referenced above in ¶¶7-8 are referred to herein as the “Individual
21 Defendants.” ECOTality and the Individual Defendants are referred to herein, collectively, as
22 “Defendants.”
23

CLASS ACTION ALLEGATIONS

24
25 10. Plaintiffs bring this action as a class action pursuant to Federal Rule of Civil
26 Procedure 23(a) and (b)(3) on behalf of a class consisting of all purchasers of the common stock of
27 ECOTality during the Class Period (the “Class”). Excluded from the Class are Defendants, the
28

1 officers and directors of the Company, at all relevant times, members of their immediate families and
2 their legal representatives, heirs, successors or assigns and any entity in which Defendants have or
3 had a controlling interest.

4 11. The members of the Class are so numerous that joinder of all members is
5 impracticable. Throughout the Class Period, ECOTality common stock and other publicly-traded
6 securities were actively traded on the NASDAQ. While the exact number of Class members is
7 unknown to Plaintiffs at this time and can only be ascertained through appropriate discovery,
8 Plaintiffs believe that there are hundreds of thousands of members in the proposed Class. Record
9 owners and other members of the Class may be identified from records maintained by ECOTality or
10 its transfer agent and may be notified of the pendency of this action by mail, using the form of notice
11 similar to that customarily used in securities class actions.
12

13 12. Plaintiffs' claims are typical of the claims of the members of the Class as all members
14 of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is
15 complained of herein.
16

17 13. Plaintiffs will fairly and adequately protect the interests of the members of the Class
18 and have retained counsel competent and experienced in class and securities litigation.
19

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

- 23 (a) whether the Exchange Act was violated by Defendants as alleged herein;
24 (b) whether statements made by Defendants misrepresented material facts about
25 the business, operations and management of ECOTality; and
26 (c) to what extent the members of the Class have sustained damages and the
27 proper measure of damages.
28

1 combined with the increasing market penetration of plug-in electric vehicles, *well*
2 *positions the company for continued growth.*

3 *This January, we unveiled the Minit-Charger 12, a product that targets the sweet*
4 *spot of the market and serves as the foundation of our next generation of industrial*
5 *fast charge solutions. The company has a renewed focus on our Minit-Charger*
6 *business and is committed to substantially expanding its market presence in the*
7 *industrial sector to capitalize on increasing electrification trends.*

8 Looking ahead, we will continue to build upon our three core lines of business,
9 Blink, Minit-Charger and eTec Labs with an emphasis on expanding our Blink
10 Network across the country and launching our next generation of charging products.
11 With our interoperability partnership, strong product lines and extensive consulting
12 activities, ECOtality is focused on expanding our position as the leader in electric
13 transportation technologies and solutions.²

14 22. During the conference call held with investors later on the evening of April 15, 2013,
15 ECOtality made more positive comments about the strength of its business and product offerings,
16 including stating that “[o]verall, [ECOtality’s] fourth quarter and annual results were largely driven
17 by *the continued successful rollout of the nationwide Blink network* and [its] *ability to successfully*
18 *execute upon the deliverables of the EV Project,*” and emphasizing the following fiscal 2013
19 outlook:

20 Moving forward in 2013, we’ll continue to build upon our multiple lines of business
21 as we launch our Blink Network in new markets and are *ramping up our sales*
22 *organization for life beyond the EV Project.* With our interoperability JV and our
23 strategies for *building out and monetizing this growing industry,* we believe
24 ECOtality remains at the forefront of the evolving EVSE market. With our footprint
25 of over 10,000 installed chargers, our loyal and growing membership base and the
26 strength of the Blink network and brand, *we are well-positioned to continue to grow*
27 *in 2013.*

28 23. Also on April 15, 2013, ECOtality filed its annual financial report for its fiscal year
ended December 31, 2012 on Form 10-K with the SEC. The Form 10-K stated, in pertinent part,
that: (i) the Company was “currently building the largest EV smart charging network in the U.S.”;
(ii) that the Company had “been successful in [its] bids for public and private funding to support and
manage EV charging infrastructure research and deployment programs, including a \$100.2 million
cost-share grant (“DOE Contract”) from the [DOE], to lead, support and manage the largest

² All emphasis in bold and italics is added, unless otherwise noted.

