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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

	:	
	:	Civil Action No. <u>'19CV0377 LAB JLB</u>
KIP LEGGETT, on behalf of himself and all others similarly situated,	:	
Plaintiff,	:	CLASS ACTION COMPLAINT FOR BREACH OF FIDUCIARY DUTIES AND VIOLATIONS OF SECTIONS 14(a) AND 20(a) OF THE SECURITIES EXCHANGE ACT OF 1934
vs.	:	
MAXWELL TECHNOLOGIES, INC., RICHARD BERGMAN, STEVE BILODEAU, JÖRG BUCHHEIM, FRANZ J. FINK, BURKHARD GOESCHEL, ILYA GOLUBOVICH, JOHN MUTCH, TESLA, INC., and CAMBRIA ACQUISITION CORP.	:	<u>JURY TRIAL DEMAND</u>
Defendants.	:	

Plaintiff, Kip Leggett (“Plaintiff”), by his attorneys, on behalf of himself and those similarly situated, files this action against the defendants, and alleges upon information and belief, except for those allegations that pertain to him, which are alleged upon personal knowledge, as follows:

SUMMARY OF THE ACTION

1. Plaintiff brings this stockholder class action on behalf of himself and all other public stockholders of Maxwell Technologies, Inc. (“Maxwell” or the “Company”), against

1 Maxwell, the Company's Board of Directors (the "Board" or the "Individual Defendants"), for
2 violations of Sections 14(a) and 20(a) of the Securities and Exchange Act of 1934 (the "Exchange
3 Act") and for breaches of fiduciary duty as a result of Defendants' efforts to sell the Company to
4 Tesla, Inc. ("Parent"), and Cambria Acquisition Corp. ("Merger Sub," collectively with Parent,
5 "Tesla," and collectively with Maxwell and the Individual Defendants, the "Defendants") as a
6 result of an unfair process for an unfair price, and to enjoin a tender offer, currently expected to
7 expire on March 19, 2019 at 11:59pm, on a proposed all stock transaction valued at approximately
8 \$218 million (the "Proposed Transaction").

9 2. The terms of the Proposed Transaction were memorialized in a February 4, 2019,
10 filing with the Securities and Exchange Commission ("SEC") on Form 8-K attaching the definitive
11 Agreement and Plan of Merger (the "Merger Agreement"). Under the terms of the Merger
12 Agreement, Maxwell will become an indirect wholly-owned subsidiary of Tesla, and Maxwell
13 stockholders will receive a number of shares of Tesla common stock valued at approximately \$4.50
14 for each share of Maxwell common stock they own. The exact valuation will be based upon the
15 quotient obtained by dividing \$4.75 by a volume weighted average price of one share of Tesla
16 common stock for the five consecutive trading days preceding the expiration of the tender offer
17 period, rounded to four decimal places.

18 3. Thereafter, on February 20, 2019, Maxwell filed a Solicitation/Recommendation
19 Statement on Schedule 14D-9 (the "14D-9") with the SEC in support of the Proposed Transaction.
20 Also, on February 20, 2019, Tesla filed a Registration Statement on Schedule S-4 (the "S-4",
21 together with the "14D-9" the "Proxy Materials") with the SEC in support of the Proposed
22 Transaction.

23 4. The Proposed Transaction is unfair and undervalued for a number of reasons.
24 Significantly, the 14D-9 describes an insufficient sales process in which the Board rushed through
25 an inadequate "sales process" in which the only end goal was a sale to Tesla, and in proper
26 fiduciary measures such as a special committee and market were undertaken only after Tesla had
27 made several bids and had threatened to end its customer relationship with Maxwell should the
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1 Company not accept its offer to purchase it. These attempts to bootstrap proper fiduciary
2 procedure late in the sales process reveal the rushed and inadequate nature of the process as a
3 whole.

4 5. Such a sales process, or lack thereof, clearly indicates that the only end-goal
5 acceptable to the Defendants was an acquisition of Maxwell by Tesla.

6 6. In approving the Proposed Transaction, the Individual Defendants have breached
7 their fiduciary duties of loyalty, good faith, due care and disclosure by, *inter alia*, (i) agreeing to
8 sell Maxwell without first taking steps to ensure that Plaintiff and Class members (defined below)
9 would obtain adequate, fair and maximum consideration under the circumstances; and (ii)
10 engineering the Proposed Transaction to benefit themselves and/or Tesla without regard for
11 Maxwell public stockholders. Accordingly, this action seeks to enjoin the Proposed Transaction
12 and compel the Individual Defendants to properly exercise their fiduciary duties to Maxwell
13 stockholders.

14 7. Next, it appears as though the Board has entered into the Proposed Transaction to
15 procure for themselves and senior management of the Company significant and immediate benefits
16 with no thought to the Company's public stockholders. For instance, pursuant to the terms of the
17 Merger Agreement, upon the consummation of the Proposed Transaction, Company Board
18 Members and executive officers will be able to exchange all Company equity awards for the
19 merger consideration. Moreover, certain Directors and other insiders will also be the recipients of
20 lucrative change-in-control agreements, triggered upon the termination of their employment as a
21 consequence of the consummation of the Proposed Transaction.

22 8. In further violation of their fiduciary duties, Defendants caused to be filed the
23 materially deficient Proxy Materials on February 20, 2019 with SEC in an effort to solicit
24 stockholders to tender their Maxwell shares in favor of the Proposed Transaction. The Proxy
25 Materials are materially deficient, deprives Maxwell stockholders of the information they need to
26 make an intelligent, informed and rational decision of whether to tender their shares in favor of
27 the Proposed Transaction, and is thus in breach of the Defendants fiduciary duties. As detailed
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1 below, the Proxy Materials omits and/or misrepresents material information concerning, among
2 other things: (a) the sales process and in particular certain conflicts of interest for management;
3 (b) the financial projections for Maxwell and Tesla, provided by Maxwell and Tesla to the
4 Company's financial advisor Barclays Capital, Inc. ("Barclays") for use in its financial analyses;
5 and (c) the data and inputs underlying the financial valuation analyses that purport to support the
6 fairness opinions provided by the Company's financial advisors, Barclays.

7 9. Absent judicial intervention, the Proposed Transaction will be consummated,
8 resulting in irreparable injury to Plaintiff and the Class. This action seeks to enjoin the Proposed
9 Transaction or, in the event the Proposed Transaction is consummated, to recover damages
10 resulting from violation of the federal securities laws by Defendants.

11 **PARTIES**

12 10. Plaintiff is a citizen of California and, at all times relevant hereto, has been a
13 Maxwell stockholder.

14 11. Defendant Maxwell develops, manufactures, and markets energy storage and
15 power delivery products worldwide. Maxwell is incorporated under the laws of the State of
16 Delaware and has its principal place of business at 3888 Calle Fortunada, San Diego, CA 92123.
17 Shares of Maxwell common stock are traded on the NasdaqGS under the symbol "MXWL".

18 12. Defendant Richard Bergman ("Bergman") has been a Director of the Company at
19 all relevant times. In addition, Bergman serves as a member on the Board's Strategic Alliance
20 Committee and as the Chair of the Board's Compensation Committees.

21 13. Defendant Steve Bilodeau ("Bilodeau") has been a director of the Company at
22 all relevant times. In addition, Bilodeau serves as the Chairman of the Company Board and as a
23 member on the Board's Audit, Strategic Alliance, and Compensation Committees, and as the Chair
24 of the Board's Governance & Nominating Committee. In addition, Bilodeau is classified by the
25 Company as a "Financial Expert".

26 14. Defendant Jörg Buchheim ("Buchheim") has been a director of the Company at
27 all relevant times.

1 15. Defendant Franz J. Fink ("Fink") has been a director of the Company at all
2 relevant times. In addition, Fink serves as the Company's President and Chief Executive Officer
3 ("CEO").

4 16. Defendant Burkhard Goeschel ("Goeschel") has been a director of the Company at
5 all relevant times. In addition, Goeschel serves as a member on the Board's Governance &
6 Nominating Committee.

7 17. Defendant Ilya Golubovich ("Golubovich") has been a director of the Company at
8 all relevant times. In addition, Golubovich serves as a member on the Board's Compensation and
9 Governance & Nominating Committees.

10 18. Defendant John Mutch ("Mutch") has been a director of the Company at all relevant
11 times. In addition, Mutch serves as the Chair of the Board's Audit Committee and is classified by
12 the Company as being a "Financial Expert."

13 19. Defendants identified in ¶¶ 12 - 18 are collectively referred to as the "Individual
14 Defendants."

15 20. Defendant Parent designs, develops, manufactures, and sells electric vehicles, and
16 energy generation and storage systems in the United States, China, Norway, and internationally.
17 Parent is a corporation organized under the laws of the State of Delaware and has its principal
18 place of business at 3500 Deer Creek Rd., Palo Alto, CA 94304. Parent common stock is traded
19 on the NasdaqGS under the ticker symbol "TSLA".

20 21. Defendant Merger Sub is a wholly owned subsidiary of Parent created to effectuate
21 the Proposed Transaction.

22 **JURISDICTION AND VENUE**

23 22. This Court has subject matter jurisdiction pursuant to Section 27 of the Exchange
24 Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331 (federal question jurisdiction) as Plaintiff alleges
25 violations of Sections 14(a) and Section 20(a) of the Exchange Act. This action is not a collusive
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1 one to confer jurisdiction on a court of the United States, which it would not otherwise have.

2 23. Personal jurisdiction exists over each defendant either because the defendant
3 conducts business in or maintains operations in this District, or is an individual who is either
4 present in this District for jurisdictional purposes or has sufficient minimum contacts with this
5 District as to render the exercise of jurisdiction over defendant by this Court permissible under
6 traditional notions of fair play and substantial justice.
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8 24. Venue is proper in this District pursuant to 28 U.S.C. § 1391, because Maxwell has
9 its principal place of business is located in this District, and each of the Individual Defendants, as
10 Company officers or directors, has extensive contacts within this District.

11 CLASS ACTION ALLEGATIONS

12 25. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure 23,
13 individually and on behalf of the stockholders of Maxwell common stock who are being and will
14 be harmed by Defendants' actions described herein (the "Class"). The Class specifically excludes
15 Defendants herein, and any person, firm, trust, corporation or other entity related to, or affiliated
16 with, any of the Defendants.

17 26. This action is properly maintainable as a class action because:

- 18 a. The Class is so numerous that joinder of all members is impracticable. As of
19 February 11, 2019, there were over 46 million shares of Maxwell Common
20 Stock were issued and outstanding. The actual number of public stockholders
21 of Maxwell will be ascertained through discovery;
- 22 b. There are questions of law and fact which are common to the Class, including
23 *inter alia*, the following:
- 24 i. Whether Defendants have violated the federal securities laws;
- 25 ii. Whether Defendants made material misrepresentations and/or omitted
26 material facts in the Proxy Materials; and
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1 iii. Whether Plaintiff and the other members of the Class have and will
2 continue to suffer irreparable injury if the Proposed Transaction is
3 consummated.

4 c. Plaintiff is an adequate representative of the Class, has retained competent
5 counsel experienced in litigation of this nature and will fairly and adequately
6 protect the interests of the Class;

7 d. Plaintiff's claims are typical of the claims of the other members of the Class
8 and Plaintiff does not have any interests adverse to the Class;

9 e. The prosecution of separate actions by individual members of the Class would
10 create a risk of inconsistent or varying adjudications with respect to individual
11 members of the Class which would establish incompatible standards of conduct
12 for the party opposing the Class;

13 f. Plaintiff anticipates that there will be no difficulty in the management of this
14 litigation and, thus, a class action is superior to other available methods for the
15 fair and efficient adjudication of this controversy; and

16 g. Defendants have acted on grounds generally applicable to the Class with respect
17 to the matters complained of herein, thereby making appropriate the relief
18 sought herein with respect to the Class as a whole

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21 **THE INDIVIDUAL DEFENDANTS' FIDUCIARY DUTIES**

22 27. By reason of the Individual Defendants' positions with the Company as officers
23 and/or directors, said individuals are in a fiduciary relationship with Maxwell and owe the
24 Company the duties of due care, loyalty, and good faith.

25 28. By virtue of their positions as directors and/or officers of Maxwell, the Individual
26 Defendants, at all relevant times, had the power to control and influence, and did control and
27 influence and cause Maxwell to engage in the practices complained of herein.