1 deployment of EVs and charging infrastructure in U.S. history”; (iii) that as “the project manager for
2 The EV Project, [ECOtality was then] uniquely positioned to capture significant share of the
3 domestic market for EV charging solutions”; and that (iv) “[t]hrough the EV Project and [the
4 Company’s] commercial sales channels, . . . the Blink Network [would] be the largest EV smart
5 charging infrastructure network in the world and a well-recognized and trusted brand within the U.S.
6 and international EV industry.” The Form 10-K was signed and certified as to veracity under §§302
7 and 906 of the Sarbanes Oxley Act of 2002 by the Individual Defendants.
8

9 24. On this news, the Company’s stock price spiked when trading resumed on April 16,
10 2013, closing up more than approximately 40% on extremely high trading volume of more than 2.69
11 million shares trading, or more than eight times the average daily volume over the preceding ten
12 trading days.
13

14 25. Indeed, by April 30, 2013, the Company would file a Current Report on Form 8-K
15 advising that despite having been previously advised by the staff of the NASDAQ that its common
16 stock had failed to maintain a minimum bid price of \$1.00 as required by the Listing Rules of The
17 NASDAQ Stock Market, *and had thus been subject to a delisting proceeding*, following the
18 Company’s April 15, 2013 press release and Defendants’ positive comments at the earnings
19 conference and in the Form 10-K, “the Staff ha[d] determined that for the last 10 consecutive
20 business days, from April 16, 2013 to April 29, 2013, the closing bid price of the Company’s
21 common stock ha[d] been at \$1.00 per share or greater. Accordingly, the Company ha[d] regained
22 compliance with Listing Rule 5550(a)(2)[,]” and the common stock of ECOtality was no longer
23 subject to delisting.
24

25 26. On May 3, 2013, ECOtality filed a Current Report on Form 8-K with the SEC
26 advising that it had scheduled its 2013 Annual Meeting of Shareholders to be held on August 22,
27 2013.
28

1 *the year.* Based on the market trends and EVs, as well as our planned network
2 expansion, *we also expect to see a continued uptick in usage trends.*

3 We expect to complete the installations of our level 2 residential and public charging
4 systems under The EV Project this summer. And we expect to complete DC Fast
5 Charger installations by Q3. After that happens, the majority of our revenues will
6 then be generated by new hardware sales, usage fees, the latter of which is a new
7 revenue stream for us, as well as annual licensing and maintenance fees. In addition,
8 we continue to conduct further testing on advertising *and expect that it will
9 represent an additional revenue stream in the future.*

10 We currently have over 12,000 Blink chargers installed all across the United States
11 *and are continuing to gain traction in our major markets. . . .*

12 * * *

13 Looking beyond Blink, let's spend a moment talking about our other product and
14 service offerings, which have become an increasing focus for us. We see opportunity
15 for substantial growth in the industrial fast-charging market and in the launch of our
16 Minit-Charger 12 represents our new focus in this market. *We are on track to begin
17 deliveries in the third quarter to satisfy our healthy pipeline of interest in this
18 product. . . .*

19 * * *

20 As you can see, *we're making progress on shifting our business to one with a
21 significant concentration of revenue in one project to a well-diversified business.*
22 We believe that each of our 3 complementary product and service offerings represent
23 a *growth opportunity, a significant growth opportunity.* We have set aggressive
24 internal sales targets and we intend to meet them. Our goal is to promote the use of
25 clean, efficient, cost-effective transportation technology to best serve our customers
26 *while simultaneously cultivating shareholder value as we continue to build our
27 business.*

28 29. On May 15, 2013, ECOtality also filed its quarterly financial report for its first
quarter of 2013, ended March 31, 2013, on Form 10-Q with the SEC. The Form 10-Q stated, in
pertinent part, that "ECOtality offer[ed] electric vehicle charging stations under the Blink brand and
provide[d] *a turnkey network operating system for EV drivers, commercial businesses and
utilities*" and that the "Minit-Charger manufacture[d] and distribute[d] fast-charging systems for
material handling and airport ground support vehicles." The Form 10-Q was signed and certified as
to veracity under §§302 and 906 of the Sarbanes Oxley Act of 2002 by the Individual Defendants.