1 29. Each of the Individual Defendants are required to act with due care, loyalty, good
2 faith and in the best interests of the Company. To diligently comply with these duties, directors
3 of a corporation must:

- 4 a. act with the requisite diligence and due care that is reasonable under the
5 circumstances;
- 6 b. act in the best interest of the company;
- 7 c. use reasonable means to obtain material information relating to a given
8 action or decision;
- 9 d. refrain from acts involving conflicts of interest between the fulfillment
10 of their roles in the company and the fulfillment of any other roles or
11 their personal affairs;
- 12 e. avoid competing against the company or exploiting any business
13 opportunities of the company for their own benefit, or the benefit of
14 others; and
- 15 f. disclose to the Company all information and documents relating to the
16 company's affairs that they received by virtue of their positions in the
17 company.

18 30. In accordance with their duties of loyalty and good faith, the Individual
19 Defendants, as directors and/or officers of Maxwell, are obligated to refrain from:

- 20 a. participating in any transaction where the directors' or officers'
21 loyalties are divided;
- 22 b. participating in any transaction where the directors or officers are
23 entitled to receive personal financial benefit not equally shared by the
24 Company or its public stockholders; and/or
- 25 c. unjustly enriching themselves at the expense or to the detriment of
26 the Company or its stockholders.

1 31. Plaintiff alleges herein that the Individual Defendants, separately and together, in
2 connection with the Proposed Transaction, violated, and are violating, the fiduciary duties they
3 owe to Maxwell, Plaintiff and the other public stockholders of Maxwell, including their duties of
4 loyalty, good faith, and due care.

5 32. As a result of the Individual Defendants' divided loyalties, Plaintiff and Class
6 members will not receive adequate, fair or maximum value for their Maxwell common stock in
7 the Proposed Transaction.

8 **SUBSTANTIVE ALLEGATIONS**

9 ***Company Background***

10 33. Maxwell develops, manufactures, and markets energy storage and power delivery
11 products worldwide.

12 34. The Company provides ultracapacitor cells, multi-cell packs, modules, and
13 subsystems that provide energy storage and power delivery solutions for applications in
14 automotive, grid energy storage, wind, bus, industrial, and truck industries; and lithium-ion
15 capacitors, which are energy storage devices designed to address various applications in the rail,
16 grid, and industrial markets.

17 35. Maxwell also offers CONDIS high-voltage capacitors, such as grading and
18 coupling capacitors, electric voltage transformers, and metering products that are used to ensure
19 the safety and reliability of electric utility infrastructure and other applications, including transport,
20 distribution, and measurement of high-voltage electrical energy. In addition, the company
21 provides dry battery electrodes for use in electric vehicles.

22 36. The Company markets and sells its products through direct and indirect sales
23 channels to integrators and OEMs for use in a range of end products.

24 37. The Company's most recent financial performance press release before the
25 announcement of the Proposed Transaction indicated sustained and solid financial performance.
26 For example, in a November 6, 2018 press release announcing its 2018 Q3 financial results, the
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1 Company highlighted such milestones as an increase in total revenue from \$29.5 million to \$33.7
2 million year-on-year.

3 38. Speaking on these positive results, CEO Defendant Fink noted on the Company’s
4 positive financial results as follows, “In Q3, we experienced sequential revenue growth driven by
5 energy storage product sales in the wind and non-China bus markets, enhanced our position in the
6 grid market with a new partnership, and our overall pipeline continues to grow”

7 39. Defendant Fink went on to comment on a strong future outlook for Maxwell noting
8 “Overall, momentum is building and we believe we are well positioned in large, global markets
9 that are growing and have a need for our technology solutions.”

10 40. These positive results are not an anomaly, but rather, are indicative of a trend of
11 continued financial success by Maxwell. Clearly, based upon these positive financial results, the
12 Company is likely to have tremendous future success and should command a much higher
13 consideration than the amount contained within the Proposed Transaction.

14 41. Despite this upward trajectory and continually increasing financial results, the
15 Individual Defendants have caused Maxwell to enter into the Proposed Transaction for insufficient
16 consideration.

17 ***The Flawed Sales Process***

18 42. As detailed in the Proxy Materials, the process deployed by the Individual
19 Defendants was flawed and inadequate, was conducted out of the self-interest of the Individual
20 Defendants, and was designed with only one concern in mind – to effectuate a sale of the Company
21 to Tesla.

22 43. First, the Proxy Materials indicate that both a market check and the creation of a
23 committee of independent board members given the task of running the sales process were
24 inadequate, after-the-fact measures, carried out well after the negotiations with Tesla had begun.

25 44. The Proxy Materials also do not provide for sufficient information as to discussions
26 and decisions regarding the Company continuing as standalone entity in the face of Tesla’s
27 overtures, especially considering Defendant Fink’s initial representations to Tesla that Maxwell
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1 was not actively looking to sell the Company, and the Maxwell Board’s later determination that a
2 proper valuation for any sale should fall in the \$5.75 - \$6.00 per share range.

3 45. The Proxy Materials also indicated that Tesla put pressure on the Company to
4 ensure that no real process would be carried out by threatening to no longer pursue a strategic
5 commercial arrangement with Maxwell. Despite this threat of cutting off an important client, the
6 Proxy Materials do not provide for the amount of revenue Maxwell generates from its current
7 business with Tesla.

8 46. The Proxy Materials are unclear as to the nature of any specific standstill
9 restrictions arising out of the terms of any of the non-disclosure agreements entered into between
10 Maxwell on the one hand and any interested third party, including Tesla, on the other, and if the
11 terms of any included “don’t-ask, don’t-waive” provisions or standstill provisions in any such
12 agreements, and if so, the specific conditions, if any, under which such provisions would fall away.

13 47. Moreover, the Preliminary Proxy is also unclear as to any differences that may exist
14 between the various non-disclosure agreements entered into between Maxwell and any interested
15 third parties.

16 48. It is not surprising, given this background to the overall sales process, that it was
17 conducted in a completely inappropriate and misleading manner.

18 ***The Proposed Transaction***

19 49. On February 4, 2019, Maxwell issued a press release announcing the Proposed
20 Transaction. The press release stated, in relevant part:

21 **San Diego (February 4, 2019)**—Maxwell Technologies, Inc. (Nasdaq: MXWL
22 or the “Company” or “Maxwell”), a leading developer and manufacturer of
23 energy solutions, today announced it has entered into a definitive agreement (the
24 “Merger Agreement”) to be acquired by Tesla, Inc. (Nasdaq: TSLA or “Tesla”).
25 Tesla will commence an all stock exchange offer for all the issued and outstanding
26 shares of the Company (the “Offer”), after which the Company will be merged
27 with a Tesla subsidiary and become a wholly owned subsidiary of Tesla.

28 The Offer will value each share of Maxwell common stock at \$4.75 per share.
Pursuant to the Offer, each share of Maxwell common stock will be exchanged
for a fraction of a share of Tesla’s common stock, equal to the quotient obtained
by dividing \$4.75 by a volume weighted average price of one share of Tesla’s

1 common stock as reported on the NASDAQ Global Select Market for the five
2 consecutive trading days preceding the expiration of the Offer, and which is
3 subject to a floor that has been set at 80% of a volume weighted average price of
Tesla common stock calculated prior to signing.

4 The closing of the transaction is subject to the successful tender and exchange of
5 shares, certain regulatory approvals and customary closing conditions. These
6 terms, along with additional terms and conditions of the transaction, can be found
7 in the Company's Form 8-K filed on February 4, 2019 with the Securities and
Exchange Commission and in the Merger Agreement, which is filed as an exhibit
to the Company's Form 8-K.

8 While there can be no assurances on the closing date, the Company anticipates
9 that the merger will be consummated in the second quarter of 2019, or shortly
10 thereafter, should all conditions be met and subject to the timing of the
aforementioned approvals.

11 The Merger Agreement and the consummation of the Offer, merger and other
12 transactions contemplated in the Merger Agreement have been unanimously
13 approved by Maxwell's board of directors, all of whom recommend to the
14 Company's stockholders that they accept the Offer and tender their Maxwell
15 shares pursuant to the Offer. The directors and certain officers of Maxwell and
I2BF Energy Limited have agreed to tender all of their Maxwell shares in the
Offer, which in the aggregate represent approximately 7.56% of the outstanding
shares of Maxwell common stock.

16 "We are very excited with today's announcement that Tesla has agreed to acquire
17 Maxwell. Tesla is a well-respected and world-class innovator that shares a
18 common goal of building a more sustainable future," said Dr. Franz Fink,
19 President and Chief Executive Officer of Maxwell. "We believe this transaction
20 is in the best interests of Maxwell stockholders and offers investors the
opportunity to participate in Tesla's mission of accelerating the advent of
sustainable transport and energy."

21 DLA Piper, LLP (US) represented Maxwell as outside legal counsel, and Barclays
22 Capital Inc. served as independent advisor to Maxwell in connection with the
transaction. Wilson Sonsini Goodrich & Rosati represented Tesla as outside legal
counsel.

23 ***The Inadequate Merger Consideration***

24 50. Significantly, the Company's financial prospects and opportunities for future
25 growth, and synergies with Tesla establish the inadequacy of the merger consideration.

26 51. First, the compensation afforded under the Proposed Transaction to Company
27 stockholders significantly undervalues the Company. The proposed valuation does not adequately
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1 reflect the intrinsic value of the Company. Moreover, the valuation does not adequately take into
2 consideration how the Company is performing, considering key financial improvements of the
3 Company in recent years.

4 52. For example, the Company has traded as high as \$6.27 per share within the past
5 fifty-two weeks, a value approximately 32% greater than the consideration offered in the Proposed
6 Transaction.

7 53. Moreover, according to *MarketBeat.com*, within the past six months analysts at
8 Oppenheimer have set a price target for Maxwell at \$6.00 per share, a valuation more than 26.31%
9 greater than that offered in the Proposed Transaction.

10 54. Additionally, Maxwell's future success is extremely likely, given the consistent
11 positive financial results it has posted over the past several quarters. Obviously, the opportunity
12 to invest in such a company on the rise is a great coup for Tesla, however it undercuts the
13 investment of Plaintiff and all other public stockholders.

14 55. Finally, the Proposed Transaction represents a significant synergistic benefit to
15 Tesla, which would be able to vertically integrate Maxwell's products into its own production line,
16 and will use the new assets, operational capabilities, and brand capital to bolster its own position
17 in the market.

18 56. Those in the media have been quick to note the synergistic benefits that the
19 Proposed Transaction will have for Tesla. For example, Bill Selesky, an analyst with Argus
20 Research, was quoted in a February 5, 2019 *MarketWatch.com* article as stating Maxwell is "a
21 perfect fit for a company like Tesla."

22 57. Garret Nelson, an analyst with CFRA, also quoted in the same article, further stated
23 that Maxwell's intellectual properties "could improve battery performance and lower [Tesla's]
24 production costs meaningfully". Nelson continued stating, "This seems like a low-risk, bolt-on
25 acquisition for Tesla with significant upside potential, and we also like the fact they're using stock
26 and not cash to pay for it."

1 58. Clearly, while the deal will be beneficial to Tesla it comes at great expense to
2 Plaintiff and other public stockholders of Maxwell.

3 59. Moreover, post-closure, Maxwell stockholders will see their voting power diluted
4 significantly as stockholders of Tesla, their ownership share in the surviving entity being
5 significantly smaller than their current holdings, thus shrinking any future benefit from their
6 investment in Maxwell.

7 60. It is clear from these statements and the facts set forth herein that this deal is
8 designed to maximize benefits for Tesla at the expense of Maxwell stockholders, which clearly
9 indicates that Maxwell stockholders were not an overriding concern in the formation of the
10 Proposed Transaction.

11 ***Preclusive Deal Mechanisms***

12 61. The Merger Agreement contains certain provisions that unduly benefit Tesla by
13 making an alternative transaction either prohibitively expensive or otherwise impossible.
14 Significantly, the Merger Agreement contains a termination fee provision that is especially onerous
15 and impermissible. Notably, in the event of termination, the merger agreement requires Maxwell
16 to pay up to \$8,295,000 to Tesla, if the Merger Agreement is terminated under certain
17 circumstances. Moreover, under one circumstance, Maxwell must pay this termination fee even
18 if it consummates any competing Acquisition Proposal (as defined in the Merger Agreement)
19 *within 12 months following the termination* of the Merger Agreement. The termination fee will
20 make the Company that much more expensive to acquire for potential purchasers. The termination
21 fee in combination with other preclusive deal protection devices will all but ensure that no
22 competing offer will be forthcoming.