30. On May 24, 2013, ECOtality filed a Current Report on Form 8-K with the SEC
disclosing that "[i]n March 2013, the Company issued 85,000 unregistered shares of common stock

1 under the Ecotality, Inc. 2007 Equity Incentive Plan to a third-party service provider in reliance on
2 the exemption for private offerings under Section 4(2) of the Securities Act of 1933, as amended.”

3 31. On June 13, 2013, ECOtality filed a Current Report on Form 8-K with the SEC
4 advising that on June 12, 2013 it had sold 5,123,423 shares of the Company’s common stock in an
5 unregistered stock offering at a purchase price per share of \$1.60, for an aggregate purchase price of
6 \$8,197,477. The Form 8-K also advised that the securities were sold subject to a registration rights
7 agreement pursuant to which the Company was required to register the shares for resale. ECOtality
8 advised on June 19, 2013 that the \$8.2 million private placement had been completed, that the funds
9 would “be used for general corporate and working capital purposes,” and that ECOtality was *then*
10 “making good progress to advance [its] Blink Network and monetize [its] EV solutions,” adding
11 that “[t]his capital raise help[ed the Company] *continue [its] operational momentum as [it]*
12 *execute[d] on [its] strategic initiatives to expand [its] diversified business lines and continue to*
13 *build its] business.*”
14
15

16 32. Pursuant to a registration statement filed on Form S-3 on July 1, 2013 and declared
17 effective by the SEC on July 9, 2013, the 5+ million shares of ECOtality stock sold in the private
18 placement in June 2013 were registered for resale to the investing public at market prices and sales
19 of those shares commenced pursuant to a false and misleading prospectus filed with the SEC on July
20 10, 2013.
21

22 33. On August 6, 2013, ECOtality announced that its 2013 Annual Meeting of
23 Stockholders, originally scheduled to be held on August 22, 2013, had been postponed to October
24 29, 2013. Defendants also advised that contrary to the May 3, 2013 Form 8-K, the annual financial
25 data required to be disclosed prior to the 2013 Annual Meeting of Stockholders would not be made
26 available until September 2013.
27
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1 34. The true facts, which were known by Defendants, but concealed from the investing
2 public during the Class Period, were as follows:

3 (a) Due to design and manufacturing defects, some of ECOTality's charging
4 systems had been causing overheating and even melting of connector plugs when charging vehicles,
5 causing discord with customers and potentially requiring that the Company replace all connector
6 plugs on approximately 12,000 stations;

7
8 (b) Despite efforts undertaken to transition the Company's business model from
9 subsidizing installations of EVSEs under the EV Project to regular commercial sales and
10 installations, ECOTality was not achieving enough commercial EVEC sales and installations to
11 sustain operations in the second half of 2013;

12 (c) Due to "unacceptable performance shortfalls during prototype verification
13 testing," ECOTality was not on track to meet the scheduled release of a new Minit Charger product
14 for industrial customers in the second half of 2013;

15 (d) Due to would-be potential investors' unwillingness to provide additional
16 needed financing, ECOTality was unable to obtain the requisite financing to meet its short-term and
17 long-term capital needs;

18 (e) Because ECOTality was unable to secure the financing requisite to meet its
19 short-term and long-term capital needs, the Company would be unable to meet its obligations to the
20 DOE's EV Project and the DOE would suspend all payments to the Company; and

21 (f) Due to non-compliance with the nation's labor laws, the Company was liable
22 to the U.S. Department of Labor ("DOL") for \$855,000 for the payment of back wages and damages.

23 35. On August 12, 2013, before the opening of trading, ECOTality announced that the
24 Company had hired a "restructuring" adviser to evaluate options including new financing, a possible
25 sale of the Company or bankruptcy filing. The Company's Current Report filed with the SEC on
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1 Form 8-K that day emphasized, in pertinent part, that a bankruptcy filing could be made “in the very
2 near future” following, among other things, disappointing sales and suspension of payments from the
3 federal government.

4 36. ECotality also disclosed that day that some of its charging systems had been causing
5 overheating and even melting of connector plugs when charging vehicles. As a result, ECotality
6 stated that some manufacturers had told the Company they were threatening to advise customers to
7 avoid ECotality’s systems if the Company did not replace all connector plugs on about 12,000
8 stations.
9

10 37. The Company also disclosed that day that it was not on track to meet the scheduled
11 release deadline of a new Minit Charger product for industrial customers in the second half of 2013,
12 citing “unacceptable performance” during testing, and that it had not been able to line up sufficient
13 financing to meet its ongoing capital needs. As a result, the Company had been forced to advise the
14 DOE during the first week of August 2013 that it might not be able to meet its obligations to the
15 DOE’s EV Project and the DOE had responded by notifying ECotality that it would suspend
16 payments, ordering the Company not to incur any new costs on the project and instructing the
17 Company to provide notices to its vendors and subcontractors of the suspension.
18

19 38. Finally, the Company also disclosed that because it had violated provisions of the Fair
20 Labor Standards Act and the Davis-Bacon Act, ECotality would be forced to pay \$855,000 to the
21 DOL in fines and penalties to cover back wages and damages.
22

23 39. On this news, the price of ECotality common stock, which had traded as high as
24 \$2.40 per share in intraday trading during the Class Period, plummeted *more than 87%* from that
25 level to close at \$0.30 per share when trading resumed on August 12, 2013, *erasing more than \$53*
26 *million in market capitalization.*
27
28

1 40. The market for ECOtality common stock was open, well-developed and efficient at
2 all relevant times. As a result of these materially false and misleading statements and omissions as
3 set forth above, ECOtality common stock traded at artificially inflated prices during the Class
4 Period. Plaintiffs and other members of the Class purchased or otherwise acquired ECOtality
5 common stock relying upon the integrity of the market price of ECOtality common stock and market
6 information relating to ECOtality, and have been damaged thereby.
7

8 41. During the Class Period, Defendants materially misled the investing public, thereby
9 inflating the price of ECOtality common stock, by publicly issuing false and misleading statements
10 and omitting to disclose material facts necessary to make Defendants' statements, as set forth herein,
11 not false and misleading. Said statements and omissions were materially false and misleading in that
12 they failed to disclose material adverse information and misrepresented the truth about the Company,
13 its business and operations, as alleged herein.
14

15 42. At all relevant times, the material misrepresentations and omissions particularized in
16 this Complaint directly or proximately caused, or were a substantial contributing cause of, the
17 damages sustained by Plaintiffs and other members of the Class. As described herein, during the
18 Class Period, Defendants made or caused to be made a series of materially false or misleading
19 statements about ECOtality's business, prospects, and operations. These material misstatements and
20 omissions had the cause and effect of creating, in the market, an unrealistically positive assessment
21 of ECOtality and its business, prospects, and operations, thus causing the Company's securities to be
22 overvalued and artificially inflated at all relevant times. Defendants' materially false and misleading
23 statements during the Class Period resulted in Plaintiffs and other members of the Class purchasing
24 ECOtality common stock at artificially inflated prices, thus causing the damages complained of
25 herein. When the true facts about the Company were revealed to the market, the inflation in the
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1 price of ECOTality common stock was removed and the price of ECOTality common stock declined
2 dramatically, causing losses to Plaintiffs and the other members of the Class.

3 **ADDITIONAL SCIENTER ALLEGATIONS**

4 43. As alleged herein, ECOTality and the Individual Defendants acted with scienter in that
5 they knew that the public documents and statements issued or disseminated in the name of the
6 Company were materially false and misleading; knew that such statements or documents would be
7 issued or disseminated to the investing public; and knowingly and substantially participated or
8 acquiesced in the issuance or dissemination of such statements or documents as primary violations of
9 the federal securities laws. As set forth elsewhere herein in detail, these Defendants, by virtue of
10 their receipt of information reflecting the true facts regarding ECOTality, their control over, and/or
11 receipt and/or modification of ECOTality's allegedly materially misleading statements and/or their
12 associations with the Company which made them privy to confidential proprietary information
13 concerning ECOTality, participated in the fraudulent scheme alleged herein.
14