23 62. The Merger Agreement also contains a “No Solicitation” provision that restricts
24 Maxwell from considering alternative acquisition proposals by, *inter alia*, constraining Maxwell’s
25 ability to solicit or communicate with potential acquirers or consider their proposals. Specifically,
26 the provision prohibits the Company from directly or indirectly soliciting, initiating, proposing or
27 inducing any alternative proposal, but permits the Board to consider an unsolicited bona fide
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1 “*Acquisition Proposal*” if it constitutes or is reasonably calculated to lead to a “*Superior*
2 *Proposal*” as defined in the Merger Agreement.

3 63. Moreover, the Merger Agreement further reduces the possibility of a topping offer
4 from an unsolicited purchaser. Here, the Individual Defendants agreed to provide Tesla
5 information in order to match any other offer, thus providing Tesla access to the unsolicited
6 bidder’s financial information and giving Tesla the ability to top the superior offer. Thus, a rival
7 bidder is not likely to emerge with the cards stacked so much in favor of Tesla.

8 64. These provisions, individually and collectively, materially and improperly impede
9 the Board’s ability to fulfill its fiduciary duties with respect to fully and fairly investigating and
10 pursuing other reasonable and more valuable proposals and alternatives in the best interests of the
11 Company and its public stockholders.

12 65. Accordingly, the Company’s true value is compromised by the consideration
13 offered in the Proposed Transaction.

14 ***Potential Conflicts of Interest***

15 66. The breakdown of the benefits of the deal indicate that Maxwell insiders are the
16 primary beneficiaries of the Proposed Transaction, not the Company’s public stockholders. The
17 Board and the Company’s executive officers are conflicted because they will have secured unique
18 benefits for themselves from the Proposed Transaction not available to Plaintiff and the public
19 stockholders of Maxwell.

20 67. Certain insiders stand to receive massive financial benefits as a result of the
21 Proposed Transaction. Notably, Company insiders, including the Individual Defendants, currently
22 own large, illiquid portions of Company stock that will be exchanged for large cash pay days upon
23 the consummation of the Proposed Transaction.

24 68. Furthermore, upon the consummation of the Proposed Transaction, each
25 outstanding Company option or equity award, will be canceled and converted into the right to
26 receive certain consideration according to the merger agreement

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69. These payouts will be paid to Maxwell's Directors, as a consequence of the Proposed Transaction's consummation, as follows:

Name	Vested Maxwell Options (#) ⁽¹⁾	Unvested Maxwell Options (#) ⁽²⁾	Value of Maxwell Options (\$) ⁽³⁾	Maxwell Unvested RSU Awards (#) ⁽⁴⁾	Value of Unvested Maxwell RSU Awards (\$) ⁽⁵⁾	Maxwell Vested and Deferred RSU Awards (#)	Value of Maxwell Vested and Deferred RSU Awards (\$) ⁽⁵⁾	Total (\$)
Richard Bergman	5,000	5,000	—	19,785	93,979	44,923	213,384	307,363
Steve Bilodeau	5,000	5,000	—	19,785	93,979	30,421	144,500	238,479
Jörg Buchheim	5,000	5,000	—	19,785	93,979	—	—	93,979
Burkhard Goeschel	5,000	5,000	—	19,785	93,979	—	—	93,979
Ilya Golubovich	5,000	5,000	—	19,785	93,979	40,187	190,888	284,867
John Mutch	5,000	5,000	—	19,785	93,979	—	—	93,979

70. Additionally, such payouts will be paid to Maxwell's other insiders, including its executive team, as a consequence of the Proposed Transaction's consummation, as follows:

71. Name	Vested Maxwell Options (#) ⁽¹⁾	Value of Vested Maxwell Options (\$) ⁽²⁾	Accelerated Unvested Maxwell Options Upon a Qualifying Termination (#) ⁽³⁾	Value of Accelerated Unvested Maxwell Options Upon a Qualifying Termination (\$) ⁽⁴⁾	Accelerated Maxwell RSU Awards Upon a Qualifying Termination (#) ⁽⁵⁾	Value of Accelerated Maxwell RSU Awards Upon a Qualifying Termination (\$) ⁽⁶⁾	Total (\$) ⁽⁷⁾
Dr. Franz J. Fink	73,626	—	24,541	—	551,189	2,618,148	2,618,148
David Lyle	25,160	—	8,386	—	243,328	1,155,808	1,155,808
Everett Wiggins	10,602	—	3,534	—	113,003	536,764	536,764
Emily Lough	4,750	—	—	—	83,449	396,383	396,383

72. Moreover, certain employment agreements with certain Maxwell executives, entitle such executives to severance packages should their employment be terminated under certain circumstances. These 'golden parachute' packages are significant, and will grant each director or officer entitled to them millions of dollars, compensation not shared by Maxwell's common stockholders. These golden parachute agreements will pay out to Company insiders as follows:

Name	Cash (\$) ⁽¹⁾	Equity (\$) ⁽²⁾	Perquisites/Benefits (\$) ⁽³⁾	Other (\$) ⁽⁴⁾	Total (\$)
Franz Fink, Ph.D.	\$ 2,123,288	\$ 1,779,289	\$ 33,898	—	\$ 3,936,475
David Lyle	\$ 955,479	\$ 703,633	\$ 18,506	—	\$ 1,677,618
Everett Wiggins	\$ 413,938	\$ 382,091	\$ 22,847	\$ 30,000	\$ 818,876

1 73. Thus, while the Proposed Transaction is not in the best interests of Maxwell
2 stockholders, it will produce lucrative benefits for the Company's officers and directors.

3 ***The Materially Misleading and/or Incomplete Proxy Materials***

4 74. On February 20, 2019, the Maxwell Board and Tesla caused to be filed with the
5 SEC materially misleading and incomplete Proxy Materials that, in violation their fiduciary duties,
6 failed to provide the Company's stockholders with material information and/or provides them with
7 materially misleading information critical to the total mix of information available to the
8 Company's stockholders concerning the financial and procedural fairness of the Proposed
9 Transaction.