15 **NO SAFE HARBOR**

16 44. ECOTality's "Safe Harbor" warnings accompanying its reportedly forward-looking
17 statements ("FLS") issued during the Class Period were ineffective to shield those statements from
18 liability. To the extent that projected revenues and earnings were included in the Company's
19 financial reports prepared in accordance with GAAP, including those filed with the SEC on Form
20 8-K, they are excluded from the protection of the statutory Safe Harbor. *See* 15 U.S.C. §78u-
21 5(b)(2)(A).
22

23 45. Defendants are also liable for any false or misleading FLS pleaded because, at the
24 time each FLS was made, the speaker knew the FLS was false or misleading and the FLS was
25 authorized and/or approved by an executive officer of ECOTality who knew that the FLS was false.
26 None of the historic or present tense statements made by Defendants were assumptions underlying or
27
28

1 relating to any plan, projection or statement of future economic performance, as they were not stated
2 to be such assumptions underlying or relating to any projection or statement of future economic
3 performance when made, nor were any of the projections or forecasts made by Defendants expressly
4 related to or stated to be dependent on those historic or present tense statements when made.
5

6 **APPLICATION OF PRESUMPTION OF RELIANCE:
7 FRAUD ON THE MARKET**

8 46. Plaintiffs will rely upon the presumption of reliance established by the fraud on the
9 market doctrine in that, among other things:

10 (a) Defendants made public misrepresentations or failed to disclose material facts
11 during the Class Period;

12 (b) The omissions and misrepresentations were material;

13 (c) The Company's securities traded in an efficient market;

14 (d) The misrepresentations alleged would tend to induce a reasonable investor to
15 misjudge the value of the Company's securities; and

16 (e) Plaintiffs and other members of the Class purchased ECOTality securities
17 between the time Defendants misrepresented or failed to disclose material facts and the time the true
18 facts were disclosed, without knowledge of the misrepresented or omitted facts.
19

20 47. At all relevant times, the market for ECOTality securities was efficient for the
21 following reasons, among others:

22 (a) As a regulated issuer, ECOTality filed periodic public reports with the SEC;
23 and

24 (b) ECOTality regularly communicated with public investors via established
25 market communication mechanisms, including through regular disseminations of press releases on
26 the major news wire services and through other wide-ranging public disclosures, such as
27 communications with the financial press, securities analysts, and other similar reporting services.
28

1 Plaintiffs and others similarly situated in connection with their purchases of ECOtality securities
2 during the Class Period.

3 52. Plaintiffs and the Class have suffered damages in that, in reliance on the integrity of
4 the market, they paid artificially inflated prices for ECOtality securities. Plaintiffs and the Class
5 would not have purchased ECOtality securities at the prices they paid, or at all, if they had been
6 aware that the market prices had been artificially and falsely inflated by Defendants' misleading
7 statements.
8

9 **COUNT II**

10 **For Violations of §20(a) of the Exchange Act**
11 **Against Defendant ECOtality and the Individual Defendants**

12 53. Plaintiffs incorporate ¶¶1-52 by reference.

13 54. The Individual Defendants acted as controlling persons of ECOtality within the
14 meaning of §20(a) of the Exchange Act. By reason of their positions with the Company, and their
15 ownership of ECOtality securities, the Individual Defendants had the power and authority to cause
16 ECOtality to engage in the wrongful conduct complained of herein. ECOtality controlled the
17 Individual Defendants and all of the Company's employees. By reason of such conduct, Defendants
18 are liable pursuant to §20(a) of the Exchange Act.
19

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

22 A. Determining that this action is a proper class action, designating Plaintiffs as Lead
23 Plaintiffs and certifying Plaintiffs as Class representatives under Rule 23 of the Federal Rules of
24 Civil Procedure and Plaintiffs' counsel as Lead Counsel;

25 B. Awarding compensatory damages in favor of Plaintiffs and the other Class members
26 against all Defendants, jointly and severally, for all damages sustained as a result of Defendants'
27 wrongdoing, in an amount to be proven at trial, including interest thereon;
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- C. Awarding Plaintiffs and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees;
- D. Awarding rescission or a rescissory measure of damages; and
- E. Awarding such equitable/injunctive or other relief as deemed appropriate by the Court.

JURY DEMAND

Plaintiffs demand a trial by jury.

DATED: August 15, 2013