10 *Omissions and/or Material Misrepresentations Concerning the Sales Process leading up*
11 *to the Proposed Transaction*

12 75. Specifically, the Proxy Materials fail to provide material information concerning
13 the process conducted by the Company and the events leading up to the Proposed Transaction. In
14 particular, the Proxy Materials fail to disclose:

- 15 a. The nature of any specific standstill restrictions arising out of the terms of any
16 of the non-disclosure agreements entered into between Maxwell on the one
17 hand and any interested third party, including tesla, on the other, and if the terms
18 of any included "don't-ask, don't-waive" provisions or standstill provisions in
19 any such agreements, and if so, the specific conditions, if any, under which such
20 provisions would fall away;
- 21 b. The nature of any differences that exist between the various non-disclosure
22 agreements entered into between Maxwell and any interested third parties
- 23 c. The reasoning as to why the committee of independent board members created
24 to run the sales process was not created until after Tesla had supplied two
25 rounds of bids to purchase the Company;
- 26 d. The reasoning as to why a market check was not carried out until after Tesla
27 had supplied two rounds of bids to purchase the Company;
- 28

1 e. Sufficient information as to discussions and decisions regarding the Company
2 continuing as standalone entity in the face of Tesla’s overtures, especially
3 considering Defendant Fink’s initial representations to Tesla that Maxwell was
4 not actively looking to sell the Company, and the Maxwell Board’s later
5 determination that a proper valuation for any sale should fall in the \$5.75 - \$6.00
6 per share range; and

7 f. The amount of revenue Maxwell generates from its current business with Tesla.

8 Omissions and/or Material Misrepresentations Concerning Maxwell’s Financial
9 Projections

10 76. The Proxy Materials fail to provide material information concerning financial
11 projections provided by Maxwell’s management and relied upon by Barclays in its analyses. The
12 Preliminary Proxy discloses management-prepared financial projections for the Company which
13 are materially misleading. The Preliminary Proxy indicates that in connection with the rendering
14 of Barclays’ fairness opinions, Barclays reviewed “financial and operating information with
15 respect to the business, operations and prospects of Maxwell furnished to Barclays by Maxwell,
16 including financial projections prepared by Maxwell’s management.” Accordingly, the Proxy
17 Materials should have, but fails to provide, certain information in the projections that Maxwell
18 management provided to the Board and Barclays. Courts have uniformly stated that “projections
19 ... are probably among the most highly-prized disclosures by investors. Investors can come up
20 with their own estimates of discount rates or [] market multiples. What they cannot hope to do is
21 replicate management’s inside view of the company’s prospects.” *In re Netsmart Techs., Inc.*
22 *S’holders Litig.*, 924 A.2d 171, 201-203 (Del. Ch. 2007).

23 77. With respect to the Maxwell 2019 long-range plan process Projections, the Proxy
24 Materials fail to provide material information concerning the financial projections prepared by
25 Maxwell management. Specifically, the Proxy Materials fail to disclose the line items that make
26 up the following metrics:

27 a. EBIT;

1 b. Adj EBITDA; and

2 c. Adj EBITEDA-Capital Expenditures; and

3 78. Moreover, the Maxwell 2019 long-range plan process Projections contain provide
4 non-GAAP financial metrics, including EBIT, Adj EBITDA, and Adj EBITEDA-Capital
5 Expenditures, but fails to disclose a reconciliation of all non-GAAP to GAAP metrics.

6 79. With respect to the Extended Projections, the Proxy Materials fail to provide
7 material information concerning the financial projections prepared by Maxwell management and
8 extended by Barclays to calendar years 2024 and 2025. Specifically, the Proxy Materials fail to
9 disclose the line items that make up the following metrics:

10 a. Adj EBITDA; and

11 b. EBIT.

12 80. Moreover, the Extended Projections contain provide non-GAAP financial metrics,
13 including, Adj EBITDA, EBIT, and Unlevered Free Cash Flow, but fails to disclose a
14 reconciliation of all non-GAAP to GAAP metrics.

15 81. In addition the Proxy Materials indicate that the Extended Projections for the years
16 2024 and 2025 were created by Barclays taking into “account recent developments, including the
17 removal of any potential revenue based on a potential commercial arrangement with Tesla while
18 adding forecasted amounts for potential alternative automotive manufacturers;” however, the
19 Projections do not disclose the specific amount of potential revenue from Tesla removed, or the
20 amount of revenue from potential alternative manufacturers included.

21 82. This information is necessary to provide Company stockholders a complete and
22 accurate picture of the sales process and its fairness. Without this information, stockholders were
23 not fully informed as to Defendants’ actions, including those that may have been taken in bad faith,
24 and cannot fairly assess the process.

25 83. Without accurate projection data presented in the Proxy Materials, Plaintiff and
26 other stockholders of Maxwell are unable to properly evaluate the Company’s true worth, the
27 accuracy of Barclay’s financial analyses, or make an informed decision whether to tender their
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1 Company stock in favor of the Proposed Transaction. As such, the Board has breached their
2 fiduciary duties by failing to include such information in the Proxy Materials.

3 Omissions and/or Material Misrepresentations Concerning Tesla's Financial Projections

4 84. The Preliminary Proxy fails to provide any information whatsoever concerning
5 financial projections for Tesla.

6 85. Without accurate projection data presented in the Proxy Materials, Plaintiff and
7 other stockholders of Maxwell are unable to properly evaluate Tesla's true worth (which is highly
8 relevant, given that the merger consideration consists entirely of Tesla stock).

9 Omissions and/or Material Misrepresentations Concerning the Financial Analyses by
10 Barclays

11 86. In the Proxy Materials, Barclays describes its fairness opinion and the various
12 valuation analyses performed to render such opinion. However, the descriptions fail to include
13 necessary underlying data, support for conclusions, or the existence of, or basis for, underlying
14 assumptions. Without this information, one cannot replicate the analyses, confirm the valuations
15 or evaluate the fairness opinions.

16 87. With respect to the *Selected Comparable Companies Analysis*, the Proxy Materials
17 fail to disclose the following:

- 18 a. The specific benchmark multiples for each Comparable Company;

19 88. With respect to the *Selected Precedent Transactions Analysis*, the Proxy Materials
20 fails to disclose the following:

- 21 a. The total value of each selected transaction;
22 b. The specific date on which each selected transaction closed;
23 c. The specific benchmark multiples for each transaction;

24 89. With respect to the *Discounted Cash Flow Analysis*, the Proxy Materials fail to
25 disclose the following:

- 26 a. The specific inputs and assumptions used to calculate the discount rate range of
27 14.0% to 18.0%; including
28

1 i. Maxwell's weighted average cost of capital.

2 b. The specific inputs and assumptions used to calculate the perpetuity growth
3 rates of 3% to 5%;

4 90. These disclosures are critical for stockholders to be able to make an informed
5 decision on whether to tender their shares in favor of the Proposed Transaction.

6 91. Without the omitted information identified above, Maxwell's public stockholders
7 are missing critical information necessary to evaluate whether the proposed consideration truly
8 maximizes stockholder value and serves their interests. Moreover, without the key financial
9 information and related disclosures, Maxwell's public stockholders cannot gauge the reliability of
10 the fairness opinion and the Board's determination that the Proposed Transaction is in their best
11 interests. As such, the Board has breached their fiduciary duties by failing to include such
12 information in the Preliminary Stockholders.

13 **FIRST COUNT**

14 **Claim for Breach of Fiduciary Duties**

15 **(Against the Individual Defendants)**

16 92. Plaintiff repeats all previous allegations as if set forth in full herein.

17 93. The Individual Defendants have violated their fiduciary duties of care, loyalty and
18 good faith owed to Plaintiff and the Company's public stockholders.

19 94. By the acts, transactions and courses of conduct alleged herein, Defendants,
20 individually and acting as a part of a common plan, are attempting to unfairly deprive Plaintiff and
21 other members of the Class of the true value of their investment in Maxwell.

22 95. As demonstrated by the allegations above, the Individual Defendants failed to
23 exercise the care required, and breached their duties of loyalty and good faith owed to the
24 stockholders of Maxwell by entering into the Proposed Transaction through a flawed and unfair
25 process and failing to take steps to maximize the value of Maxwell to its public stockholders.

1 96. Indeed, Defendants have accepted an offer to sell Maxwell at a price that fails to
2 reflect the true value of the Company, thus depriving stockholders of the reasonable, fair and
3 adequate value of their shares.

4 97. Moreover, the Individual Defendants breached their duty of due care and candor by
5 failing to disclose to Plaintiff and the Class all material information necessary for them to make
6 an informed decision on whether to tender their shares in favor of the Proposed Transaction.

7 98. The Individual Defendants dominate and control the business and corporate affairs
8 of Maxwell, and are in possession of private corporate information concerning Maxwell's assets,
9 business and future prospects. Thus, there exists an imbalance and disparity of knowledge and
10 economic power between them and the public stockholders of Maxwell which makes it inherently
11 unfair for them to benefit their own interests to the exclusion of maximizing stockholder value.

12 99. By reason of the foregoing acts, practices and course of conduct, the Individual
13 Defendants have failed to exercise due care and diligence in the exercise of their fiduciary
14 obligations toward Plaintiff and the other members of the Class.

15 100. As a result of the actions of the Individual Defendants, Plaintiff and the Class will
16 suffer irreparable injury in that they have not and will not receive their fair portion of the value of
17 Maxwell's assets and have been and will be prevented from obtaining a fair price for their common
18 stock.

19 101. Unless the Individual Defendants are enjoined by the Court, they will continue to
20 breach their fiduciary duties owed to Plaintiff and the members of the Class, all to the irreparable
21 harm of the Class.

22 102. Plaintiff and the members of the Class have no adequate remedy at law. Only
23 through the exercise of this Court's equitable powers can Plaintiff and the Class be fully protected
24 from the immediate and irreparable injury which Defendants' actions threaten to inflict.

25 **SECOND COUNT**

26 **Aiding and Abetting the Board's Breaches of Fiduciary Duty**

27 **Against Defendants Maxwell Technologies, Inc.,**

1 **Tesla, Inc., and Cabria Acquisition Corp.**

2 103. Plaintiff incorporates each and every allegation set forth above as if fully set forth
3 herein.

4 104. Defendants Maxwell, Parent, and Merger Sub, knowingly assisted the Individual
5 Defendants' breaches of fiduciary duty in connection with the Proposed Acquisition, which,
6 without such aid, would not have occurred.

7 105. As a result of this conduct, Plaintiff and the other members of the Class have been
8 and will be damaged in that they have been and will be prevented from obtaining a fair price for
9 their shares.

10 106. Plaintiff and the members of the Class have no adequate remedy at law.

11 **THIRD COUNT**

12 **Violations of Section 14(a) of the Exchange Act**

13 **(Against All Defendants)**

14 107. Plaintiff repeats all previous allegations as if set forth in full herein.

15 108. Defendants have disseminated the Proxy Materials with the intention of soliciting
16 stockholders to tender their shares in favor of the Proposed Transaction.

17 109. Section 14(a) of the Exchange Act requires full and fair disclosure in connection
18 with the Proposed Transaction. Specifically, Section 14(a) provides that:

19 It shall be unlawful for any person, by the use of the mails or by any means or
20 instrumentality of interstate commerce or of any facility of a national securities
21 exchange or otherwise, in contravention of such rules and regulations as the [SEC]
22 may prescribe as necessary or appropriate in the public interest or for the protection
23 of investors, to solicit or to permit the use of his name to solicit any proxy or consent
24 or authorization in respect of any security (other than an exempted security)
25 registered pursuant to section 78l of this title.

26 110. As such, SEC Rule 14a-9, 17 C.F.R. 240.14a-9, states the following
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1 No solicitation subject to this regulation shall be made by means of any proxy
2 statement, form of proxy, notice of meeting or other communication, written or
3 oral, containing any statement which, at the time and in the light of the
4 circumstances under which it is made, is false or misleading with respect to any
5 material fact, or which omits to state any material fact necessary in order to make
6 the statements therein not false or misleading or necessary to correct any statement
7 in any earlier communication with respect to the solicitation of a proxy for the same
8 meeting or subject matter which has become false or misleading.

9 111. The Proxy Materials were prepared in violation of Section 14(a) because they are
10 materially misleading in numerous respects and omits material facts, including those set forth
11 above. Moreover, in the exercise of reasonable care, Defendants knew or should have known that
12 the Proxy Materials are materially misleading and omits material facts that are necessary to render
13 them non-misleading.

14 112. The Individual Defendants had actual knowledge or should have known of the
15 misrepresentations and omissions of material facts set forth herein.

16 113. The Individual Defendants were at least negligent in filing the Proxy Materials that
17 were materially misleading and/or omitted material facts necessary to make the Proxy Materials
18 not misleading.

19 114. The misrepresentations and omissions in the Proxy Materials are material to
20 Plaintiff and the Class, and Plaintiff and the Class will be deprived of its entitlement to decide
21 whether to tender its shares in favor of the Proposed Transaction on the basis of complete
22 information if such misrepresentations and omissions are not corrected prior to expiration of the
23 tender period regarding the Proposed Transaction.

24 **FOURTH COUNT**

25 **Violations of Section 20(a) of the Exchange Act**

26 **(Against All Individual Defendants)**

27 115. Plaintiff repeats all previous allegations as if set forth in full herein.
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1 116. The Individual Defendants were privy to non-public information concerning the
2 Company and its business and operations via access to internal corporate documents, conversations
3 and connections with other corporate officers and employees, attendance at management and
4 Board meetings and committees thereof and via reports and other information provided to them in
5 connection therewith. Because of their possession of such information, the Individual Defendants
6 knew or should have known that the Proxy Materials were materially misleading to Company
7 stockholders.

8 117. The Individual Defendants were involved in drafting, producing, reviewing and/or
9 disseminating the materially false and misleading statements complained of herein. The Individual
10 Defendants were aware or should have been aware that materially false and misleading statements
11 were being issued by the Company in the Proxy Materials and nevertheless approved, ratified
12 and/or failed to correct those statements, in violation of federal securities laws. The Individual
13 Defendants were able to, and did, control the contents of the Proxy Materials. The Individual
14 Defendants were provided with copies of, reviewed and approved, and/or signed the Proxy
15 Materials before their issuance and had the ability or opportunity to prevent its issuance or to cause
16 it to be corrected.

17 118. The Individual Defendants also were able to, and did, directly or indirectly, control
18 the conduct of Maxell's business, the information contained in its filings with the SEC, and its
19 public statements. Because of their positions and access to material non-public information
20 available to them but not the public, the Individual Defendants knew or should have known that
21 the misrepresentations specified herein had not been properly disclosed to and were being
22 concealed from the Company's stockholders and that the Proxy Materials were misleading. As a
23 result, the Individual Defendants are responsible for the accuracy of the Proxy Materials and are
24 therefore responsible and liable for the misrepresentations contained herein.

25 119. The Individual Defendants acted as controlling persons of Maxwell within the
26 meaning of Section 20(a) of the Exchange Act. By reason of their position with the Company, the
27 Individual Defendants had the power and authority to cause Maxwell to engage in the wrongful
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1 conduct complained of herein. The Individual Defendants controlled Maxwell and all of its
2 employees. As alleged above, Maxwell is a primary violator of Section 14 of the Exchange Act
3 and SEC Rule 14a-9. By reason of their conduct, the Individual Defendants are liable pursuant to
4 section 20(a) of the Exchange Act.

5 WHEREFORE, Plaintiff demands injunctive relief, in its favor and in favor of the Class,
6 and against the Defendants, as follows:

7 A. Ordering that this action may be maintained as a class action and certifying Plaintiff
8 as the Class representatives and Plaintiff's counsel as Class counsel;

9 B. Enjoining the Proposed Transaction;

10 C. In the event Defendants consummate the Proposed Transaction, rescinding it and
11 setting it aside or awarding rescissory damages to Plaintiff and the Class;

12 D. Declaring and decreeing that the Merger Agreement was agreed to in breach of the
13 fiduciary duties of the Individual Defendants and is therefore unlawful and unenforceable;

14 E. Directing the Individual Defendants to exercise their fiduciary duties to commence
15 a sale process that is reasonably designed to secure the best possible consideration for
16 Maxwell and obtain a transaction which is in the best interests of Maxwell and its
17 stockholders;

18 F. Directing defendants to account to Plaintiff and the Class for damages sustained
19 because of the wrongs complained of herein;

20 G. Awarding Plaintiff the costs of this action, including reasonable allowance for
21 Plaintiff's attorneys' and experts' fees; and

22 H. Granting such other and further relief as this Court may deem just and proper.
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury on all issues which can be heard by a jury.

Dated: February 26, 2019

BRODSKY & SMITH, LLC

By: /s/ Evan J. Smith

Evan J. Smith, Esquire (SBN 242352)

esmith@brodskysmith.com

Ryan P. Cardona, Esquire (SBN 302113)

rcardona@brodskysmith.com

9595 Wilshire Blvd., Ste. 900

Phone: (877) 534-2590

Facsimile (310) 247-0160

Attorneys for Plaintiff

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PLAINTIFF'S CERTIFICATION

I, Kip Leggett ("Plaintiff"), declare under penalty of perjury, as to the claims asserted under the federal securities laws, that:

1. Plaintiff has reviewed the complaint and authorized the commencement of an action on Plaintiff's behalf.
2. Plaintiff did not purchase the security that is the subject of this action at the direction of plaintiff's counsel or in order to participate in this private action.
3. Plaintiff is willing to serve as a representative party on behalf of the class, including providing testimony at deposition and trial, if necessary.
4. Plaintiff's transactions in Maxwell Technologies, Inc. (Nasdaq: MXWL) of securities during the Class Period specified in the Complaint are as follows (use additional sheet if necessary):

<u>DATE</u>	<u># OF SHARES PURCHASED</u>	<u># OF SHARES SOLD</u>	<u>PRICE</u>
June/July 2014	1600	0	\$17.23

5. During the three years prior to the date of this Certificate, Plaintiff has not sought to serve or served as a representative party for a class in an action filed under the federal securities laws. [Or, Plaintiff has served as a class representative in the action(s) listed as follows:]

6. Plaintiff will not accept any payment for serving as a representative party on behalf of the class beyond the Plaintiff's pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the class as ordered or approved by the court.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 18th
day of February, 2019.

Sign Name: Kip Leggett

Print Name: Kip Leggett

Address: 677 Via La Cuesta

State, Zip Code: Chula Vista, CA 91913

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

KIP LEGGETT, on behalf of himself and all others similarly situated,

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Evan J. Smith, Brodksy & Smith, LLC,
9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212
(877) 534-2590

DEFENDANTS

MAXWELL TECHNOLOGIES, INC., et al.

County of Residence of First Listed Defendant San Diego
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'19CV0377 LAB JLB

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input checked="" type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. § 78aa and 28 U.S.C. § 1331
 Brief description of cause:
Violations of the Exchange Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 02/26/2019 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.